

NO. 27776

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

ALAN KEITH BREMER, Plaintiff, v.  
JOHN DOUGLAS WEEKS II, also known as BOBBY WEEKS,  
and JOHN DOES 1-100, Defendants-Appellees  
(CIVIL NO. 98-186K)

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2009 JUL 31 AM 7:48

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VERNON ABRAM BOIDO and CLARA JENINE BOIDO; PAUL S. BANGERT and  
BONNIE E. BANGERT, Plaintiffs-Appellants v. JOHN DOUGLAS  
WEEKS II, also known as BOBBY WEEKS, and JOHN DOES 1-50,  
Defendants-Appellees  
(CIVIL NO. 00-1-190K)

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT

SUMMARY DISPOSITION ORDER

(By: Watanabe, Acting C.J., Nakamura and Fujise, JJ.)

Plaintiffs-Appellants Vernon Abram Boido and Clara Jenine Boido (Boidos) and Paul S. Bangert and Bonnie E. Bangert (Bangerts) (collectively, Plaintiffs) appeal from the January 19, 2006 Final Judgment of the Circuit Court of the Third Circuit (circuit court)<sup>1</sup> entered in favor of Plaintiff Alan Keith Bremer (Bremer) and Defendant-Appellee John Douglas Weeks II, also known as Bobby Weeks (Weeks).<sup>2</sup> Pursuant to a special verdict, the jury found (1) access to and from Mamalahoa Highway over a trail owned by Weeks (trail) was (a) granted for Bremer's kuleana and (b) denied for Plaintiffs' kuleana and (2) access to Mamalahoa Highway for Plaintiffs' kuleana was relocated to Palekana and/or Old Poi Factory Roads (Bishop Estate Road).

Plaintiffs argue that a new trial should have been granted because the jury's special verdict findings in favor of Bremer and against Plaintiffs are (1) irreconcilably inconsistent

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<sup>1</sup> The Honorable Ronald Ibarra presided.

<sup>2</sup> Bremer is not a party to this appeal.

and (2) against the manifest weight of the evidence. After a careful review of the issues raised, arguments advanced, applicable law, and the record in this case, we hold that the circuit court did not abuse its discretion in denying Plaintiffs' motion for a new trial.

1. **The jury's findings are reconcilable.**

A conflict in the jury's answers to questions in a special verdict will warrant a new trial only if those answers are irreconcilably inconsistent, and the verdict will not be disturbed if the answers can be reconciled under any theory. The theory, however, must be supported by the trial court's instructions to the jury.

Carr v. Strode, 79 Hawai'i 475, 489, 904 P.2d 489, 503 (1995) (citation omitted).

In the present case, the jury was instructed that, under Hawaii Revised Statutes (HRS) § 7-1 (1993),<sup>3</sup> a kuleana is entitled to one, unconditional right-of-way, and in determining where to locate such right-of-way, the condition or character of the lands, use of the lands, and acts and acquiescence of the parties were to be considered, but not convenience.<sup>4</sup> "[A]s a rule, juries are presumed to be reasonable and follow all of the trial court's instructions." Kato v. Funari, 118 Hawai'i 375, 382, 191 P.3d 1052, 1059 (2008) (quoting Myers v. South Seas Corp., 76 Hawai'i 161, 165, 871 P.2d 1231, 1235 (1994)). In light of these instructions, a review of the evidence relative to

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<sup>3</sup> HRS § 7-1 states:

**Building materials, water, etc.; landlords' titles subject to tenants' use.** Where the landlords have obtained, or may hereafter obtain, allodial [(fee simple)] titles to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house-timber, aho cord, thatch, or ki leaf, from the land on which they live, for their own private use, but they shall not have a right to take such articles to sell for profit. *The people shall also have a right to drinking water, and running water, and the right of way.* The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple; provided that this shall not be applicable to wells and watercourses, which individuals have made for their own use. (Emphasis added.)

<sup>4</sup> These instructions are not challenged on appeal. See also, Bremer v. Weeks, 104 Hawai'i 43, 69, 85 P.3d 150, 176 (2004).

each party reveals that Bremer's kuleana (Apana 3) and Plaintiffs' kuleana (Apana 1) were not equivalently situated and the history of the respective kuleanas' owners' access patterns were not identical. As a result, the jury's answers to the special verdict questions are reconcilable.

First, Apana 3 borders the trail, while Apana 1 is located north of the trail and across the Bishop Estate Road. The Bishop Estate Road is improved, and the trail is only partially improved. A map prepared in 1908 depicts both the trail and the Bishop Estate Road.

Second, access from Mamalahoa Highway to Apana 3 was historically taken over the trail, but is currently taken over the Bishop Estate Road and the mauka portion of the trail. In contrast, Bremer testified, he could not access Apana 3 without using the trail. Christine Durbin (Bremer's predecessor) also testified that she was unaware of any actual access to Apana 3 other than the trail, and that even with access over the mauka portion of the trail, full access to Apana 3 was still limited. Furthermore, although access from Mamalahoa Highway to Apana 1 may have been historically taken over the trail, it was more recently taken over the Bishop Estate Road only. Plaintiffs offered no evidence attesting to the use of the trail for access to Apana 1 after the 1930s.

