

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27392

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

GARY MATOLA, Plaintiff-Appellant, v.
KAUAI ADVENTURE A.T.V. TOURS, O. RIVERA, STEVE CASE, AND GROVE
FARMS LAND CORP., Defendants-Appellee

APPEAL FROM THE DISTRICT COURT OF THE FIFTH CIRCUIT
(CIVIL NO. RC-05-1-0020)

ORDER DISMISSING APPEAL

(By: Lim, Presiding Judge, Foley and Fujise, JJ.)

K.H. MAKADO
CIRK. APPEL. STATE
LATE COURTS
HAWAII

2006 JUL 24 AM 8:03

FILED

In this personal injury case, arising out of an all terrain vehicle tour accident, Plaintiff Gary Matola (Plaintiff), proceeding *pro se* here and below, appeals the June 8, 2005 adverse judgment that the District Court of the Fifth Circuit (district court)¹ entered in favor of Defendants Kauai Adventure A.T.V. Tours (later identified as Kauai ATVS, LLC), O. Rivera (later identified as Olegario Rivera), Steve Case, and Grove Farms Land Corp. (later identified as Grove Farm Company, Inc.).

After a painstaking review of the record and the briefs submitted by the parties, including repeated readings of Plaintiff's opening and reply briefs, we dismiss Plaintiff's appeal, because

(1) Plaintiff's opening brief does not conform in any manner or particular to any of the provisions of Hawai'i Rules of Appellate Procedure (HRAP) Rule 28 (2005), HRAP Rule 30 (2005)

¹ The Honorable Joseph N. Kobayashi presided.

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(where "the brief of an appellant is . . . not in conformity with these rules, the appeal may be dismissed or the brief stricken and monetary or other sanctions may be levied by the appellate court"); HRAP Rule 28(b)(4) (points of error "not presented in accordance with this section will be disregarded, except that the appellate court, at its option, may notice a plain error not presented"); HRAP Rule 28(b)(7) (points "not argued may be deemed waived"); Housing Fin. & Dev. Corp. v. Ferguson, 91 Hawai'i 81, 85, 979 P.2d 1107, 1111 (1999) (appellant's "failure to conform his brief to the requirements of HRAP Rule 28(b) burdens both the parties compelled to respond to the brief and the appellate court attempting to render an informed judgment. . . . [S]uch noncompliance offers sufficient grounds for the dismissal of the appeal" (citation omitted)); Schefke v. Reliable Collection Agency, Ltd., 96 Hawai'i 408, 420, 32 P.3d 52, 64 (2001); Bettencourt v. Bettencourt, 80 Hawai'i 225, 228, 909 P.2d 553, 556 (1995) ("appellant's brief in almost no respect conforms to the requirements of [HRAP] Rule 28(b), which we have held is, alone, sufficient basis to affirm the judgment of the circuit court" (citation omitted)); Weinberg v. Mauch, 78 Hawai'i 40, 49, 890 P.2d 277, 286 (1995); O'Connor v. Diocese of Honolulu, 77 Hawai'i 383, 385, 885 P.2d 361, 363 (1994); In re Miller and Lieb Water Co., Inc., 65 Haw. 310, 310-11, 651 P.2d 486, 487-88 (1982) (per curiam) (dismissal of appeal warranted for appellant's failure to conform opening brief to the requirements

of the predecessor to HRAP Rule 28(b)(4), Supreme Court Rule 3(b)(5)); Alamida v. Wilson, 53 Haw. 398, 405, 495 P.2d 585, 590 (1972) (failure to conform appellate brief to Supreme Court Rule 3(b)(5) on a point of error warrants dismissal of point of error on appeal); Ala Moana Boat Owners' Ass'n v. State, 50 Haw. 156, 157-59, 434 P.2d 516, 517-18 (1967);

(2) Plaintiff has failed to include in the record on appeal the transcript of the April 15, 2005 bench trial which gave rise to the June 8, 2005 judgment that Plaintiff here appeals, HRAP Rule 10(a)(4) (2005) ("record on appeal shall consist of . . . the transcripts prepared for the record on appeal"); HRAP Rule 10(b)(1)(A) (2005) (where "appellant desires to raise any point on appeal that requires consideration of the oral proceedings before the court or agency appealed from, the appellant shall file with the clerk of the court appealed from, within 10 days after filing the notice of appeal, a request or requests to prepare a reporter's transcript of such parts of the proceedings as the appellant deems necessary that are not already on file"); HRAP Rule 10(b)(3) (2005) (where "the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion"); HRAP Rule 11(a) (2005) ("the appellant . . . shall comply with the applicable provisions of [HRAP] Rule 10(b) and shall take any

other action necessary to enable the clerk of the court to assemble and transmit the record"); Bettencourt, 80 Hawai'i at 230, 909 P.2d at 558 (the burden "is upon appellant in an appeal to show error by reference to matters in the record, and he or she has the responsibility of providing an adequate transcript" (brackets and internal quotation marks omitted) (quoting Union Bldg. Materials Corp. v. The Kakaako Corp., 5 Haw. App. 146, 151, 682 P.2d 82, 87 (1984))); Lepere v. United Pub. Workers 646, 77 Hawai'i 471, 474, 887 P.2d 1029, 1032 (1995) (appellant "had a duty to include the relevant transcripts of proceedings as a part of the record on appeal" (footnote omitted)); State v. Goers, 61 Haw. 198, 202-3, 600 P.2d 1142, 1144-45 (1979); State v. Hawaiian Dredging Co., 48 Haw. 152, 158, 397 P.2d 593, 598 (1964) (it is "elementary that an appellant must furnish to the appellate court a sufficient record to positively show the alleged error" (citation omitted)); Marn v. Reynolds, 44 Haw. 655, 663, 361 P.2d 383, 388 (1961) (transcript of proceedings must be provided to the appellate court unless "evidence is not necessary for the disposition of an appeal on its merits" (citation omitted)); Ling v. Yokoyama, 91 Hawai'i 131, 135, 980 P.2d 1005, 1009 (App. 1999); Costa v. Sunn, 5 Haw. App. 419, 430, 697 P.2d 43, 50 (1985); Johnson v. Robert's Hawaii Tour, Inc., 4 Haw. App. 175, 178, 664 P.2d 262, 265 (1983); Hawaiian Trust Co., Ltd. v. Cowan, 4 Haw. App. 166, 168, 663 P.2d 634, 636 (1983); and

(3) Plaintiff's appellate briefs are incomprehensible

in the context of his appeal.

Therefore,

IT IS HEREBY ORDERED that Plaintiff's appeal is dismissed.

DATED: Honolulu, Hawai'i, July 24, 2006.

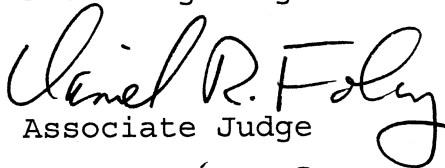
On the briefs:

Gary Matola,
Plaintiff-Appellant,
pro se.

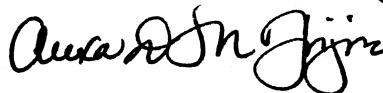
Roy F. Hughes and
Thomas E. Irons
(Hughes & Taosaka),
for Defendants-Appellee.



Presiding Judge



Associate Judge



Associate Judge