

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 28251

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAIIESTHER R. DeCAMBRA, Individually, and as Special
Administrator of the Estates of Carla Jean Russell,
deceased, and Rachel Elma DeCambra, deceased,
Plaintiff/Appellant/Cross-Appellee,

v.

TETSUYA YAMADA, a.k.a. "GRIZZLY" YAMADA,
Defendant/Appellee/Cross-Appellant,
andTHE ESTATE OF REGINA PUANANI HAILI,^{1/}
Defendant-AppelleeK. HANAKAHO
COURTS
STATE OF HAWAII

2008 APR 11 AM 7:47

FILED

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 96-556)SUMMARY DISPOSITION ORDER

(By: Foley and Fujise, JJ.; and Recktenwald, C.J. dissenting)

Plaintiff/Appellant/Cross-Appellee Esther R. DeCambra (DeCambra), individually, and as Special Administrator of the Estates of Carla Jean Russell, deceased, and Rachel Elma DeCambra, deceased, appeals from the Judgment filed on July 21, 2006 in the Circuit Court of the Third Circuit (circuit court),^{2/} and Defendant/Appellee/Cross-Appellant Tetsuya Yamada, a.k.a. "Grizzly" Yamada, (Yamada) cross-appeals from the Judgment. Pursuant to a jury verdict and the circuit court's rulings on jury instructions, judgment was entered in favor of Yamada and against DeCambra as to Counts I, II, III, IV, and VII of

^{1/} Regina Puanani Haaheo Haili (Haili) was also known as Puanani Haili, Regina Haili, Regina Nago, and Puanani Nago. Haili died on September 12, 1999. On June 7, 2004, Yamada filed a Motion to Allow Substitution of Party, asking the circuit court to substitute the Estate of Regina Puanani Haili as a party in place of Haili. On July 27, 2004, the circuit court granted the motion.

^{2/} The Honorable Greg K. Nakamura presided.

DeCambra's First Amended Complaint. The circuit court awarded costs of \$9,870.33 in favor of Yamada and against DeCambra.

On appeal, DeCambra argues that the circuit court abused its discretion by denying her July 31, 2006 "Motion to Set Aside the Jury's Erroneous Verdict, Vacate the Court's Judgment Based Thereon, and For an Order Granting a New Trial Pursuant to [Hawai'i Rules of Civil Procedure (HRCP)] Rule 59" (Motion For New Trial) for the following reasons:

(1) It was plain error for the circuit court, in its Special Verdict Form, to give the jury four separate "yes or no" questions as to who killed Carla Russell (Russell) and Rachel DeCambra (Rachel) (collectively, the victims); the court should have posed only one question on that issue, i.e., "Who killed Carla Russell and Rachel DeCambra," with the only two choices for an answer being either Yamada or Regina Puanani Haaheo Haili (Haili).

(2) The jury was derelict in its duty to resolve the core issue presented for determination, i.e., whether Yamada or Haili, the only possible perpetrators, killed Russell and Rachel. Consequently, the jury's answers on the Special Verdict Form exonerating Yamada and Haili were against the substantial weight of the evidence, inherently inconsistent and irreconcilable, unsupported by the evidence, and/or contrary to the evidence.

(3) The circuit court's finding of fact in its denial of DeCambra's Motion for New Trial that she bore the burden of proof on the issue of whether Haili killed the victims was clearly erroneous and/or contrary to law.

DeCambra requests that we reverse the Judgment, vacate the verdict and all orders consistent therewith, and grant her a new trial.

In his cross-appeal, Yamada contends the circuit court abused its discretion by denying

(1) his request in his April 4, 2006 "Motion for Attorney[']s Costs and Fees" (Second Motion for Costs) for the cost of partial transcripts of testimonies by Hawai'i County Police Department (HCPD) Detective Tanaka and HCPD Officer Victorine from the prior, related criminal proceeding, and

(2) his motion for recovery of the other cost items because DeCambra did not provide specific objections to each of the cost items.

