

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28291

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'IYOSHIMI HATA and SANAE HATA, Plaintiffs/Counterclaim  
Defendants-Appellees, v. PETE MUÑOZ and CONNIE MUÑOZ  
Defendants/Counterclaimants-AppellantsAPPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT,  
WAILUKU DIVISION  
(DC-Civ. No. 06-1-1584)SUMMARY DISPOSITION ORDER

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

Defendants/Counterclaimants-Appellants Pete Muñoz and Connie Muñoz (collectively, Tenants) appeal from the Final Judgment entered by the District Court of the Second Circuit (district court)<sup>1</sup> on January 17, 2007 in favor of Plaintiffs/Counterclaim Defendants-Appellees Yoshimi Hata and Sanae Hata (Landlords). We affirm.

This appeal stems from a complaint filed by Landlords on October 23, 2006, requesting summary possession of a parcel of land in Ha'iku, Maui (premises) which Landlords had leased to Tenants, pursuant to a "Lease or Rental Agreement" (lease) beginning on January 1, 1989, "for agricultural purposes only." Before filing the complaint, Landlords had notified Tenants by a letter dated June 23, 2006 that the lease was being terminated and that Tenants "must vacate the subject premises within (120) days of the date of termination, on or before October 23, 2006."

Paragraph 13 of the lease provided that Tenants "shall not remove any improvements erected on premise[s] during the term of the lease." Nevertheless, Tenants built a home on the leased premises, apparently with the financial backing of Landlords. In their answer to Landlords' complaint, Tenants did "not contest the right of [Landlords] to repossess their 150 x 150 foot

---

<sup>1</sup> The Honorable Douglas H. Ige entered the Final Judgment.

2008 SEP 10 AM 8:37  
 NORMA T. YARA  
 CLERK, INTERMEDIATE COURTS  
 STATE OF HAWAII

FILED

section of their 34.573 acre parcel of land described in their complaint." However, they contested "the amount of time that they were given, and that [Landlords] have given no consideration to the fact that [Tenants] are not just moving their personnel [sic] effects, but that they are knowingly, [by Landlords], entitled to move their home, also." Tenants further stated:

1. [Tenants] request that this court will allow [them] a reasonable time period to move their home to a new location, predicated on [Tenants'] genuine efforts to expedite this move and those efforts to be determined by monthly certified reports submitted by [Tenants] to [Landlords'] attorney. ([Tenants], since 27 June 2006, have been packing their belongings).

2. What might be considered a reasonable amount of time?

3. There exists a critical housing shortage on Maui! Finding a piece of property to move [Tenants'] house will require an enormous effort and time to accomplish.

4. [Tenants] have, since the 27<sup>th</sup> of June 2006 commenced their efforts to find a place to move and they possess a log of contacts made and will provide the court that information if so requested.

5. The County of Maui Planning Department may issue a permit to move a structure within 6 months after submission of application. . . .

6. [Tenants] have acquired a great deal of personnel [sic] effects in nearly 50 years and this will, in itself, require more time.

7. The setting up and implementation of water, sewage and electricity will require more time, based on county requirements.

8. [Tenants] have been on this land of [Landlords] for about 18½ years. They have conducted themselves flawlessly in their complete cooperation and requirements demanded of them by [Landlords].

9. [Landlords] have not shown any exigent circumstances that they will immediately require this particular 150' x 150' section of their land mass of 34.573 acres of undeveloped property.

10. [Tenants] incorporate their Counter Complaint, filed on 31 October 2006, and the attached Affidavit and Exhibits to that Counter Complaint.

[Tenants] request that this court will use good judgment in their decision which should be fair and equitable to both [Tenants] and [Landlords].

