

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27643

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

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

NAPOLEON T. ANNAN-YARTEY, Plaintiff-Appellant,
v.

ERNEST NOMURA, DAVID LONBORG, ELENA ONAGA, THE LAW FIRM
OF LONBORG, NOMURA, & ONAGA, misidentified as THE LAW FIRM
OF NOMURA, LONBORG AND ONAGA, Defendants-Appellees,
and
CORPORATIONS 1-10, DOE ENTITIES 1-10, AND ROE, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 04-1-0151)

SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Watanabe and Foley, JJ.)

Plaintiff-Appellant Napoleon T. Annan-Yartey (Annan-Yartey) appeals from the Judgment filed on October 26, 2005, as amended on November 9, 2005, in the Circuit Court of the First Circuit^{1/} (circuit court) against him and in favor of Defendants-Appellees Ernest Nomura (Nomura), David Lonborg (Lonborg), Elena Onaga (Onaga), and the Law Firm of Lonborg, Nomura & Onaga (collectively, Appellees).

On appeal, Annan-Yartey argues that the circuit court

- (1) "erred as a matter of law in excluding evidence pertaining to [Annan-Yartey's] assault and battery injuries"
- (2) erred by "granting [Appellees'] Motion in Limine to exclude all of [Annan-Yartey's] evidence at trial," in violation of the Hawaii Rules of Evidence;
- (3) "erred in failing to instruct the jury that [Annan-Yartey's] personal matters regarding [] his marriage

^{1/} The Honorable Randall K.O. Lee presided.

problems [were] irrelevant and should not be considered by the jury in reaching its verdict";

(4) "abused its discretion in denying [Annan-Yartey's] motion to compel answers to interrogatories";

(5) "erred in excluding [Annan-Yartey's] exhibits and relevant documents which would proof [sic] his injuries caused by the Assault and Battery"; and

(6) "erred as a matter of law when [it] decided that push, use office door as a weapon, slamming the door hard on [Annan-Yartey's] body by defendants (forehead) does not establishes [sic] Battery."

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 raised by the parties, we resolve Annan-Yartey's points of error as follows:

(1) Annan-Yartey's Opening Brief falls far short of satisfying various provisions of the Hawai'i Rules of Appellate Procedure (HRAP). The Record on Appeal contains no transcripts whatsoever. HRAP Rule 10(b) requires that an appellant raising a point on appeal requiring consideration of oral proceedings provide a transcript of "such parts of the proceedings as the appellant deems necessary that are not already on file." Failure to furnish transcripts so as to form a sufficient record may be considered fatal to an issue on appeal. Johnson ex rel. Galdeira v. Robert's Hawaii Tour, Inc., 4 Haw. App. 175, 178-79, 664 P.2d 262, 266 (1983). Without a transcript, the appellant cannot positively demonstrate the circuit court's error to the appellate court. Id. at 178, 664 P.2d at 265. Inability to pay for transcripts is no excuse. Id. at 179 n.2, 664 P.2d at 266 n.2.

(2) Annan-Yartey has failed to show that the circuit court erred in its rulings on the motions in limine. Annan-Yartey's failure to supply transcripts of the circuit court's

October 6, 2005 hearing on the motions in limine is fatal to these claimed points of error because we are left without a record upon which to review the alleged errors. Johnson ex rel. Galdeira, 4 Haw. App. at 178-79, 664 P.2d at 266. Annan-Yartey's second point of error may also be deemed waived pursuant to HRAP Rule 28(b), as it is not argued with specificity and is unsupported by accurate or relevant citations to the record.

(3) Annan-Yartey has failed to show that the circuit court reversibly erred by not giving his proposed jury instructions numbered 1-20. Annan-Yartey actually submitted 44 proposed instructions and then withdrew all but two; the circuit court gave the two remaining instructions to the jury. As the record shows no objection to the jury instructions given, we review only for plain error; we see none. State v. Sawyer, 88 Hawai'i 325, 330, 966 P.2d 637, 642 (1998). Annan-Yartey fails to cite relevant case law or provide relevant record citations in support of this point of error, and thus it is waived. HRAP Rule 28(b)(7).

