

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27237

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

IRENE KATO AND RALPH KATO, Plaintiffs-Appellants, v. FREDERICK FUNARI, Defendant-Appellee, JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; DOE NON-PROFIT ENTITIES 1-10; AND DOE GOVERNMENTAL ENTITIES 1-10, Defendants-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT  
(Civ. No. 03-1-0215(1))

SUMMARY DISPOSITION ORDER

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

Plaintiffs-Appellants Irene Kato (Irene) and Ralph Kato (Ralph) (collectively Appellants) appeal from the final judgment entered December 8, 2004, in the Circuit Court of the Second Circuit (circuit court)<sup>1</sup> and the April 12, 2005 Amended Order Denying Plaintiffs' Motion to Alter or Amend Judgment, or in the Alternative, for a New Trial Filed December 15, 2004. Final judgment was entered in favor of Defendant-Appellee Frederic Funari (Funari) and against Appellants pursuant to a special verdict returned at the conclusion of a jury trial.

Appellants raise three points on appeal: First, Appellants challenge the form of the special verdict as submitted to the jury. Second, Appellants challenge the validity of the judgment entered by the circuit court. Finally, Appellants challenge the denial of their motion to alter or amend the judgment or for a new trial. After a careful review of the record and the arguments and supporting authority presented by the parties, we resolve Appellants' points as follows:

1. The circuit court did not abuse its discretion in employing the special verdict form used in this case. Montalvo v. Lapez, 77 Hawai'i 282, 292, 884 P.2d 345, 355 (1994); Cann v. Ford Motor Co., 658 F.2d 54, 58 (2nd Cir. 1981). There was no

<sup>1</sup> The Honorable Joel E. August presided.

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inconsistency between the instructions, which Appellants concede were a correct statement of the law, and the challenged Interrogatories Nos. 3 and 4. Taking both the instructions and interrogatories as a whole, they adequately informed the jury regarding the determination of the percentage of injuries or pain attributable to a pre-existing condition. Montalvo, 77 Hawai'i at 292, 884 P.2d at 355. While the circuit court was not required to instruct the jury on the legal implications of their factual determinations, Instruction 31 essentially did so.

Interrogatories Nos. 3 and 4, read with Instruction 31, adequately explained the appropriate time frame for the existence of a pre-existing condition. Instruction 31 explains that apportionment is only appropriate where the pre-existing condition was not latent, or was symptomatic, at the time of the incident. When read with Interrogatories Nos. 3 and 4, the phrase "caused by conditions which existed and were symptomatic before the accident" was sufficient to provide an appropriate explanation.

The circuit court's use of the phrase "injury or pain" in Interrogatories Nos. 3 and 4 did not misdirect the jury's apportionment of damages as the damage division between causes of injury is identical to the attribution of injury or pain.

2. The circuit court's judgment was in conformity with the jury's special verdict. The jury was instructed that it must answer the special interrogatories in numerical order. Interrogatory No. 2 asked the jury for the "total damages" suffered by Irene before being asked, in Interrogatory No. 3 to decide whether her injuries or pain were attributable to a pre-existing condition and, in Interrogatory No. 4, what proportion of her injuries or pain was attributable to that pre-existing condition. Presuming, as we must, that the jury followed the circuit court's instructions, the totals entered in response to Interrogatory No. 2 were pre-apportionment totals. The circuit court's judgment reflected these totals reduced by the jury's

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decision on apportionment and was consistent with the jury's verdict.

3. As Appellants' motion to alter amend the judgment, or, in the alternative, for a new trial, was based on the foregoing arguments, we similarly hold that there was no error in the denial of this motion.

Therefore,

IT IS HEREBY ORDERED that the Circuit Court of the Second Circuit's December 8, 2004 Judgment and the April 12, 2005 Amended Order Denying Plaintiffs' Motion to Alter or Amend Judgment, or in the Alternative, for a New Trial Filed December 15, 2004 are affirmed.

DATED: Honolulu, Hawai'i, January 29, 2008.

On the briefs:

Ian L. Mattoch and  
Stuart M. Kodish,  
for Plaintiffs-Appellants.

Dean E. Ochiai,  
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for Defendant-Appellee.

*Corinne K.A. Watanabe*

Presiding Judge

*Daniel R. Foley*

Associate Judge

*Ausa M. Jijim*

Associate Judge