In their "Counter Complaint Exceeding Opposing Claim" filed on October 31, 2006 (counterclaim), Tenants described the history of their use of the leased premises and requested that the district court "allow [them] an indeterminate time period to move their home to a new location, predicated on [Tenants'] genuine efforts to expedite this move and those efforts to be determined by monthly certified reports submitted by [Tenants] to [Landlords'] attorney." It does not appear from the record that the district court entered a final order or judgment as to Tenants' counterclaim. We therefore have no jurisdiction to address Tenants' arguments on appeal regarding the counterclaim.<sup>2</sup>

Tenants, *pro se*, appear to raise three points of error on appeal:

(1) The district court violated the Americans with Disabilities Act (ADA), as well as Tenants' rights to due process and equal protection of the law, by failing to:

- (a) grant Tenants' October 26, 2006 request<sup>3</sup> that a November 6, 2006 hearing be delayed by a half-hour;
- (b) delay the December 18, 2006 hearing, after being informed that Tenants were "a little late but would be there in short time"; and
- (c) provide Tenants timely notice of the December 18, 2006 hearing.

(2) The district court erred in denying Tenants' demand for a jury trial because the law proscribing jury trials

---

<sup>2</sup> Despite our lack of jurisdiction to consider Tenants' arguments regarding the counterclaim, we have jurisdiction over Tenants' appeal from the Final Judgment in favor of Landlords for summary possession of the premises. See Ciesla v. Reddish, 78 Hawai'i 18, 20, 889 P.2d 702, 704 (1995).

<sup>3</sup> In a letter filed with the district court on October 26, 2006, Tenants requested at least a half-hour delay of the November 6, 2006 hearing on grounds that Pete "suffers from a serious medical condition, diabetes mellitus, [is] insulin dependent," and "in order to control a very brittle condition, . . . needs to inject himself with insulin, eat, and exercise after eating to control his blood sugar level. This will require the change in timing for this hearing."

in summary possession cases violates Hawaii Revised Statutes § 604-5(b) and article 1, section 10 of the Hawai'i Constitution.

(3) The district court denied Tenants' inalienable right to trial, to be heard, and to clarify points of contention, in possible violation of Rules of the District Court of the State of Hawai'i Rules 17 and 24, as well as Tenants' right to due process of law and their rights under "natural law" derived from the Magna Carta of 1215.

Upon a thorough review of the record and the briefs submitted by the parties, and having duly considered the issues and arguments raised on appeal, as well as the statutory and case law relevant thereto, we resolve Tenants' claims as follows.

1.

There is no merit to Tenants' claim that their rights under the ADA and their rights to due process and equal protection of the law were violated when the district court did not delay the November 6, 2006 and December 18, 2006 hearings and did not provide written notice of the December 18, 2006 hearing.

Tenants have not cited any provision of the ADA that the district court allegedly violated. Although this court adheres to the policy of affording litigants, especially those *pro se*, the opportunity to "have their cases heard on the merits, where possible[,] "O'Connor v. Diocese of Honolulu, 77 Hawai'i 383, 386, 885 P.2d 361, 364, reconsideration denied, 77 Hawai'i 489, 889 P.2d 66 (1994), it is not our duty to research the ADA to determine if and how Tenants' rights were violated. Hawai'i Rules of Appellate Procedure Rules 28(b)(7) and 30; Ala Moana Boat Owners' Ass'n v. State of Hawai'i, 50 Haw. 156, 158, 434 P.2d 516, 518 (1967); Berkness v. Hawaiian Elec. Co., 51 Haw. 437, 438, 462 P.2d 196, 197 (1969).

Tenants have also failed to explain how their right to equal protection of the law was violated. Based on our review of the record in light of the relevant case law, we conclude that no violation occurred. See Vacco v. Quill, 521 U.S. 793, 799

(1997); State v. Cotton, 55 Haw. 148, 150, 516 P.2d 715, 717 (1973).

Finally, it is axiomatic that the "fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976); Sandy Beach Def. Fund v. City Council, 70 Haw. 361, 377, 773 P.2d 250, 261 (1989). The record on appeal indicates that Tenants were provided opportunities to be meaningfully heard at the hearings about which they complain, but they failed to take advantage of them.

