

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 28094

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

NANCY MAKANUI, Plaintiff-Appellant, v.
STATE OF HAWAII, et al., Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 02-1-0155)

K. HAMAKA'DI
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

SUMMARY DISPOSITION ORDER

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

Plaintiff-Appellant Nancy Makanui (Makanui) appeals pro se from the Final Judgment filed on July 14, 2006, in the Circuit Court of the Third Circuit (circuit court).^{1/} Pursuant to the circuit court's April 7, 2006 "Order Granting Defendants' Motion for Summary Judgment or for Dismissal" (Order Granting Motion for SJ), the circuit court entered judgment in favor of Defendants State of Hawai'i, Department of Human Services (DHS), Dr. Susan Chandler (Chandler), Lilian Koller (Koller), Kathleen Stanley, Patricia Murakami (Murakami), Dr. Patricia Snyder, Noreen Moon-Ng, and Norman Nishiki (Nishiki) (hereinafter collectively referred to as State of Hawai'i, et al.) and against Makanui as to Counts I, II, III, and IV of Makanui's Fourth Amended Complaint.

On appeal, Makanui presents 32 issues. To the extent her arguments can be discerned, she maintains the following:

(1) The circuit court erred by determining that, as a matter of law, the doctrines of issue preclusion and claim preclusion barred relitigation of her claims.

^{1/} The Honorable Greg K. Nakamura presided.

(2) The circuit court erred by granting State of Hawai'i, et al.'s motion for a stay of proceedings pending the resolution of cases involving the same events.

(3) The circuit court erred by attempting "to cover up" the substitution of Koller as Chandler's successor Director of DHS, "by attempting to file a final judgment without naming [Koller] and [Murakami] as defendants."

(4) The circuit court erred when it ruled that Hawaii Revised Statutes (HRS) Chapter 92F did not grant her a private cause of action for State of Hawai'i, et al.'s alleged disclosures of her personal records.

(5) The circuit court erred when it determined that she could not sustain her claim for intentional infliction of emotional distress (IIED) because her underlying claims for relief were precluded by the doctrines of issue preclusion and claim preclusion.

(6) The circuit court erred by "having a new judge sitting for the first time in this case and a new defense attorney appearing for the first time."

(7) Circuit court Judge Greg K. Nakamura (Judge Nakamura) committed judicial misconduct by refusing to allow her to present additional documents in support of her claims and defenses, using a pre-typed decision, allowing Makanui only seven minutes to present her case, and failing to rule on Makanui's request for a sanction against State of Hawai'i, et al.'s attorney.

(8) The circuit court denied her a full and fair opportunity to litigate all of her claims against State of Hawai'i, et al. by denying her February 7, 2006 Motion to Amend Fourth Amended Complaint.

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 Makanui's points of error as follows:

(1) By the time Makanui filed suit in the instant case, the United States District Court for the District of Hawai'i had already ruled on the issue of whether Nishiki made the alleged disclosure to Lane Ueda (Ueda) in its "Order Granting Defendants' [State of Hawai'i, et al.'s] Motion for Summary Judgment; Order Denying Plaintiff's [Makanui's] Cross Motion for Summary Judgment," and that holding had been affirmed by the United States Court of Appeals for the Ninth Circuit. Under the doctrines of claim preclusion and issue preclusion, Makanui was precluded from proving that Nishiki made the alleged disclosure to Ueda because the judgment was apparently final, the finding that Nishiki did not make the alleged disclosure to Ueda was essential to the judgment, and Makanui was also the plaintiff in the federal action. Bremer v. Weeks, 104 Hawai'i 43, 53-54, 85 P.3d 150, 160-61 (2004).

(2) Under the doctrine of claim preclusion, Makanui was precluded from proving before the circuit court that Kitagawa's conduct violated HRS § 346-225, HRS Chapters 10, 11, and 92F; Hawai'i Administrative Rules (HAR) 17-1401 and 17-1421; and the Hawai'i Constitution. As the circuit court stated in its Order Granting Motion for SJ, the third circuit court in Civ. No. 01-1-0093, Makanui v. Kitagawa, had already ruled on the issues in Makanui's Counts I and II relating to the August 5, 1999 letter when it held that "HRS §§ 710-1062, 346-11, 346-225, 346-226, 92F-12(b)(1), 92F-13(1), 92F-14 and § 17-1401-8 of the Hawaii Administrative Rules do not create private claims for relief or damages" and this court in its January 18, 2005 Summary Disposition Order in appeal No. 25723 had affirmed the third circuit court's judgment in Civ. No. 01-1-0093. See Bremer, 104 Hawai'i at 53-54, 85 P.3d at 160-61.

