

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NOS. 27761 & 27922

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

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

No. 27761

WENDELL E. HOSHINO AND MERLE M. HOSHINO, AS TRUSTEES
UNDER THE MERLE M. HOSHINO FAMILY INTER VIVOS
REVOCABLE TRUST AGREEMENT DATED OCTOBER 13, 1983,
Plaintiffs-Appellees,

v.

MARK K. HOSHINO, Defendant-Appellant,
and
ESTELLE S. OSHIRO and WINSTON HOSHINO, Defendants

and

No. 27922

WENDELL E. HOSHINO AND MERLE M. HOSHINO, AS TRUSTEES
UNDER THE MERLE M. HOSHINO FAMILY INTER VIVOS
REVOCABLE TRUST AGREEMENT DATED OCTOBER 13, 1983,
Plaintiffs-Appellees,

v.

WINSTON HOSHINO, Defendant-Appellant,
and
ESTELLE S. OSHIRO and MARK K. HOSHINO, Defendants

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
(CIVIL NO. 1RC05-1-2011)

SUMMARY DISPOSITION ORDER

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

In this consolidated appeal, Defendant-Appellant Mark K. Hoshino (Mark) appeals from a Judgment for Possession and Writ of Possession, both filed on January 10, 2006 (appeal No. 27761) in the District Court of the First Circuit, Honolulu Division (district court),^{1/} and Defendant-Appellant Winston Hoshino (Winston) appeals from a Judgment for Possession/

^{1/} The Honorable Faye M. Koyanagi issued the Judgment for Possession and Writ of Possession.

Ejectment and Writ of Possession/Ejectment, both filed against him and Michael Todoc (Todoc) on April 24, 2006 (appeal No. 27922) in the district court.^{2/}

On appeal,^{3/} Mark and Winston argue that the district court erred by

(1) failing to dismiss Mark's case for lack of subject matter jurisdiction,

(2) denying their demands for a jury trial, and

(3) finding that Wendell Hoshino (Wendell) and Merle Hoshino (Merle) proved title to the Hoshino family home at Aleo Place in Honolulu, Hawai'i (the Property) and ordering that Mark and Winston be ejected from the Property.

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 Mark and Winston's points of error as follows:

(1) In reality, Mark and Winston's assertion of various equitable defenses based on an alleged parol gift of the Property in this ejectment action is an assertion of a right to specific performance, and one who in an ejectment suit sets up equitable estoppel based on an alleged parol gift of the land must establish his right by clear, definite, and unequivocal evidence. Coelho v. Fernandez, 46 Haw. 578, 583, 384 P.2d 527, 530 (1963). Mark and Winston did not meet this standard.

^{2/} The Honorable Gerald H. Kibe issued the Judgment for Possession/Ejectment and Writ of Possession/Ejectment.

^{3/} The opening brief of Defendants-Appellants Mark Hoshino (Mark) and Winston Hoshino (Winston) cites to "Court Minutes" as record references. Pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 10(a), the court's minutes are not part of the record on appeal" and "for purposes of the appeal, these documents do not exist and may not be cited as if they exist. HRAP Rule 28(b)." Webb v. Harvey, 103 Hawai'i 63, 66, 79 P.3d 681, 684 (App. 2003). Appellants' counsel is warned that future non-compliance with HRAP 28(b) may result in sanctions against him.

(2) Mark's Declaration did not sufficiently set forth, pursuant to District Court Rules of Civil Procedure (DCRCP) Rule 12.1., the source, nature, and extent of the title he claimed to the Property or such further particulars that would have apprised the district court of the nature of his claims. Mark did not meet the standard for setting up equitable estoppel based on an alleged parol gift of the land. Coelho, 46 Haw. at 583, 384 P.2d at 530. Further, the claims alleged in Mark's Declaration were unsupported by the record and inconsistent with and superseded by Wendell and Merle's record title. Hawaii Revised Statutes §§ 604-5 (Supp. 2006) & 604-6 (1993); Territory of Hawaii, by Pratt, v. Kapiolani Estate, 18 Haw. 640, 643-44 (1908); Jellings v. Kaihe, 30 Haw. 160 (1927); Monette v. Benjamin, 52 Haw. 246, 473 P.2d 864 (1970).

(3) Mark and Winston were not entitled to a trial by jury on their equitable claims because provisions in the United States and Hawai'i Constitutions preserving the right to a jury trial in common-law actions do not extend to suits of an equitable nature. U.S. Const. amend. VII; Mehau v. Reed, 76 Hawai'i 101-11, 110, 869 P.2d 1320, 1329-30 (1994); Harada v. Burns, 50 Haw. 528, 533, 445 P.2d 376, 380 (1968); Mathewson v. Aloha Air., Inc., 82 Hawai'i 57, 79 n.22, 919 P.2d 969, 991 n.22 (1996).

(4) Although Mark and Winston assert on appeal that Wendell and Merle did not prove they were entitled to the Property, the record on appeal shows that deeds in evidence beginning in 1972 identify the title as going back and forth between Wendell and Merle individually and the Merle M. Hoshino Family Inter Vivos Revocable Trust.

Therefore,

The Judgment for Possession and Writ of Possession, both filed on January 10, 2006 against Mark K. Hoshino, and the

Judgment for Possession/Ejectment and Writ of Possession/
Ejectment, both filed on April 24, 2006 against Winston Hoshino
and Michael Todoc, are affirmed.

DATED: Honolulu, Hawai'i, November 15, 2007.

On the briefs:

Charles H. Brower
for Defendants-Appellants.

Ward D. Jones
(Bervar & Jones) and
Alexander T. MacLaren
for Plaintiffs-Appellees.

Corinne K.A. Watanabe

Presiding Judge

Daniel R. Foley
Associate Judge

Alana D. M. Fijina
Associate Judge