

NOT FOR PUBLICATION

NO. 24976

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

MILTON K. KAOPUA, SUSANNA L. KAOPUA,
Plaintiffs-Appellees, v.
SHARON P. MANUEL, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT,
HONOLULU DIVISION
(CIVIL CASE NO. 1RC00-7123)

MEMORANDUM OPINION

(By: Watanabe, Acting C.J., Lim and Foley, JJ.)

Defendant-Appellant Sharon P. Manuel (Sharon) appeals the \$6,366.75 Judgment filed on October 23, 2001 in the District Court of the First Circuit, Honolulu Division (district court).¹

On appeal, Sharon contends the district court abused its discretion by (1) prohibiting cross-examination of witnesses, (2) denying her the opportunity to directly examine witnesses, and (3) failing to exclude witnesses from the courtroom. Sharon also contends the district court's finding of fact that Sharon borrowed \$5,000.00 from Plaintiffs-Appellees Susanna L. Kaopua (Susanna) and Milton K. Kaopua (Milton) is clearly erroneous.

I. FACTS

On October 31, 2000, Susanna and Milton (who were husband and wife) filed a complaint against Sharon. The

¹ The Honorable Rhonda Nishimura presided.

complaint alleged that Sharon had borrowed \$5,000.00 from Susanna and Milton, promised to repay the money, and failed to repay the money.

Trial was held on December 26, 2000, and the parties appeared pro se. The district court judge asked Sharon and Susanna for the names of their witnesses. Sharon responded that her witnesses were Charles Gerdes (Gerdes) and Shawnee Vellese (Shawnee). Susanna responded that her witnesses were Shawnee, Henry Vellese (Henry), and Brenda Vellese (Brenda). The witnesses and parties were sworn in.² Susanna and Sharon agreed that all of the witnesses would not be excluded from the courtroom while testimony was being given. The judge explained that each party would have the opportunity to make opening statements, could ask questions of each witness, and could testify on his or her own behalf. Both sides made opening statements.

Henry was called by Susanna as her first witness. Susanna and Sharon were sisters and Henry was their brother. Susanna questioned Henry on direct examination. The judge interrupted Susanna several times in order to question Henry about how he came to ask Susanna for \$5,000.00 and what he did with the money after Susanna gave it to him. Sharon questioned

² The specific names of the witnesses who were sworn in are not identified in the record.

Henry on cross-examination, but her questioning was also interrupted by the judge asking her own questions.

Susanna called Brenda, Henry's wife, to testify. However, the judge ordered Shawnee (sister of Susanna, Sharon, and Henry) to testify. The judge questioned Shawnee; Susanna and Sharon did not question Shawnee. The judge then allowed Brenda to testify, but only the judge questioned Brenda. The judge continued randomly questioning Susanna, Sharon, Brenda, Shawnee, and Gerdes (a probate attorney for the estate of the mother of Susanna and Sharon) until the end of the proceeding. The district court terminated the proceeding until April in the hope that the pending probate court proceedings would settle the issue.

On September 17, 2001, the district court continued the trial between Susanna and Sharon. Susanna had retained counsel by September 17, 2001. The district court judge stated that the witnesses had already testified and the court had finished taking evidence. The judge also stated that only closing arguments would be heard and no further testimony from the parties or witnesses would be taken.

During Sharon's closing argument, she stated:

The hearing ended on not a clear tone only because all testimonies really wasn't [sic] heard. Meaning, you closed the probate (sic) when you found out that there was five thousand dollars in probate and that you wanted us to pursue the matter more, which means you never gave me the opportunity to actually question the probate attorney when

Susanna and Henry was [sic] questioning the probate attorney.

Plus, you never had me bring, or put Shawnee really on the stand for me to do my questioning.

During Sharon's closing argument, the judge continued to ask Sharon questions. The judge also asked Susanna questions, after Sharon's closing argument, about how she obtained the \$5,000.00 to give to Henry. The judge also let Milton address the court and give testimony about what Sharon said to him.

The district court found that Susanna and Milton had loaned money to Sharon and Sharon had failed to pay back the money. The district court ordered Sharon to pay \$5,000.00 plus costs and attorney's fees to Susanna and Milton. Judgment was entered on October 23, 2001 for Susanna and Milton in the amount of \$6,366.75. Sharon timely filed this appeal.

II. DISCUSSION

A. The district court abused its discretion by not allowing Sharon to cross-examine witnesses or directly examine witnesses.

Sharon contends the district court abused its discretion by prohibiting cross-examination of witnesses. Susanna contends the district court did not abuse its discretion because the court did not prohibit Sharon from cross-examining witnesses.

"The right to cross-examine a witness, although subject to waiver, is a fundamental right that is basic to our judicial

system." Kekua v. Kaiser Found. Hosp., 61 Haw. 208, 221, 601 P.2d 364, 372 (1979). "[W]here essentially the same evidence is given by other witnesses or other means, the trial court's exclusion of relevant evidence constitutes harmless error." Wakabayashi v. Hertz Corp., 66 Haw 265, 272, 660 P.2d 1309, 1314 (1983).