(3) The circuit court did not abuse its discretion by granting the State of Hawai'i, et al.'s February 17, 2006 Motion for Summary Judgment or for Dismissal (Motion for SJ), notwithstanding the State of Hawai'i, et al.'s failure to affirmatively raise the defense of res judicata in its answer to Makanui's Fourth Amended Complaint, because Makanui did not object to or claim to be surprised by the State of Hawai'i, et al.'s failure to affirmatively raise the res judicata defense. Further, State of Hawai'i, et al. set forth its arguments regarding issue and claim preclusion in "Defendants State of Hawai'i, Department of Human Services, Susan Chandler, Lillian Koller, Kathleen Stanley, Patricia Murakami, Dr. Patricia Snyder, Noreen Moon-Ng, and Norman Nishiki's Motion for Summary Judgment or in the Alternative for Stay as to Plaintiff's Fourth Amended Complaint Filed on October 22, 2003" (Request for Stay). Hawai'i Rules of Civil Procedure (HRCP) Rule 8(c); Wilson v. Kealakekua Ranch, Ltd., 57 Haw. 124, 126, 551 P.2d 525, 527 (1976).

(4) There is no evidence in the record on appeal that the circuit court attempted to enter a final judgment without naming Koller and Murakami as defendants. Regardless, the Final Judgment names Chandler, Koller, and Murakami as defendants. Moreover, HRCP Rule 25(d) authorizes automatic substitution as a party of a named public officer's successor.

(5) There is no evidence in the record on appeal that the circuit court granted the Request for Stay so that the State of Hawai'i, et al. could later claim a defense of res judicata.

(6) The circuit court did not abuse its discretion in granting State of Hawai'i, et al.'s Request for Stay for the sake of judicial efficiency, given the fact that the issues and parties in the instant case and Makanui v. Kitagawa, Civil No. 01-1-0093, appeal No. 25490, were the same. Solarana v. Indust.

Electronics, Inc., 50 Haw. 22, 30, 428 P.2d 411, 417 (1967); Sapp v. Wong, 62 Haw. 34, 41, 609 P.2d 137, 142 (1980).

(7) We agree with the circuit court that a plain reading of HRS Chapter 92F reveals that the chapter pertains to a complainant's "personal records" and, thus, is inapplicable to the instant case. Furthermore, given that the Ninth Circuit Court of Appeals upheld the holding of the United States District Court for the District of Hawaii that Makanui failed to prove Nishiki informed Ueda that Makanui had reported Ueda to APS, and that this court affirmed the third circuit court's grant of summary judgment in favor of Kitagawa, we do not see how any provision in HRS Chapter 92F would have supported a claim for invasion of privacy in the instant case. HRS Chapter 92F; State v. Valdivia, 95 Hawai'i 465, 472, 24 P.3d 661, 668 (2001) (this court is bound to give effect to the plain meaning of unambiguous statutory language).

(9) The circuit court correctly concluded that Makanui could not prevail on her claims for IIED and permanent injunctive relief because the underlying claims were precluded. See Takaki v. Allied Machinery Corp., 87 Hawai'i 57, 66-67, 951 P.2d 507, 516-17 (App. 1998); Calleon v. Miyagi, 76 Hawai'i 310, 319-20, 876 P.2d 1278, 1287-88 (1994); Kang v. Harrington, 59 Haw. 652, 660, 587 P.2d 285, 291 (1978).

(9) Makanui does not provide a discernible argument for her claim that the circuit court erred by "having a new judge sitting for the first time in this case and a new defense attorney appearing for the first time." Hence, she has waived this argument. Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(7).

(10) Makanui does not provide a discernible argument with regard to her claims that Judge Nakamura committed judicial misconduct by refusing to allow her to present additional

documents in support of her claims and defenses, using a pre-typed decision, allowing her only seven minutes to present her case, and failing to rule on her request for a sanction against State of Hawai'i, et al.'s attorney. Hence, she has waived these arguments. HRAP Rule 28(b)(7).

(11) The circuit court did not abuse its discretion by denying Makanui's Motion to Amend Fourth Amended Complaint for the reasons the court gave in its April 7, 2006 Order Denying [Makanui's] Motion to Amend Fourth Amended Complaint.

Therefore,

IT IS HEREBY ORDERED that the Final Judgment filed on July 14, 2006, in the Circuit Court of the Third Circuit is affirmed.

DATED: Honolulu, Hawai'i, November 21, 2007.

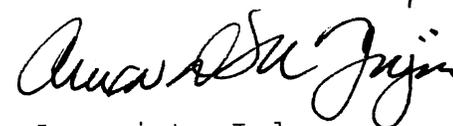
On the briefs:

Nancy Makanui,
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Susan R. Kern,
Deputy Attorneys General,
for Defendants-Appellees.


Presiding Judge


Associate Judge


Associate Judge