

NO. 26982

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

ALICIA A. BOHANNON, Plaintiff-Appellant, v.
CITY AND COUNTY OF HONOLULU and JOHN WHERRY,
Defendants-Appellees,
and
CARLOS GASTELUM and DOE DEFENDANTS 3-25, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 01-1-2094)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Presiding Judge, Foley and Nakamura, JJ.)

Plaintiff-Appellant Alicia A. Bohannon (Bohannon) appeals from the Judgment Pursuant to Special Verdict filed on November 10, 2004 in the Circuit Court of the First Circuit (circuit court).^{1/}

On July 12, 2001, Bohannon filed a Complaint against the City and County of Honolulu (the City) and Doe Defendants 1-25. Bohannon amended her Complaint on August 6, 2002 and December 30, 2003. In her Second Amended Complaint, Bohannon named as defendants: the City and Honolulu Police Department (HPD) Officers John Wherry (Wherry) and Carlos Gastelum (Gastelum). Bohannon asserted claims against the City, Wherry,

^{1/} The Honorable Victoria S. Marks presided.

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and Gastelum for assault and battery (Count I), negligence (Count II), negligent and/or intentional infliction of severe emotional distress (Count III), punitive damages (Count IV), and violation of 42 U.S.C. § 1983 (Count V).

On May 19, 2004 the circuit court granted summary judgment on Count IV in favor of only the City and on Count V in favor of the City and Wherry. On October 7, 2004, the circuit court dismissed with prejudice all claims against Gastelum as he had not been served with the Second Amended Complaint and more than six months had elapsed since its filing. Jury trial began on October 12, 2004. On October 21, 2004, the jury returned a special verdict in favor of the City and Wherry (collectively, Defendants).

On appeal, Bohannon argues (1) the jury's verdict excusing Defendants from negligence was against the manifest weight of the evidence and a product of prejudice against Bohannon, (2) the jury's verdict was inconsistent viewed in light of the manifest weight of the evidence and the circuit court's instructions, (3) the circuit court erred in allowing Dr. Wilhite to testify over objection regarding TMJ/TMD, and (4) the jury erred in finding, against the manifest weight of the evidence, that Defendants did not negligently cause Bohannon severe emotional distress.

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 as raised by the parties, we conclude:

(1) The verdict in favor of Defendants was not against the manifest weight of the evidence. Hawaii Revised Statutes § 635-56 (1993); Stallworth v. Boren, 99 Hawai'i 287, 305, 54 P.3d 923, 941 (App. 2002); Miyamoto v. Lum, 104 Hawai'i 1, 11, 84 P.3d 509, 519 (2004); Peterson v. City & County of Honolulu, 53 Haw. 440, 442, 496 P.2d 4, 7 (1972).

(2) A new trial against Defendants is not warranted because the verdict was not irreconcilably inconsistent. Carr v. Strode, 79 Hawai'i 475, 489, 904 P.2d 489, 503 (1995); Miyamoto, 104 Hawai'i at 8-9, 84 P.3d at 516-17.

(3) The circuit court did not err in qualifying Dr. Wilhite as an expert witness. Hawaii Rules of Evidence Rule 702; Larsen v. State Sav. & Loan Ass'n, 64 Haw. 302, 304, 640 P.2d 286, 288 (1982); Association of Apt. Owners of Wailea Elua v. Wailea Resort Co., 100 Hawai'i 97, 117, 53 P.3d 608, 628 (2002); State v. Keaweehu, 110 Hawai'i 129, 137, 129 P.3d 1157, 1165 (App. 2006); Neilsen v. American Honda Motor Co., 92 Hawai'i 180, 189, 989 P.2d 264, 273 (App. 1999).

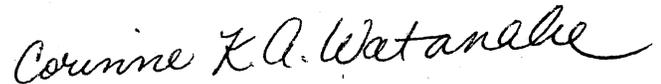
Therefore, the Judgment Pursuant to Special Verdict filed on November 10, 2004 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, September 14, 2006.

On the briefs:

David J. Gierlach
for Plaintiff-Appellant.

Richard D. Lewallen and
Marie Manuele Gavigan,
Deputies Corporation Counsel,
for Defendants-Appellees
City and County of Honolulu
and John Wherry.



Presiding Judge



Associate Judge



Associate Judge