

NOS. 23506 and 23210

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

CALVERT A. WILLIAMSON, Plaintiff-Appellant, v.  
TERRY TELFER, and REYNOLDS METALS, INC., dba REYNOLD  
ALUMINUM RECYCLING CO., Defendants-Appellees  
and  
JOHN DOES 1-10; JANE DOES 1-10; DOE BUSINESS  
ENTITIES 1-10; DOE CORPORATION 1-10; DOE PARTNERSHIPS  
1-10; DOE UNINCORPORATED ORGANIZATIONS 1-10;  
AND DOE GOVERNMENTAL AGENCIES 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIV. NO. 97-0238-01)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Lim and Foley, JJ.)

Plaintiff-Appellant Calvert A. Williamson (Williamson)  
appeals from the following:

- (1) "Order Denying Without Prejudice Defendants Terry Telfer and Reynolds Metals, Inc. dba Reynolds Aluminum Recycling Company's Motion to Dismiss Plaintiff's Complaint, Compelling Plaintiff's Response to Defendant's First Request for Production of Documents, Awarding Defendants Terry Telfer and Reynolds Metals, Inc., dba Reynolds Recycling Company Attorneys' Fees and Costs for

Preparation of the Motion to Dismiss, Fining Plaintiff \$175.00," filed February 18, 2000, and the "Order for Payment of Monetary Sanctions," filed January 31, 2000<sup>1</sup> (S. Ct. No. 23210); and (2) "Order Granting Defendants Terry Telfer and Reynolds Metals, Inc. dba Reynolds Aluminum Recycling Company's Motion to Dismiss Plaintiff's Complaint," filed May 30, 2000,<sup>2</sup> and the Judgment, filed June 5, 2000 (S. Ct. No. 23506).

These two appeals arose out of two motions to dismiss filed on December 30, 1999 and April 17, 2000 by Defendants-Appellees Terry Telfer and Reynolds Metals, Inc. (Telfer and Reynolds Metals) in the Circuit Court of the First Circuit (circuit court). The order consolidating the appeals was filed on August 15, 2000.

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<sup>1</sup>The Honorable Bode Uale presided. Telfer's and Reynolds Metals' first motion to dismiss was denied, and Williamson was ordered to respond to the request for production of documents within thirty days; pay Telfer's and Reynolds Metals' attorneys' fees and costs for preparation of the motion to dismiss; and pay a \$175.00 fine to a local charity of Williamson's choice for his non-compliance with Rules of the Circuit Courts Rule 7 (Forms of Motions) by filing his responsive memoranda to the motion less than three days before the hearing. Williamson did not attach the February 18, 2000 order to his notice of appeal, but did state in his notice that he was appealing the order "to pay sanctions and attorney fees."

<sup>2</sup>The Honorable Sabrina McKenna presided. Telfer's and Reynolds Metals' second motion to dismiss was granted and Williamson's January 17, 1997 Complaint was dismissed with prejudice.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Williamson's points of error as follows:

(1) Williamson argues that Telfer's and Reynolds Metals' motion to dismiss for Williamson's failure to provide answers to interrogatories was precluded by law. Williamson's argument is without merit. The record on appeal indicates that Williamson served his answers to interrogatories on Telfer and Reynolds Metals the day before the hearing on the first motion to dismiss. The circuit court dismissed Williamson's complaint because he failed to serve a response to Telfer's and Reynolds Metals' request for production of documents, despite having been ordered to do so by the circuit court at the hearing on the first motion to dismiss. The circuit court did not abuse its discretion by dismissing Williamson's complaint with prejudice. Williamson delayed, engaged in contumacious conduct warranting the dismissal, and did not object to the dismissal. Azer v. The Courthouse Racquetball Corp., 9 Haw. App. 530, 540, 852 P.2d 75, 81 (1993).

(2) Williamson argues that the circuit court abused its discretion by sanctioning him after Telfer and Reynolds Metals filed an "improper motion" to dismiss Williamson's complaint. Williamson states that "Hawaii Rules of Civil

Procedure [(HRCF)] Rule 11 prohibits improper motion from being filed by all parties." Williamson's argument has no merit. The circuit court properly sanctioned Williamson \$175.00 for filing his responsive memoranda to the motion to dismiss less than three days before the hearing in violation of Rules of the Circuit Courts (RCC) Rule 7 (Forms of Motions). Hawai'i Revised Statutes (HRS) § 603-21.9 (1993) and RCC 3(e).

(3) Williamson argues that the circuit court improperly imposed sanctions of attorneys' fees against him following Telfer's and Reynolds Metals' improperly filed first motion to dismiss. Pursuant to HRCF Rule 37(d), the circuit court properly ordered Williamson to pay the reasonable expenses, including attorneys' fees, for preparation of the motion to dismiss, which had been brought because of Williamson's failure to timely serve discovery responses.

(4) Williamson argues his right to due process was violated. Since Williamson failed to request the transcripts of the hearings of the two motions to dismiss, there is no way to evaluate this alleged error. Lepere v. United Public Workers, Local 646, AFL-CIO, 77 Hawai'i 471, 474, 887 P.2d 1029, 1032 (1995).

Therefore,

IT IS HEREBY ORDERED that the January 31, 2000,  
February 18, 2000, and May 30, 2000 orders and the June 5, 2000  
Judgment of the circuit court are affirmed.

DATED: Honolulu, Hawai'i, June 3, 2002.

On the briefs:

Calvert A. Williamson,  
plaintiff-appellant pro se.

Chief Judge

Leighton K. Oshima  
for defendants-appellees.

Associate Judge

Associate Judge