

NO. 24138

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

EUGENE J. HUTCH and VIVIAN E. MIYASATO,  
Plaintiffs-Appellants, v. DOUGLAS PARSONS,  
DIAMOND HEAD MENTAL HEALTH CENTER, and  
VICTORY OHANA, INC., Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIV. NO. 00-01-2175)

SUMMARY DISPOSITION ORDER

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

All documents in the record appearing to have been signed by Plaintiff-Appellant Vivian E. Miyasato (Miyasato) were in fact signed by Plaintiff-Appellant Eugene J. Hutch (Hutch) for Miyasato. In a handwritten letter Hutch sent to the clerk of the Hawai'i Supreme Court and which was received on March 8, 2001, Hutch stated, "This case involves me and my wife Ms. Vivian E. Miyasato, and I have her permission to sign her name." That statement, by itself, is insufficient to authorize Hutch to sign for Miyasato.

Hutch appeals from the circuit court's February 23, 2001 order dismissing, without prejudice, "PLAINTIFF'S CIVIL RIGHTS COMPLAINT AND DEMAND FOR JURY TRIAL" (Complaint) filed by Hutch on July 12, 2000. The reason for the order was the lack of a showing of proper service upon the defendants.

BACKGROUND

On July 12, 2000, Hutch, for himself and Miyasato, filed the Complaint against the defendants alleging "VIOLATIONS OF THE PLAINTIFF CONSTITUTIONAL RIGHTS GIVEN IN THE UNITED STATES CONSTITUTION AND THE HAWAII CONSTITUTION, AND IN VIOLATIONS OF THE LAWS IN THE STATE OF HAWAII AGAINST RACIAL DISCRIMINATION," "VIOLATION OF THE REHABILITATION ACT AND TITLE I (EMPLOYMENT) OF THE AMERICANS WITH DISABILITIES ACT" and "VIOLATION OF DISCRIMINATION BECAUSE OF PLAINTIFFS, RACE, COLOR, SEX, AGE, RELIGION NATIONAL ORIGIN, AND DISABILITY."

The Complaint alleged that Defendant-Appellee Douglas Parsons, in his capacity as a Parole Officer, and Defendant-Appellee Diamond Head Mental Health Center (Diamond Head) did "NOT ALLOW [Hutch] TO LIVE WITH HIS WIFE [Miyasato]" and forced Hutch "TO SIGN PAPERS TO ENTER INTO THE VICTORY OHANA PROGRAM, AGAINST THE ORDER BY THE HAWAII PAROLING AUTHORITY TO ALLOW [Hutch] TO BE PAROLED TO [Miyasato] AT" their home in Kaimuki.

The Complaint against Diamond Head was "FOR NOT ALLOWING PLAINTIFFS TO LIVE TOGETHER ON PAROLE BECAUSE OF A CHARGE OF [Hutch's] ABUSE OF FAMILY AND HOUSEHOLD MEMBER, AGAINST HIS WIFE, WHEN [Hutch] WAS NOT FOUND GUILTY OF THAT CHARGE, AND THAT CHARGE HAS BEEN EXPUNGED FROM [Hutch's] CRIMINAL RECORD[.]"

The Complaint complained against Defendant-Appellee Victory Ohana "FOR CHARGING [Hutch] \$350.00 each month, and/or \$11.66 A DAY, AND NOT ALLOWING [Hutch] TO WORK, AND HAS FORCE [Hutch] TO GO TO CHURCH, MEETINGS, AND TO BE HOUSED IN THEIR PROGRAM."

The Complaint alleged the following:

"ALL THE . . . DEFENDANTS HAVE IGNORED PLAINTIFFS REQUEST TO ALLOW PLAINTIFF TO LIVE TOGETHER[.]"

"ALL DEFENDANTS ARE USING DISCRIMINATION AGAINST PLAINTIFFS BECAUSE OF RACE FOR [Hutch] IS BLACK (AFRICAN-AMERICAN[]), AND [Miyasato] IS JAPANESE."

"ALL DEFENDANTS ARE USING DISCRIMINATION AGAINST PLAINTIFFS BECAUSE BOTH PLAINTIFFS HAVE A MENTAL DISORDER."

