

NO. 23628

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

JOHN PATRICK REEVES, Plaintiff-Appellant, v. JUDITH RODGERS
and AN NGUYEN, Defendants-Appellees, and STEVEN SILVA,
NOLAN ESPINDA, and OFFICERS JOHN DOE 1-10, HONOLULU
POLICE DEPARTMENT, DEPARTMENT OF PUBLIC SAFETY, CITY
AND COUNTY OF HONOLULU, STATE OF HAWAI'I, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Civ. No. 99-2729)

MEMORANDUM OPINION

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

This appeal by Plaintiff-Appellant John Patrick Reeves (Reeves) is taken from a judgment in favor of Defendants-Appellees Judith Rodgers (Rodgers) and An Nguyen (Nguyen) (collectively, Appellees) and against Reeves, which was entered on July 14, 2000 by the Circuit Court of the First Circuit (the circuit court)¹ and certified as final for appeal purposes. The judgment was predicated on a March 7, 2000 order in which the circuit court granted the motion of Appellees to dismiss Reeves' complaint against them on grounds that the action was barred by the two-year statute of limitations set forth in the State Tort Liability Act.

¹ The Honorable Virginia Lea Crandall entered the judgment and order which are being challenged on appeal.

We vacate the judgment and remand for further proceedings.

BACKGROUND

On July 19, 1999, Reeves, acting pro se, filed the underlying complaint against Appellees, who were both employees of Defendant State of Hawai'i (the State), as well as the State, the Department of Public Safety (the DPS), and two other employees of the State. Reeves appears to allege in his complaint that on September 22, 1995, while he was an inmate at the Laumaka Work Furlough Unit (Laumaka), he was granted parole status by the Hawai'i Paroling Authority (the HPA), with his release being contingent upon his securing residential housing on O'ahu and his social worker, Rodgers, submitting verification to the HPA of Reeves' residence. Reeves claims that although he complied with the conditions for his release by securing housing and submitting a rental receipt to Rodgers on September 26, 1995, Rodgers failed to notify the HPA of Reeves' satisfaction of the terms for his release. On October 18, 1995, Reeves states, he worked his shift as a chef at T.G.I. Friday's, visited his new residence, and then returned to Laumaka at 8:20 p.m., well before the 9:30 p.m. expiration time of his furlough pass.

According to Reeves, when he arrived at the Laumaka check-in station, he was instructed to pack his personal belongings because, pursuant to an order from Nguyen, who was Rodgers' supervisor, Reeves "was being removed from

resocialization status and being placed back into a Medium Custody housing area, effective immediately." Reeves states that he

was next informed that he was being written-up for the misconduct infraction of "Deviation", as initiated by [Rodgers]. As a direct result of the Misconduct Report and Ordered Movement, [Reeves] was subsequently Falsely Accused, Falsely Sanctioned, Falsely Charged, and Falsely Imprisoned by [the DPS] for "Promotion of Prison Contraband in the Second Degree". This charge was also submitted to Kalihi branch of The Honolulu Police Department, and the Prosecutor's Office; for which charge [Reeves] was found Not Guilty by a jury of twelve(12) [sic] of his peers, in The Circuit Court of Hawaii on August 1, 1997.[²]

(Footnote added.) Alleging that various torts had been committed against him, Reeves sought general and special damages from the various Defendants, in an amount to be shown at trial, as well as punitive damages in the amount of \$3 million.

On December 21, 1999, Appellees filed a motion to dismiss the complaint, arguing that (1) Reeves' claims against them, which arose from the events on October 18, 1995, were barred by the two-year statute of limitations set forth in the State Tort Liability Act, Hawaii Revised Statutes (HRS) § 662-4 (1993), and (2) the statute of limitations was not tolled by Reeves' incarceration pursuant to HRS § 657-13 (1993).

By an order filed on March 7, 2000, the circuit court granted Appellees' motion, and on July 14, 2000, the circuit court entered a judgment in favor of Appellees and against

² According to the complaint filed by Plaintiff-Appellant John Patrick Reeves (Reeves) in this action, Reeves' defense at the trial was that the drug contraband he was charged with promoting had been placed on his property by an adult corrections officer.

Reeves, certified as final for appeal purposes. Reeves filed his notice of appeal on August 1, 2000.