The district court asked Sharon and Susanna for the names of their witnesses. Sharon responded that her witnesses were Gerdes and Shawnee. Susanna responded that her witnesses were Shawnee, Henry, and Brenda.

After a discussion concerning exhibits, the following conversation occurred between the district court and Susanna:

THE COURT: Alright, let's proceed. Your first witness? Who do you wanna testify first?

[SUSANNA]: Henry Velleles.

THE COURT: Okay, Mr. Velleles, take the stand. You've already been sworn in. Have a seat. Speak verbally and into the mike clear, and I want only one person speaking at a time. We're taping, so we cannot have two people speaking over each other. Everyone understands?

[SUSANNA]: Yes.

THE COURT: Alright. After your witness testifies, then you can, then Ms. Manuel, you can ask questions of the witness. That's called cross-examination. Finish all of your witnesses including yourself, testify. After each witness, you can ask questions with them. Then after you're finished with your case, Mr. and Mrs. Kaopua, then Ms. Manuel, you can present your case. And same thing, you get to testify, your witnesses get to testify, and you'll have a chance to cross-examine the witnesses. Does either side have any questions.

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After Henry finished testifying, Susanna called Brenda as her next witness. However the judge called Shawnee to testify instead of Brenda:

THE COURT: Who's Shawnee? Is Shawnee here? You know what, Shawnee, maybe we can cut through everything. Come Shawnee, I want you to come to the mike, Shawnee. Tell me this, you got the five thousand from Henry?

The judge questioned Shawnee extensively; however, Sharon was not permitted to question Shawnee. The judge then questioned Gerdes and Brenda. The record does not show that Sharon was ever offered the chance to question Shawnee or Brenda on direct or cross-examination. The record shows the judge questioned Gerdes intermittently throughout the proceeding. The record does not indicate that Sharon was offered the chance to call Gerdes as her own witness or to ask him any questions.

At the continuation of the trial on September 17, 2001, the district court judge stated:

THE COURT: Now, as I informed to all the parties at this morning's pretrial conference that the court did have the trial on December 26, and just to reiterate, the witnesses have already testified, and these were Henry, Rita (sic), Shawnee Velleses, and Charles Gerdes, the probate attorney, is that correct?

[COUNSEL FOR SUSANNA AND MILTON]: I believe the parties also testified by way of discussion.

THE COURT: And the parties also testified, and certain exhibits had been received into evidence at that time, and after we had finished all of taking of the evidence, then there was a matter of a probate issue that had been raised, so the Court instead of rendering its decision at the time, allowed the parties additional time to untangle or to clarify what happened at probate so that there's no pending matter that may or may not be interrelated. Do both sides remember? Is that a fair recitation?

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[COUNSEL FOR SUSANNA AND MILTON]: Yes, your Honor, that's correct? [sic]

[SHARON]: Yes.

. . . .

THE COURT: Okay. So now we're here, and the Court will have the parties present closing argument. No further testimony from parties or witnesses, but the Court is allowing both sides to give a summary of why they feel the Court should rule in their favor.

After the parties had finished their closing arguments, the judge allowed Milton to address the court as to specific facts of the case, and he stated: "Because [Sharon] said I going pay you five thousand dollars, I said she is, okay, fine, that's how I gave it." The district court did not give Sharon an opportunity to question Milton about this statement. The district court heard more evidence after closing arguments despite the judge's statement that only closing arguments would be heard and no more testimony would be taken from the parties.

It is clear from the record that Sharon was not provided with the opportunity cross-examine Shawnee, Brenda, and Gerdes. The judge stated that the "Court will find that basically this is a matter of credibility." The district court's error cannot be said to be harmless when a party is denied the opportunity to cross-examine witnesses in order to question their credibility, which is the determinative factor at trial. Contrary to Susanna's contention that Sharon never sought to question Sharon's witnesses, the district court had a duty to ask Sharon if she wanted to question the witnesses because she was

appearing pro se. Pro se parties are not usually knowledgeable about court proceedings, and Sharon properly relied upon the district court's statement that she would have the opportunity to cross-examine witnesses and then present her own case. The district court abused its discretion by denying Sharon her right to cross-examine witnesses. Sharon's other points of error need not be addressed because the district court's denial of Sharon's right to cross-examine witnesses is sufficient to require a new trial.

III. CONCLUSION

The Judgment filed on October 23, 2001 is vacated, and the case is remanded for new trial.

DATED: Honolulu, Hawai'i, April 19, 2004.

On the briefs:

Kekuailohia M. Beamer
for defendant-appellant.

Acting Chief Judge

Mitchell S. Burns and
Cynthia L. Harvey
for plaintiffs-appellants.

Associate Judge

Associate Judge