

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

FREDERICK H.K. BAKER, JR. and)	CIVIL NO. 13-00159 LEK-KSC
HAUNANI Y. BAKER,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
STATE OF HAWAI`I; STATE OF)	
HAWAI`I BY ITS' DEPARTMENT OF)	
HAWAIIAN HOME LANDS; NEIL)	
ABERCROMBIE; HUGH E. GORDON;)	
SCOTT D. PARKER; ROBERT)	
KORBEL DAVIS, JR; JOHN DOES)	
1-100; and JANE DOES 1-100,)	
)	
Defendants.)	
)	

ORDER DISMISSING CLAIMS WITHOUT PREJUDICE

On June 12, 2013, pro se Plaintiffs Frederick H.K. Baker, Jr. and Haunani Y. Baker (collectively, "Plaintiffs") filed their First Amended Civil Rights Complaint with Jury Demand ("First Amended Complaint"). [Dkt. no. 21.] The First Amended Complaint named the following defendants: the State of Hawai'i, the Department of Hawaiian Home Lands, and Neil Abercrombie (collectively, "the State Defendants"); Hugh E. Gordon ("Defendant Gordon"); Scott D. Parker ("Defendant Parker"); and Robert Korbel Davis, Jr. ("Defendant Davis").

On October 7, 2013, this Court issued an order that, *inter alia*, granted the State Defendants' motion to dismiss and granted Defendant Davis's motion to dismiss ("the 10/7/13 Order"). [Dkt. no. 66.] The 10/7/13 Order dismissed Plaintiffs'

claims against the State Defendants and Plaintiffs' claims against Defendant Davis with prejudice. [10/7/13 Order at 21.] The 10/7/13 Order also noted that, pursuant to Fed. R. Civ. P. 4(m),¹ Plaintiffs had until October 10, 2013 to serve the First Amended Complaint on Defendants Gordon and Parker. This Court stated that, if Plaintiffs were unable to effect service by October 10, 2013, Plaintiffs had to file a motion for an extension of time to complete service. Pursuant to Rule 4(m), Plaintiffs would have to show good cause for their failure to complete service by October 10, 2013. This Court ordered Plaintiffs to file the motion for extension of time by October 17, 2013, and this Court cautioned Plaintiffs that, if they failed to file the motion by October 17, 2013, this Court would dismiss Plaintiffs' claims against Defendants Gordon and Parker without prejudice. [Id. at 20-21.]

On October 25, 2013, Plaintiffs filed a motion for reconsideration of the 10/7/13 Order, and this Court issued an order denying the motion for reconsideration on December 13, 2013

¹ Fed. R. Civ. P. 4(m) states, in pertinent part:

If a defendant is not served within 120 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

("12/13/13 Order"). [Dkt. nos. 71, 83.] The 12/13/13 Order gave Plaintiffs until December 20, 2013 to serve Defendants Gordon and Parker with the First Amended Complaint.

On December 9, 2013, Plaintiffs filed their Motion Requesting Leave of Court to Substitute Doe Defendants 1-3 with Defendant Kip Akana, Defendant Paul Ah Yat, and Defendant Robin Nagamine ("Motion to Substitute"). [Dkt. no. 81.] Plaintiffs, however, subsequently withdrew the Motion to Substitute. [Dkt. nos. 85, 86.]

On December 26, 2013, Plaintiffs filed a notice of appeal from the 12/13/13 Order. [Dkt. no. 88.] On January 13, 2014, the Ninth Circuit dismissed Plaintiffs' appeal for lack of jurisdiction. [Dkt. no. 92.] On January 15, 2014, this Court issued an entering order stating that this Court was inclined to dismiss Plaintiffs' claims against Defendants Gordon and Parker unless Plaintiffs showed good cause why this Court should not do so ("1/15/14 EO"). [Dkt. no. 93.] This Court cautioned Plaintiffs that, if they failed to file a memorandum responding to the 1/15/14 EO by January 29, 2014, this Court would dismiss all of Plaintiffs' claims against Defendants Gordon and Parker and would close the case.

Plaintiffs neither filed proof of service on Defendants Gordon and Parker nor filed a response to the 1/15/14 EO. Pursuant to Fed. R. Civ. P. 4(m) and the terms of the 1/15/14 EO,

this Court HEREBY DISMISSES Plaintiffs' claims against Defendant Gordon and Plaintiffs' claims against Defendant Parker WITHOUT PREJUDICE for failure to serve.

There being no remaining claims in this action, this Court DIRECTS the Clerk's Office to close this case.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, February 11, 2014.



/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

FREDERICK H.K. BAKER, JR., ET AL. VS. STATE OF HAWAI`I, ET AL;
CIVIL 13-00159 LEK-KSC; ORDER DISMISSING CLAIMS WITHOUT PREJUDICE