Third, when Bishop Estate conveyed the trail to Weeks's parents by means of a 1984 quitclaim deed, the conveyance was subject to, *inter alia*, the tenancy of the then-existing owner of Apana 3. In 1985, Bishop Estate permitted a license<sup>5</sup> to use the Bishop Estate Road to Bremer's predecessor-in-interest, terminated a reservation of the right to use of the trail in favor of Apana 3, and directed that permission to use the trail be obtained from Weeks's parents. When Weeks acquired the trail from his parents through a 1988 quitclaim deed, there was no

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<sup>5</sup> The Hawai'i Supreme Court in Bremer, 104 Hawai'i at 68-69, 85 P.3d at 175-76 (2004), determined that this letter constituted a license and not an easement, despite the language used in the letter agreement.

reservation of rights in favor of the owners of Apana 3.<sup>6</sup> Weeks permitted owners of Apana 3 access over the mauka portion of the trail, yet never permitted owners of Apana 1 access over any portion of the trail. Plaintiffs testified they had no agreements to use either the trail or the Bishop Estate Road to gain access to their property from Mamalahoa Highway. They testified that they used the Bishop Estate Road nonetheless because they had no other choice.

Thus, there was ample evidence supporting the jury's answers in rendering its special verdict granting access to the trail to Bremer but not to Plaintiffs.

**2. The weight of the evidence supports the verdict.**

HRS § 635-56 (1993) permits a court to grant a new trial "when [the verdict] appears to be so manifestly against the weight of the evidence as to indicate bias, prejudice, passion, or misunderstanding of the charge of the court on the part of the jury[.]" In Petersen v. City & County of Honolulu, 53 Haw. 440, 442, 496 P.2d 4, 6-7 (1972), the Supreme Court of Hawai'i noted:

We are, of course, extremely reluctant to reverse a trial judge's assessment of the evidence. His [or her] conclusion that a verdict is not against the weight of the evidence is sustained unless we are of the opinion that the undisputed evidence results in a verdict that is without legal support such that justice requires a new trial[.]

(internal quotation marks, ellipses, and parentheses omitted)  
(quoting Oliveras v. American Export Isbrandtsen Lines, Inc., 431 F.2d 814, 817 (1970)).

Here, the jury was asked to render a special verdict and to determine not only whether Plaintiffs' kuleana had access to Mamalahoa Highway via the trail, but if not, whether that access had been relocated to the Bishop Estate Road. Plaintiffs have not challenged the special verdict form on appeal and cannot complain about the choices given to the jury. Hawai'i Rules of

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<sup>6</sup> No additional evidence was presented that suggested further limitations on Weeks's interest in the trail (e.g., easement rights).

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Appellate Procedure Rule 28(b)(4). The jury found that access to Plaintiffs' kuleana had been relocated to the Bishop Estate Road.

Weeks's theory that the right of way had been relocated from the trail to the Bishop Estate Road was based, in part, on the following evidence: (1) the Map prepared in 1908 that showed that both the trail and the Bishop Estate Road were well established as of that year; (2) the June 6, 1973 conveyance by Bishop Estate to Weeks's parents of certain properties, including a lot adjacent to the trail, which granted to Weeks's parents the right "in common with the Grantors and others thereto entitled, to use" the trail, "subject, however, to the right of the Grantors to relocate said [trail] from time to time[;]" (3) the February 26, 1975 warranty deed from Bishop Estate to Mary Au Hoon and Benjamin Haanio, conveying Lot 3, TMK 7-8-06-3 (a portion of R.P. 4475, L.C. Aw. 7713, Ap. 7 to Kamamalu, the lot west of Weeks's property and adjacent to the trail), subject to "[a]ll ancient rights of Native Tenants as contained in Royal Patent 4475[;]" (4) the November 8, 1984 quitclaim deed from Bishop Estate to Weeks's parents conveying the trail, subject only to "Bishop Estate Tenancy No. 2587 to Christopher Kratt, owner of [Apana 3;]" (5) the July 30, 1985 letter-agreement between Bishop Estate and Fred B. Squire (Squire), then-owner of Apana 3, which granted Squire a non-exclusive license over Bishop Estate Road and "automatically [cancelled] the previous easement to Mr. and Mrs. Christopher Kratt dated October 8, 1981[,]" but directed Squire "to approach [Weeks's father] for an easement for the short portion of the roadway between [the Bishop Estate Road] and your lot[;]" (6) the testimony of Plaintiffs that they understood when they purchased their property that access was over the Bishop Estate Road and they had used this road to access their property although they also understood they had no permission from Bishop Estate to do so; and (7) the testimony of Plaintiff Vernon Boido that the Bishop Estate Road was paved and maintained and led directly to his property.

Thus, the evidence showed that both access routes, the trail and the Bishop Estate Road, were in existence at least as early as 1908 and while the trail was used at one time to gain access to Plaintiffs' property, in more recent times, and possibly as far back as 1938, the Bishop Estate Road was used to gain access to Apana 1. The evidence also showed that while Bishop Estate owned the trail, it preserved the adjoining landowners'--although not necessarily the owners of Apana 1--ability to use the trail. Once Bishop Estate conveyed the trail to Weeks's parents, it permitted use of the Bishop Estate Road, but deferred to Weeks's parents regarding use of the trail. Based on this evidence, we cannot say that the circuit court's determination that the jury's verdict was not against the weight of the evidence was an abuse of discretion.

Therefore,

IT IS HEREBY ORDERED that the January 19, 2006 Final Judgment of Circuit Court of the Third Circuit is affirmed.

DATED: Honolulu, Hawai'i, July 31, 2009.

On the briefs:

Mark Van Pernis,  
for Plaintiffs-Appellants.

  
Acting Chief Judge

Michael J. Matsukawa,  
for Defendant-Appellee.

  
Associate Judge

  
Associate Judge