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, as well as the relevant statutory and case law, we resolve DeCambra's points of error as follows:

(1) Because DeCambra did not object below to the subject questions in the Special Jury Verdict, we review the court's submission of the questions to the jury for plain error. Hawai'i Rules of Appellate Procedure Rule 28(b)(4). The circuit court did not commit plain error by submitting the questions because the questions were adequate to obtain a jury determination of all factual issues essential to judgment: a determination of (a) whether Yamada or Haili was a co-conspirator in the killings of Russell and Rachel and (b) whether damages should be awarded to DeCambra, Russell's estate, and/or Rachel's estate and, if so, in what amount(s) was dependant upon a finding that Yamada or Haili killed Russell and/or Rachel. HRCP Rules 49(a) & 59(a)(1); Montalvo v. Lapez, 77 Hawai'i 282, 292, 884 P.2d 345, 355 (1994).

(2) The jury's verdict was supported by substantial evidence. See Masaki v. General Motors Corp., 71 Haw. 1, 14, 780 P.2d 566, 574 (1989). Although DeCambra presented evidence that Yamada killed Russell and Rachel, Yamada presented substantial evidence that he did not do so. Conversely, although Yamada

presented evidence that Haili killed Russell and Rachel, DeCambra presented substantial evidence that Haili had not done so.

(3) Questions 1, 2, 8, and 9 in the Special Verdict Form are not inconsistent because it was possible that there was both no preponderance of the evidence that Yamada killed the victims and no preponderance of the evidence that Haili did so. Questions 1, 2, 8, and 9 did not irreconcilably conflict because (a) the jury's finding there was no preponderance of the evidence Yamada killed Russell and/or Rachel did not require a judgment in favor of Yamada and (b) the jury's finding that there was no preponderance of the evidence Haili killed Russell and/or Rachel did not require a judgment in favor of DeCambra. See Dunbar v. Thompson, 79 Hawai'i 306, 312, 901 P.2d 1285, 1291 (App. 1995).

(4) Assuming arguendo, the circuit court's finding that DeCambra bore the burden of proof regarding whether Haili killed the victims was erroneous, the error was harmless because the questions in the Special Jury Verdict form were not erroneous, the jury did not err by finding there was no preponderance of the evidence that either Yamada or Haili killed the victims, and the circuit court instructed the jury that DeCambra had the burden of proving by a preponderance of the evidence every element of each of her claims. HRCF Rule 61. We presume that the jury followed the circuit court's instruction. Montalvo, 77 Hawai'i at 301, 884 P.2d at 364.

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, as well as the relevant statutory and case law, we resolve Yamada's points of error as follows:

(1) Because Yamada did not argue below that the circuit court abused its discretion by denying the portion of his Second Motion for Costs for the cost of a partial transcript of

testimonies of Detective Tanaka and Officer Victorine from the prior, related criminal trial, we review the issue for plain error. HRAP Rule 28(b)(4). It was not plain error for the circuit court to deny Yamada's request for the cost of the partial transcript because DeCambra identified Tanaka and Victorine in her July 30, 2004 Pretrial Statement. HRCF Rule 68; Kikuchi v. Brown, 110 Hawai'i 204, 207, 130 P.3d 1069, 1072 (App. 2006); HRS § 607-9 (1993). Given DeCambra's inclusion of the police officers' names in her Pretrial Statement and the officers' significant role in the instant case, we find it difficult to believe Yamada was not put on notice that the officers could be called to testify at trial.

(2) The circuit court did not abuse its discretion by denying the portions of the Second Motion for Costs in which Yamada requested the entire cost of procuring James's testimony and the cost of deposing Boe and Bowman because DeCambra's counsel specifically objected to the court's awarding Yamada those costs.

Therefore,

The Judgment filed on July 21, 2006 in the Circuit Court of the Third Circuit is affirmed.

DATED: Honolulu, Hawai'i, April 11, 2008.

On the briefs:

Valta A. Cook
Kris A. LaGuire
for Plaintiff/Appellant/
Cross-Appellee.

Tetsuya Yamada,
Defendant/Appellee/
Cross-Appellant pro se.


Associate Judge


Associate Judge