The Complaint ends with the following:

PRAYER OF RELIEF

(1.) PLAINTIFFS SEEK \$50,000.00 FROM EACH DEFENDANT FOR VIOLATIONS OF PLAINTIFFS CONSTITUTIONAL RIGHTS AGAINST RACIAL DISCRIMINATION;

(2.) PLAINTIFFS SEEKS TO BE ALLOWED TO LIVE TOGETHER ON PAROLE AS WAS STATED BY THE HAWAII PAROLING AUTHORITY, AND THAT DEFENDANT VICTORY OHANA GIVE PLAINTIFF BACK HIS \$431.42;

(3.) PLAINTIFF SEEKS \$10,000.00 FROM DEFENDANT VICTORY OHANA FOR FORCING PLAINTIFF EUGENE J. HUTCH FOR GOING TO THERE CHURCH, WHEN PLAINTIFF BELONGS TO NEW HOPE CHRISTIAN FELLOWSHIP, BUT WAS NOT ALLOWED TO GO FOR THIRTY DAYS;

(4.) PLAINTIFFS SEEKS \$50,000.00 FROM EACH DEFENDANT FOR DISCRIMINATION BECAUSE PLAINTIFF HAS A MENTAL DISORDER, AND DEFENDANTS USE THAT TO IGNORE PLAINTIFFS[;]

(5.) PLAINTIFF SEEKS \$50,000.00 from DEFENDANT DIAMOND HEAD MENTAL HEALTH CENTER FOR USING PLAINTIFF CRIMINAL RECORD AGAINST PLAINTIFF EUGENE J. HUTCH FOR ABUSE OF FAMILY AND HOUSEHOLD MEMBER WHEN PLAINTIFF EUGENE J. HUTCH WAS NOT FOUNDED GUILTY OF THAT CHARGE, AND THAT CHARGE IS EXPUNGED FROM PLAINTIFF'S CRIMINAL RECORD;

(6.) WHATEVER ELSE THE JURY MAY DEEM PROPER AND JUST.

On August 31, 2000, Judge Kevin S. C. Chang denied "PLAINTIFFS['] MOTION TO RECEIVE A COURT ORDER TO ALLOW PLAINTIFF EUGENE J. HUTCH TO ATTEND LAW LIBRARY AT THE UNIVERSITY OF HAWAII, AND TO ALLOW PLAINTIFF EUGENE J. HUTCH TO ATTEND CHURCH AT NEW HOPE, AND TO CONTINUE THE STEADFAST HOUSING PROGRAM FOR PLAINTIFF VIVIAN E. MIYASATO[.]"

On February 7, 2001, the clerk of the court entered a notice that the case "is hereby dismissed for want of service pursuant to Rules of the Circuit Courts of the State of Hawaii, Rule 28 unless objections showing good cause (specific reasons) are filed within five days after receipt of this notice."

On February 22, 2001, Hutch filed his objections to the dismissal in which he noted that a copy of the Complaint had been personally served by certified mail to each of the defendants and each defendant knew about the Complaint.

On February 23, 2001, Judge Sabrina McKenna entered the court's "ORDER OVERRULING PLAINTIFF (EUGENE HUTCH)'S OBJECTIONS FOR WANT OF SERVICE AND PLAINTIFF (EUGENE HUTCH)'S MOTIONS (1) TO HAVE DEFENDANTS FILE AN ANSWER TO COMPLAINT; (2) FOR APPOINTMENT OF COUNSEL; (3) FOR A COPY OF THE TRANSCRIPTS IN S.P.P. NOS.: 00-1-0019; 00-1-00141; AND 00-1-0043, AND (4) FOR DEFAULT AND DISMISSING CASE WITHOUT PREJUDICE[.]" In this order, the court ruled that "[d]espite [Hutch's] arguments, it is clear

that proper service has not been effectuated on any defendant, and that diligent effort to effectuate proper service has not been made."

On March 8, 2001, Hutch, for himself and Miyasato, filed a notice of appeal of the February 23, 2001 order.

#### DISCUSSION

Upon a review of the record, we conclude as follows:

1. Hutch is not authorized to sign documents for Miyasato. Hawai'i Rules of Civil Procedure Rule 11(a) states as follows:

Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. . . . An unsigned paper shall be stricken by the clerk unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

It appears that the clerk did not comply with this rule regarding Miyasato because the clerk was unaware that Miyasato did not sign the Complaint.

2. Hutch did not comply with the mandatory requirements regarding service of a summons and a complaint explicitly stated in the Hawai'i Rules of Civil Procedure Rule 4, specifically Rule 4(c), (d), and (g), and the Rules of the Circuit Courts of the State of Hawai'i Rules 5 and 28. Therefore, the order of dismissal was authorized and appropriate.

CONCLUSION

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the circuit court's order dismissing this case without prejudice for lack of proper service upon the defendants, from which the appeal is taken, filed on February 23, 2001, is affirmed.

DATED: Honolulu, Hawai'i, January 14, 2003.

On the briefs:

Eugene James Hutch,  
Plaintiff-Appellant, *pro se*.

Chief Judge

Lisa M. Itomura,  
Deputy Attorney General,  
special appearance for  
Defendant-Appellee  
Douglas Parsons.

Associate Judge

Associate Judge