

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 26705

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

PAUL FERNANDEZ, Plaintiff-Appellant, v. KAPIOLANI MEDICAL
CENTER AT PALI MOMI, KONE, INC., Defendants-Appellants,
and JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-
10 and DOE PARTNERSHIPS 1-10

APPEAL FROM THE CIRCUIT OF THE FIRST CIRCUIT
(Civ. No. 03-1-0812-04 (EEH))

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Nakamura and Fujise.)

In this negligence action, Plaintiff-Appellant Paul
Fernandez (Fernandez) appeals from the June 22, 2004 Order
Denying Plaintiff's Motion for Relief From Judgment or Order
(Order) and the July 21, 2004 Order Denying Plaintiff's Motion
for Reconsideration of Order Denying Plaintiff's Motion for
Relief From Judgment or Order Filed June 22, 2004 (Filed 7/2/04)
by the Circuit Court of the First Circuit (circuit court)¹
rejecting Fernandez's request for relief from the dismissal of
his lawsuit for failure to timely file his pretrial statement.

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. Consequently, we
affirm.

Fernandez argues that the circuit court should have
granted his Hawai'i Rules of Civil Procedure Rule 60 Motion for
Relief From Judgment or Order (Motion) on the grounds that he
established that the failure of his attorney to file the required
pretrial statement was due to "inadvertence, mistake or excusable
neglect." However, Fernandez's Motion,² supporting memorandum
and declaration of counsel contains no factual basis for
counsel's failure to file the pretrial statement beyond the

¹ The Honorable Eden Elizabeth Hifo presided.

² Although a hearing on Paul Fernandez's (Fernandez) Motion for Relief
From Judgment or Order was held, no transcript of that proceeding has been
included in the record on appeal.

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

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conclusory pleading of "inadvertence." "[A] party cannot have relief under 60(b)(1) merely because he is unhappy with the judgment. Instead he must make some showing of why he was justified in failing to avoid mistake or inadvertence. Gross carelessness is not enough." Joaquin v. Joaquin, 5 Haw. App. 435, 443, 698 P.2d 298, 304 (1985), quoting 11 Wright & Miller, Federal Practice and Procedure: Civil § 2858 at 170 (1973) (internal quotations marks and footnotes omitted), citing 7 Moore's Federal Practice § 60.22[2] (1983) (construing Hawai'i Family Court Rules Rule 60(b)(1)). See also Pogia v. Ramos, 10 Haw. App. 411, 416, 876 P.2d 1342, 1345 (1994) (defaulting party must show why the failure to respond or to obtain an extension of time was justified). We review the circuit court's denial of Fernandez's motion under the abuse of discretion standard. Hawai'i Hous. Auth. v. Uyehara, 77 Hawai'i 144, 147, 883 P.2d 65, 68 (1994). We see no abuse here.³

Therefore,

The Circuit Court of the First Circuit's June 22, 2004 Order Denying Plaintiff's Motion for Relief From Judgment or Order and the July 21, 2004 Order Denying Plaintiff's Motion for Reconsideration of Order Denying Plaintiff's Motion for Relief From Judgment or Order Filed June 22, 2004 (Filed 7/2/04) are affirmed.

DATED: Honolulu, Hawai'i, August 6, 2007.

On the briefs:

Howard Glickstein,
for Plaintiff-Appellant.

Ronald Shigekane
(Ayabe, Chong, Nishimoto, Sia
& Nakamura),
for Defendants-Appellees.


Daniel R. Foley
Presiding Judge


Craig W. Nakamura
Associate Judge


Anna D. M. Fujino
Associate Judge

³ Although Fernandez challenges the July 21, 2004 Order Denying Plaintiff's Motion for Reconsideration of Order Denying Plaintiff's Motion for Relief From Judgment or Order Filed June 22, 2004 (Filed 7/2/04) in his point on appeal, he presents no argument in support of this challenge. Therefore, we do not consider it. City and County of Honolulu v. Hsiung, 109 Hawai'i 159, 180, 124 P.3d 434, 455 (2005).