The record reveals, for example, that Tenants did not comply with the procedures for requesting ADA accommodation that were set forth on the summons served on them and the "Return of Service; Acknowledgment of Service" form<sup>4</sup> that they received with Landlords' complaint. Instead, Tenants wrote a letter to the district court on October 26, 2006, requesting ADA accommodations for the November 6, 2006 hearing. Tenants did not schedule a hearing on their request, did not call the district court to confirm that the request had been granted, and wrongly assumed that the hearing time had been changed to accommodate their request. Under these circumstances, the district court cannot be faulted for conducting the hearing at 9:00 a.m., as scheduled.

There was also no due-process violation regarding the December 18, 2006 hearing at which Tenants failed to appear. Tenants state in their opening brief that "[d]ue to [Pete's] severe medical problems, [they] called Judge Ige's clerk at approximately 0924 hours to advise the court that [they] were on their way to court and would be a little late." According to the

---

<sup>4</sup> The summons served on Tenants and the "Return of Service; Acknowledgment of Service" form signed by Tenants informed Tenants as follows:

In accordance with the **Americans with Disabilities Act** if you require an accommodation for your disability, please contact the District Court Administration Office at PHONE NO. 244-2582, FAX 244-2865, or TTY 244-2865 at least ten (10) working days in advance of your hearing or appointment date.

transcripts of the hearing, however, the district court clerk announced during the hearing that Tenants were running late because they were stuck behind a car accident. Moreover, the minutes of the hearing indicate that Tenants' case was not called until 9:55 a.m., twenty-five minutes later than the hearing was scheduled to begin; yet, Tenants were still not present. The district court could not have been expected to continue the 9:30 a.m. hearing indefinitely until Tenants showed up at the courthouse.

Tenants claim that they were not given official written notice of the December 18, 2006 status hearing and were therefore "in the dark about what this hearing is all about." It is noteworthy, however, that the December 18, 2006 hearing was scheduled at the end of the November 27, 2006 trial, after Tenants had walked out of the courtroom. Additionally, Tenants did not contest Landlords' entitlement to repossession of the premises and merely sought additional time to remove their personal effects and, contrary to the terms of their lease, the home they had constructed on the premises. Based on the record, it is clear that the district court scheduled the status hearing for the purpose of getting an update on Tenants' progress in removing the home. Tenants' due-process claim is thus without merit. Eldridge, 424 U.S. at 333; Sandy Beach Def. Fund, 70 Haw. at 377, 773 P.2d at 261.

2.

Summary possession is not a jury-triable matter. Lum v. Sun, 70 Haw. 288, 296-98, 769 P.2d 1091, 1096-98 (1989). Therefore, the district court correctly denied Tenants' request for a jury trial as to Landlords' summary possession claim against Tenants.

3.

Tenants twice admitted that Landlords were entitled to summary possession of the premises. It is axiomatic that there is no right to trial when no disputed issue of fact exists, as was the case here regarding Landlords' summary possession claim.

See, e.g., Life of the Land v. Land Use Comm'n, 63 Haw. 166, 171, 623 P.2d 431, 438 (1981). Therefore, the district court did not err in granting summary possession of the premises to Landlords without holding a trial.

Accordingly, we affirm the district court's January 17, 2007 Final Judgment on Landlords' action for summary possession.

DATED: Honolulu, Hawai'i, September 10, 2008.

On the briefs:

Pete Muñoz and Connie Muñoz,  
defendants/counterclaimants-  
appellants, *pro se*.

Deborah K. Wright and  
Keith D. Kirschbraun  
(Wright & Kirschbraun)  
for plaintiffs/counterclaim  
defendants-appellees.

Corinne KA Watanabe  
Daniel R. Foley  
Aileen Abu Jijere