DISCUSSION

A.

Pursuant to HRS § 662-2 (1993), the State has waived "its immunity for liability for the torts of its employees and shall be liable in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages." HRS § 662-4 (1993) provides that "[a] tort claim against the State shall be forever barred unless action is begun within two years after the claim accrues, except in the case of a medical tort claim when the limitation of action provisions set forth in section 657-7.3 shall apply." The Hawai'i Supreme Court has held that paragraph (1) of HRS § 657-13 (1993),³ which provides for

³ Hawaii Revised Statutes (HRS) § 657-13 (1993), which is included in Part I of HRS chapter 657, provides, in relevant part:

Infancy, insanity, imprisonment. If any person entitled to bring any action specified in this part (excepting actions against the sheriff, chief of police, or other officers) is, at the time the cause of action accrued, either:

- (1) Within the age of eighteen years; or,
- (2) Insane; or
- (3) Imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than the person's natural life;

such person shall be at liberty to bring such actions within the respective times limited in this part, after the disability is removed or at any time while the disability exists.

tolling, by reason of a plaintiff's minority, of the statute of limitations for tort actions described in part I of HRS chapter 657, does not apply to tort claims against the State brought under HRS chapter 662, the State Tort Liability Act. Whittington v. State, 72 Haw. 77, 806 P.2d 957 (1991). Applying the same logic, the prisoner tolling provision set forth in paragraph (3) of HRS § 657-13 would also not apply to lawsuits brought against the State brought by prisoners pursuant to HRS chapter 662.

A reading of the complaint in this case indicates that Reeves' tort claims against Appellees stemmed from the events on October 18, 1995, which caused Reeves to lose his furlough status. Since Reeves' complaint was filed more than three years after October 18, 1995, any tort claim that Reeves may have had against the State, based on the negligent acts of Appellees, would be "forever barred."

Therefore, if the motion to dismiss the complaint had been filed by the State or the DPS, the circuit court's order granting the motion would have been proper.

B.

The motion to dismiss the complaint that is the subject of this appeal, however, was brought by Rodgers and Nguyen, who were sued in their individual capacities. The statute of limitations set forth in HRS § 662-4 for tort claims against the State is, therefore, not applicable to Reeves' complaint against

them. Instead, the applicable statute of limitations is HRS § 657-7 (1993), which provides as follows:

Damage to persons or property. Actions for the recovery of compensation for damage or injury to persons or property shall be instituted within two years after the cause of action accrued, and not after, except as provided in section 657-13 [(1993)].

Since Reeves' claims against Rodgers and Nguyen stemmed from the events on October 18, 1995 and Reeves' complaint was not actually filed until July 19, 1999, HRS § 657-7 would bar the complaint against Reeves, unless HRS § 657-13 were applicable. That statutory provision states:

Infancy, insanity, imprisonment. If any person entitled to bring any action specified in this part (excepting actions against the sheriff, chief of police, or other officers) is, at the time the cause of action accrued, either:

- (1) Within the age of eighteen years; or,
- (2) Insane; or
- (3) Imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than the person's natural life;

such person shall be at liberty to bring such actions within the respective times limited in this part, after the disability is removed or at any time while the disability exists.

(Emphasis added.) Through the enactment of the foregoing statute, the legislature has chosen to make minors, the insane, and prisoners protected classes "for purposes of extending the time limitation of their right to bring suit." Gorospe v. Matsui, 72 Haw. 377, 381, 819 P.2d 80, 82 (1991). However, the legislature excepted from the tolling statute "actions against the sheriff, chief of police, or other officers," and it is not

clear to us from the face of HRS § 657-13 whether Rodgers and Nguyen qualify as the type of "other officers" who would be included in the exception from the tolling provisions of HRS § 657-13. Since the issue was never addressed below, we will not decide it sua sponte.

CONCLUSION

In light of the foregoing discussion, we vacate (1) the judgment entered by the circuit court on July 14, 2000 and (2) the circuit court's March 7, 2000 order granting the motion of Appellees to dismiss Reeves' complaint against them on statute of limitations grounds.

Vacated and remanded for further proceedings.

DATED: Honolulu, Hawai'i, April 23, 2002.

On the briefs:

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plaintiff-appellant pro se.

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