

NO. 25965

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

NICHOLAS R. PAO, JR., Plaintiff-Appellant, v.
MARK CHUNG, M.D., and STRAUB CLINIC AND HOSPITAL,
Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 98-5209)

SUMMARY DISPOSITION ORDER

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

Plaintiff-Appellant Nicholas R. Pao, Jr. (Pao) appeals the Final Judgment filed on June 16, 2003 in the Circuit Court of the First Circuit (circuit court).^{1/} The circuit court found that pursuant to "the jury's Special Verdict dated July 25, 2002" and "the Order Granting Defendant Straub Clinic and Hospital's Motion for Summary Judgment Filed July 9, 2001 which was filed herein on September 6, 2001," judgment was entered in favor of Defendants-Appellees Mark Chung, M.D. (Dr. Chung) and Straub Clinic and Hospital (Straub) and against Pao, with Pao taking nothing against Dr. Chung and Straub. In addition, the circuit court entered judgment for costs in favor of Dr. Chung and Straub and against Pao.

On appeal, Pao argues that: (1) he was denied effective assistance of counsel at trial because his attorney, Richard C. DeWaele (DeWaele) failed (a) to excuse, voir dire, or

^{1/} The Honorable Gary W. B. Chang presided.

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peremptorily challenge juror Hiroshi Ikeda (Ikeda), who had had a previous attorney-client relationship with Dr. Chung's attorney, Dennis O'Connor (O'Connor), and (b) to cross-examine Dr. Chung; (2) the circuit court abused its discretion by failing to excuse or disqualify Ikeda or to conduct a hearing to determine the precise nature of the relationship between Ikeda and O'Connor; and (3) the circuit court erred in allowing O'Connor to continuously block with an evidence binder Pao's view of several witnesses while said witnesses were perjuring themselves on the witness stand. Pao asserts that, due to the above, this court should "set aside the special verdict and remand for new trial."

Upon careful review of the record and the briefs submitted by the parties, we hold that:

(1) Pao had no constitutional right to effective assistance of counsel because that right applies to criminal proceedings only. Norton v. Admin. Dir. of the Court, 80 Hawai'i 197, 200, 908 P.2d 545, 548 (1995); Nicholson v. Rushen, 767 F.2d 1426, 1427 (9th Cir. 1985).

(2) Pao fails to show that any relationship between Ikeda and O'Connor was sufficiently close or extreme enough to constitute implied bias, and Pao has not pointed out how he was substantially prejudiced by Ikeda's remaining on the jury. State v. Birano, No. 25699, 2005 WL 2338710, at *11 (Haw. App. Sept. 26, 2005, as amended Sept. 28, 2005); State v. Kauhi, 86

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Hawai'i 195, 198, 948 P.2d 1036, 1039 (1997); State v. Nupeiset, 90 Hawai'i 175, 177-79, 977 P.2d 183, 185-87 (App. 1999).

(3) Pao does not cite any case law or make a discernible argument with respect to his contention that the trial court erred in allowing O'Connor to continuously block with a binder Pao's view of several witnesses while said witnesses were perjuring themselves on the witness stand. Therefore, this court may disregard this contention. Hawai'i Rules of Appellate Procedure Rule 28(b)(7); see also Norton, 80 Hawai'i at 200, 908 P.2d at 548.

Therefore,

IT IS HEREBY ORDERED that the Final Judgment filed on June 16, 2003 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, January 13, 2006.

On the briefs:

Nicholas R. Pao, Jr.,
Plaintiff-Appellant, pro se.

William A. Bordner and
John Reyes-Burke
(Burke, Sakai, McPheeters,
Bordner, Iwanaga & Estes),
for Defendant-Appellee Straub
Clinic and Hospital.

Dennis E.W. O'Connor,
Kelvin H. Kaneshiro, and
Elmira K.L. Tsang
(Reinwald, O'Connor & Playdon LLP),
for Defendant-Appellee Mark Chung, M.D.



Acting Chief Judge



Associate Judge



Associate Judge