

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28070

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

CLARE CONNORS, Petitioner-Appellee, v.
TERRY LEROY CASSIDY, Defendant-Appellant

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

2009 APR -7 AM 8:28

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P. NO. 05-1-0423)

SUMMARY DISPOSITION ORDER

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

Respondent-Appellant Terry Leroy Cassidy (Cassidy), pro se, appeals from the Judgment entered on November 10, 2005 and the Order Denying Respondent's Request for Declaratory Judgment filed on July 19, 2006 in the Circuit Court of the First Circuit¹ (circuit court).

In a circuit court special proceeding, Petitioner-Appellee Clare Connors (Connors) petitioned the court, pursuant to Hawaii Revised Statutes (HRS) Chapter 507D, to expunge a UCC Financing Statement (lien) that Cassidy had recorded at the State of Hawai'i Bureau of Conveyances. Connors had not entered into any contracts or transactions with Cassidy, did not owe Cassidy any money, and had not signed or consented to the lien. The circuit court signed the order granting Connors' petition on October 26, 2005, but the order was not filed until the next day, October 27, 2005. Cassidy was served with a certified copy of Connors' petition on October 28, 2005; he acknowledged receipt of service in an October 27, 2005 letter to Connors.

On November 10, 2005, the circuit court filed a Judgment in favor of Connors and against Cassidy.

¹ The Honorable Randal K.O. Lee presided.

On December 14, 2005, Cassidy filed a Motion to Vacate Judgment Obtained by Perjury and Bad Faith, in which he stated that he had not been given an opportunity to respond to the petition prior to the entry of the Judgment. The circuit court denied the motion on December 29, 2005.

On June 29, 2006, Cassidy filed a Request for Declaratory Judgment by Restricted Appearance and Special Visitation, which the circuit court denied on July 19, 2006.

Cassidy filed a notice of appeal on July 31, 2006 and an amended notice of appeal on August 23, 2006.

On appeal, Cassidy contends:

(1) The circuit court erred in executing its October 26, 2005 order where the certificate of service was unexecuted and the court failed to verify the parties' identities.

(2) The circuit court lacked subject matter jurisdiction.

(3) The circuit court erred when it proceeded with the case, despite notification on October 27, 2005 of Cassidy's inability to respond until he reached his final prison destination and his paperwork was returned to him.

(4) The circuit court erred by prematurely executing the Judgment and by failing to give Cassidy notice of the Judgment.

(5) The circuit court erred because the court was unclear in its December 15, 2005 order denying Cassidy's motion for extension as to whether, despite the Judgment having already been entered, the court would allow Cassidy to file a response to Connors' petition.

(6) The circuit court erred in not requiring Connors to respond to Cassidy's response to the petition, and the court further erred by denying Cassidy's April 3, 2006 Notice of Default and refusing to rule on his April 5, 2006 Notice of Default

because Connors' failure to respond should have resulted in a default judgment.

Upon careful review of the record and the briefs submitted by the parties, and having given due consideration to the arguments advanced and issues raised, we conclude that Cassidy's appeal is without merit.

The circuit court correctly expunged the illegal lien recorded in the Bureau of Conveyances by Cassidy. Cassidy's lien was a nonconsensual common law lien. HRS § 507D-2 (2006 Repl.). Cassidy failed to attach a court order authorizing the filing of the lien. HRS § 507D-5 (2006 Repl.). The circuit court properly issued injunctive relief and awarded damages to Connors because the lien was invalid. HRS § 507D-2 and -7(a) and (b) (2006 Repl.). Connors properly served Cassidy throughout the proceedings. Hawai'i Rules of Civil Procedure Rule 4(c) and (d)(1). Cassidy was not prejudiced by the timing of the circuit court's order expunging the lien.

Therefore,

The Judgment entered on November 10, 2005 and the Order Denying Respondent's Request for Declaratory Judgment filed on July 19, 2006 in the Circuit Court of the First Circuit are affirmed.

DATED: Honolulu, Hawai'i, April 7, 2009.

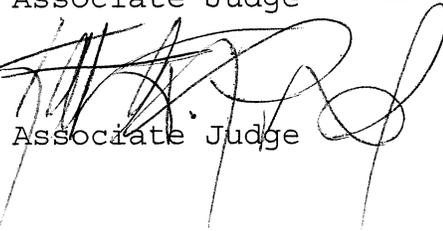
On the briefs:

Terry Leroy Cassidy,
Respondent-Appellant pro se.

Edric M. Ching,
Assistant U.S. Attorney,
for Petitioner-Appellee.


Presiding Judge


Associate Judge


Associate Judge