

NOT FOR PUBLICATION

NO. 26155

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

EM. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

SELA T. AHOLELEI, Special Administrator of the Estate of
MAFILEO AHOFONO AHOLELEI; SELA T. AHOLELEI,
Individually and as Next Friend for FANGAOKE L.
AHOLELEI, a minor, Plaintiffs-Appellants, v.
ALEXANDER M. MONELL, JR., et al., Defendants, and
COUNTY OF HAWAI'I, Defendant-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(Civ. No. 00-1-0368)

SUMMARY DISPOSITION ORDER

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

Plaintiff-Appellant Sela T. Aholelei (Aholelei) appeals from the Judgment filed on September 9, 2003, in the Circuit Court of the Third Circuit (circuit court).¹ On September 17, 2001, Aholelei, Individually and as Next Friend for Fangaoke L. Aholelei, a minor and Special Administrator of the Estate of Mafileo Ahofono Aholelei, Ofa Aholelei, Viliami Aholelei, Vaitaki Aholelei, Sita Aholelei, Vaitaki L. Aholelei, Salote Teupa, Terriann Aholelei, Fangaoke Aholelei, and Lusinita Aholelei Makalio filed a Second Amended Complaint (the Complaint) in the circuit court against Alexander M. Monell (Monell) and the County

¹ The Honorable Greg K. Nakamura presided.

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of Hawai'i (County),² for the wrongful death of Mafileo Ahofono Aholelei (Decedent). On April 19, 2002, a Notice of Dismissal with Prejudice of all Claims of all Plaintiffs except Aholelei was filed. Aholelei settled her claims against Monell, leaving County as the sole remaining defendant.

Aholelei raises six points of error on appeal, alleging in each point of error that the circuit court erred in granting summary judgment. She contends that: (1) the circuit court erred in granting County's Motion for Summary Judgment; (2) County had a duty (through the police department) to inspect and maintain Highway 19 in a reasonably safe condition and to remove hazards or to warn the public of hazards on the road; (3) evidence exists that created a genuine issue of material fact as to County's liability for the presence of a hazardous condition on Highway 19; (4) the causal relation between County's actions and the injuries to Decedent is a question of fact for the jury; (5) County's negligence need not be the whole cause of injuries to Decedent pursuant to the substantial factor test; and (6) the reasonable foreseeability of the danger of the parked truck is a question of fact for the jury.

² In addition to the County and Monell, Aholelei named "John Does 1-10; Jane Does 1-10; Doe Corporations 1-10; Doe Partnerships 1-10; and Doe Governmental Entities 2-10, Inclusive," as defendants. Aholelei did not seek leave to identify any other "Doe" defendants. Aholelei filed her pretrial statement on November 21, 2001 without naming any other defendants.

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After careful review of the issues raised and the arguments made by the parties, as well as the record of the proceedings before the circuit court and the relevant case law, we resolve Aholelei's point of error as follows:

"Fundamental in any determination of liability for negligence is the existence of [a] duty owed by the putative tortfeasor to the injured person." Cootey v. Sun Inv., Inc., 68 Haw. 480, 484, 718 P.2d 1086, 1090 (1986) (citing First Ins. Co. of Hawaii, Ltd., v. Int'l Harvester Co., 66 Haw. 185, 189, 659 P.2d 64, 67 (1983)).

The existence of a duty, that is, whether such a relation exists between the parties that the community will impose a legal obligation upon one for the benefit of the other--or, more simply, whether the interest of a plaintiff who has suffered invasion is entitled to legal protection at the expense of a defendant--is entirely a question of law. Bidar v. Amfac, Inc., 66 Haw. 547, 552, 669 P.2d [154,] 158 [(1983)] (citing W. Prosser, Handbook of the Law of Torts § 37, at 206 (4th ed. 1971)).

Tabieros v. Clark Equip. Co., 85 Hawai'i 336, 353, 944 P.2d 1279, 1296 (1997) (quoting Birmingham v. Fordor's Travel Publications, Inc., 73 Haw. 359, 366, 833 P.2d 70, 74-75 (1992)).

Ruf v. Honolulu Police Dept., 89 Hawai'i 315, 320, 972 P.2d 1081, 1086 (1999).

The County's motion for summary judgment was based on the undisputed fact that it did not own, control, or maintain the roadway or shoulder in question. The County submitted affidavits establishing this fact and Aholelei did not respond, nor did she

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submit any evidence disproving this assertion. See, K.M. Young & Assocs., Inc., v. Cieslik, 4 Haw. App. 657, 664, 675 P.2d 793, 799 (1983). Thus, to the extent Aholelei's negligence claim was based on the County's duty to maintain its own roadways, it failed as a matter of law. McNulty v. Pennsylvania, 314 F. Supp. 1274, 1275 (E.D. Pa. 1970) ("Where it is alleged that an accident occurred on a state road because of negligence in failing to inspect, maintain or repair such road, summary judgment in favor of political subdivisions other than the state is appropriate.")

Aholelei also argued another theory, that the police, and therefore the County under the doctrine of respondeat superior, owed a duty to the public to "inspect and maintain Kawaihae Road in a reasonably safe condition and to remove hazards, or at least, to warn those using the road of hazardous conditions" presumably, regardless of the ownership of the road. The law does not impose such a duty on the police. Freitas v. City & County of Honolulu, 58 Haw. 587, 574 P.2d 529 (1978) and Namauu v. City & County of Honolulu, 62 Haw. 358, 614 P.2d 943 (1980).

Aholelei also argued that County's representative admitted that the police have a duty to remove hazards from the roads. However, as the question of duty is a matter of law, the statement of belief by a witness, without more, is insufficient to impose a duty that does not otherwise exist.

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Therefore,

IT IS HEREBY ORDERED that the Circuit Court of the
Third Circuit's September 9, 2003 Judgment is affirmed.

DATED: Honolulu, Hawai'i, April 17, 2006.

On the briefs:

Gerard A. Jervis,
Thomas M. Pico, Jr., and
Glenn T. Honda,
(Jervis, Pico & Honda),
for Plaintiff-Appellant


Chief Judge

Brandon A.K. Gonzalez,
Deputy Corporation Counsel
County of Hawai'i
for Defendant-Appellee.


Associate Judge


Associate Judge