

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 26536

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

EUGENE JAMES HUTCH, Plaintiff-Appellant, v. DOCTOR S. PADERES; CLAYTON FRANK, Warden, Halawa Correctional Facility, Department of Public Safety, State of Hawai'i; DOCTOR CHUNG; IWALANI WHITE, Director, Department of Public Safety, State of Hawai'i; RUSS K. SAITO, Comptroller, Department of Accounting and General Services, State of Hawai'i; LINDA LINGLE, Governor, State of Hawai'i; PATRICIA M. GUARNACCIA, Defendants-Appellees¹

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Civ. No. 00-1-3604)

SUMMARY DISPOSITION ORDER

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

NORTH T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

2007 FEB -7 AM 9:47

FILED

Plaintiff-Appellant Eugene James Hutch (Hutch) appeals from the April 16, 2004 final judgment by the Circuit Court of the First Circuit (circuit court)² in favor of Defendant-Appellees (collectively Defendant-Appellees) Dr. Sisar Paderes, Dr. Soon Hyung Chung (Dr. Chung), Nolan Espinda (currently Clayton Frank), Ted Sakai (currently Iwalani White), Raymond H. Sato (currently Russ K. Saito) (Sato), Governor Benjamin J.

¹ At the time this case arose, Nolan Espinda was the Warden at Halawa Correctional Facility, Department of Public Safety, State of Hawai'i; Ted Sakai was the Director, Department of Public Safety, State of Hawai'i; Raymond H. Sato was the Comptroller for the Department of Accounting and General Services, State of Hawai'i; and Benjamin Cayetano was the Governor of the State of Hawai'i, four of the named Defendants-Appellees in this appeal. Pursuant to Hawai'i Rules of Appellate Procedure, Rule 43(c)(1), relating to substitution of parties, Clayton Frank, current Warden at Halawa Correctional Facility, Department of Public Safety, State of Hawai'i; Iwalani White, current Director, Department of Public Safety, State of Hawai'i; Russ K. Saito, current Comptroller for the Department of Accounting and General Services, State of Hawai'i; and Linda Lingle, current Governor of the State of Hawai'i are substituted as named parties to this case.

² The Honorable Richard W. Pollack presided.

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Cayetano (currently Governor Linda Lingle), and Patricia Guarnaccia (Guarnaccia). After a careful review of the issues raised, arguments advanced, law relied upon, and the record in the instant case, we conclude that the circuit court did not err, and affirm.

1. The circuit court properly dismissed Hutch's medical claims for lack of jurisdiction. Hawaii Revised Statutes (HRS) § 671-12(a) requires that medical tort claims be submitted to the Medical Claim Conciliation Panel "before a suit based on the claim may be commenced in any court of this State." The medical claims procedures outlined in HRS § 671-12(a) are "jurisdictional prerequisites to suit[.]" Garcia v. Kaiser Foundation Hospitals, 90 Hawai'i 425, 439, 978 P.2d 863, 877 (1999) (quoting Tobosa v. Owens, 96 Haw. 305, 314-15, 741 P.2d 1280, 1286-87 (1987)). Hutch's non-compliance with HRS § 671-12(a) divested the circuit court of subject matter jurisdiction. Id. at 440-41, 978 P.2d at 878-879.

The circuit court also properly dismissed Hutch's claims against Dr. Chung, Sato and Guarnaccia who were not served properly pursuant to Hawai'i Rules of Civil Procedure (HRCP) Rule 4. The circuit court lacks "jurisdiction over the person of the [defendants]" when such a defendant "was never served, in any manner, with proper process, specifically a summons, as required by HRCP 4." In re Lease Cancellation of Smith, 68 Haw. 466, 471, 719 P.2d 397, 401 (1986).

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2. Hutch failed to demonstrate facts establishing that genuine issues of material fact existed at the time the circuit court granted Defendant-Appellees' motion for summary judgment. Although under Bounds v. Smith, 430 U.S. 817, 821 (1977), "prisoners have a constitutional right of access to the courts" under the Fourteenth Amendment, prisoners asserting this right must "demonstrate that the alleged shortcomings in the [prison] library or legal assistance program hindered his efforts to pursue a legal claim." Lewis v. Casey, 518 U.S. 343, 351 (1996). Hutch has failed to set forth specific facts to support his claim that repealed Hawai'i Administrative Rule § 17-202-1(b) hindered his efforts to pursue his medical tort claim. Thus, Hutch did not meet his burden under Lewis and HRCP Rule 56(e).

3. The circuit court did not err in denying Hutch's Motion for Appointment of Counsel. Hutch did not have a constitutional right to appointed counsel for his discretionary appeal. Bounds, 430 U.S. at 823. The circuit court properly declined to exercise its discretion under Wolff v. McDonnell, 418 U.S. 539 (1974), after reviewing the legal issues raised in Hutch's complaint.

4. Finally, Hutch's other arguments on appeal fail under Hawai'i Rules of Appellate Procedure Rule 28(b)(7) ("[p]oints not argued may be deemed waived[]"), and State v. Moses, 102 Hawai'i 449, 456, 77 P.3d 940, 947 (2003) (arguments not raised in the lower court proceedings are deemed waived on appeal).

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Therefore,

The Circuit Court of the First Circuit's April 16, 2004
final judgment is hereby affirmed.

DATED: Honolulu, Hawai'i, February 7, 2007.

On the briefs:

Eugene James Hutch,
Plaintiff-Appellant, pro se.


Chief Judge

Caron M. Inagaki, and
Cindy S. Inouye,
Deputy Attorneys General
for Defendants-Appellees.



Associate Judge


Associate Judge