

NO. 26478

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

MAHEALANI VENTURA-OLIVER, Plaintiff-Appellant, v.
WAILUKU AGRIBUSINESS CO., INC., Defendant-
Appellee, and GILBERT SCHMITT; LEIMOMI SCHMITT;
MOMILANI VENTURA; KEOKI VENTURA; RONALEE VENTURA;
PINO SOUZA; LLOYD L. SCHMITT, III; JENNY BLACK;
LAVELLE SCHMITT; CHERYLANE K. SCHMITT; UNKNOWN
HEIRS OF ALEXANDER M. BIRCH; STATE OF HAWAI'I;
COUNTY OF MAUI; JOHN DOES, JANE DOES; DOE
CORPORATIONS, PARTNERSHIPS, & ENTITIES 1-10,
Defendants

E.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(Civ. No. 03-1-0186(3))

SUMMARY DISPOSITION ORDER

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

Plaintiff-Appellant Mahealani Ventura-Oliver (Ventura-Oliver) appeals from the final judgment entered on December 19, 2003, in the Circuit Court of the Second Circuit (circuit court).¹ After a careful review of the issues raised, arguments advanced, law relied upon, and the record in the instant case, we conclude that the circuit court did not err. Consequently, we affirm.

1. Ventura-Oliver's argument that genuine issues of material fact existed at the time the circuit court granted Defendant-Appellee Wailuku Agribusiness, Co., Inc.'s (Wailuku) motion for summary judgment is not borne out by the record. Because she failed to demonstrate a triable issue of material

¹ The Honorable Joseph E. Cardoza presided.

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fact at the time the motion was considered, the circuit court did not err in granting Wailuku's motion for summary judgment.

French v. Hawaii Pizza Hut, Inc., 105 Hawai'i 462, 470, 99 P.3d 1046, 1054 (2004).

Whether Henry Birch (Henry) was Alexander Birch's (Alexander) sixth child with an interest in Alexander's estate was not an issue before the circuit court when it decided Wailuku's motion for summary judgment. In Ventura-Oliver's memorandum in opposition to the motion for summary judgment, Henry and his alleged interest in the estate were never mentioned. To the extent Alexander's heirs were discussed, Ventura-Oliver explicitly described the group as consisting of Alexander's five children from his marriage to his wife Kahai: Isabella, Martha, Thomas, Elizabeth, and Charles. Thus, even assuming, arguendo, that Henry's interest in the estate presented a genuine issue of material fact, because Ventura-Oliver failed to raise it at the time the motion for summary judgment was decided, the circuit court did not err in failing to address it. See State v. Moses, 102 Hawai'i 449, 456, 77 P.3d 940, 947 (2003) ("As a general rule, if a party does not raise an argument at trial, that argument will be deemed to have been waived on appeal; this rule applies in both criminal and civil cases.") Whether the August 2, 1861 agreement (agreement) dividing Alexander's estate was a legally effective document also does not present a genuine issue of material fact. Moreover, Ventura-Oliver did not claim that her interest in the estate

proceeded from any of the heirs she claimed participated, or did not participate in the agreement. As such, based on the evidence presented and arguments made at the time the motion for summary judgment was decided, the validity of the agreement dividing the real property of Alexander's estate does not effect Ventura-Oliver's interests in the estate.

2. The circuit court did not abuse its discretion when it denied Ventura-Oliver's motion for reconsideration styled as a motion to alter or amend judgment under Hawai'i Rules of Civil Procedure Rule 59(e).² Gossinger v. Ass'n of Apartment Owners of Regency of Ala Wai, 73 Haw. 412, 425-26, 835 P.2d 627, 634-35 (1992). The purpose of a motion for reconsideration is to allow the parties to present new evidence and/or arguments that could not have been presented during the earlier adjudicated motion. Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 114-115, 839 P.2d 10, 26-27 (1992) citing Gossinger, 73 Hawai'i at 424-25, 835 P.2d at 634-35 and Briggs v. Hotel Corp. of the Pacific, Inc., 73 Hawai'i 276, 287 n.7, 831 P.2d 1335, 1342 n.7 (1992) ("a motion for reconsideration is not time to relitigate old matters"). Ventura-Oliver failed to demonstrate that the arguments she raised in support of her motion could not have been made during the adjudication of Wailuku's motion for summary judgment.

² We note that Plaintiff-Appellant Mahealani Ventura-Oliver points on appeal do not comply with Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(5) in that they do not provide the relevant standard of review. Counsel is reminded that nonconforming points may be disregarded and may result in other sanctions. Ass'n of Apartment Owners at Wailea Elua v. Wailea Resort Co., Ltd., 100 Hawai'i 97, 110, 58 P.3d 608, 621 (2002); HRAP Rule 28(b)(5) and 51.

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Therefore,

The Circuit Court of the Second Circuit's December 19, 2003, final judgment is affirmed.

DATED: Honolulu, Hawai'i, December 26, 2006.

On the briefs:

James Richard McCarty and
Ruby A. Hamili,
for Plaintiff-Appellant.



Presiding Judge

Peter A. Horovitz,
for Defendant-Appellee.



Associate Judge



Associate Judge