Annan-Yartey has failed to show that the circuit court plainly erred in giving two jury instructions modified and given to the jury by agreement (No. 8.8 ARGUMENT RE DAMAGES and No. 8.9 ELEMENTS OF DAMAGES). Those jury instructions concern methods of calculating damages. Annan-Yartey fails to explain why these instructions were wrong or how they prejudiced his case, and thus the point is waived. HRAP Rule 28(b)(7).

Annan-Yartey has failed to show that the circuit court erred in failing to give a curative instruction "to minimize the danger it had done by allowing Appellees to inject [Annan-Yartey's] past marriage problems of [Annan-Yartey's] into evidence." Without transcripts, we cannot ascertain where in the proceedings or even if the circuit court made erroneous rulings,

and thus the claimed point of error is waived. Johnson ex rel. Galdeira, 4 Haw. App. at 178-79, 664 P.2d at 266.

(4) Annan-Yartey has failed to show that the circuit court erred in denying his motion to compel answers to interrogatories. The record contains no transcript of the court's June 1, 2005 hearing on the motion to compel. The circuit court's June 17, 2005 order denying Annan-Yartey's motion to compel states no reasons for denying the motion. Without transcripts, we cannot review the reasoning the circuit court may have employed in deciding the motion. This failure to supply an adequate record is again, fatal to Annan-Yartey's claimed point of error.^{2/}

(5) Annan-Yartey failed to show that the circuit court erred in "1) [p]rohibiting the impeachment of defendants [sic] witness by refusing to allow the use of depositions as impeachment evidence 2) refusing to allow a defendants [sic] witness to testify as to out-of-Court statements made by [Annan-Yartey] regarding the medical care and treatment of [Annan-Yartey] 3) [l]imiting the examination of [Annan-Yartey's] medical expert witnesses to an extend [sic] which deprived [Annan-Yartey] of his right to a fair and impartial trial." It is not clear whether this point of error refers to the circuit court's rulings on motions in limine or its evidentiary rulings at trial. The Opening Brief cites to the circuit court's orders on the motions in limine. We have already concluded Annan-Yartey failed to show that the circuit court erred in those rulings. To the extent

^{2/} Moreover, the motion to compel should have been denied regardless. The interrogatories sought to discover assets held by the defendants. Such discovery is improper prior to judgment. Lothspeich v. Sam Fong, 6 Haw. App. 118, 122, 711 P.2d 1310, 1314 (1985).

Annan-Yartey seeks to challenge evidentiary rulings made during trial, the record supplied by Annan-Yartey is fatally deficient. No trial transcripts appear in the record.

(6) Annan-Yartey failed to show that the circuit court erred "as a matter of law when [it] decided that push, use office door as a weapon, slamming the door hard on [Annan-Yartey's] body (forehead) does not establishes [sic] Battery."

On September 16, 2005, the circuit court entered its order granting in part and denying in part Appellees' motion for summary judgment. In that order, the circuit court dismissed Annan-Yartey's assault claims against all Appellees and dismissed Annan-Yartey's battery claims against Onaga and Nomura. The circuit court denied the Motion for Summary Judgment as to Annan-Yartey's battery claims against Lonborg and the Law Firm of Lonborg, Nomura, and Onaga and allowed those claims to proceed to trial. The circuit court's order indicates that the Motion for Summary Judgment was heard on September 14, 2005. No transcript of this hearing appears in the record. Again, the failure to supply this court with an adequate record is fatal to Annan-Yartey's claimed error.

In the absence of trial transcripts, we are left with no record upon which to analyze Annan-Yartey's claim that the jury's verdict was not supported by substantial evidence. Again, Annan-Yartey's claims fail pursuant to HRAP Rules 10 and 28(b). The jury concluded that no battery took place. Annan-Yartey advances no evidence or coherent argument to the contrary on appeal and directs us to no particular error in the record. In the absence of a showing to the contrary, we presume that the evidence adduced at trial was sufficient. In re Gamaya, 25 Haw. 414, 416 (1920).

Therefore,

The Judgment filed on October 26, 2005, as amended on November 9, 2005, in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, July 20, 2007.

On the briefs:

Napoleon T. Annan-Yartey,
Plaintiff-Appellant pro se.

Dean E. Ochiai
Brenda Morris Hoernig,
Randall Y. Kaya, and
Adrian Y. Chang
(Law Offices of Dean E. Ochiai)
for Defendants-Appellees
David Lonborg and The Law Firm
of Lonborg, Nomura & Onaga.



Chief Judge



Associate Judge



Associate Judge