

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

ANIMAL HAVEN, INC., BONNIE L.)	CASE NO. 97-3072
PANG, and NORMAN M.W. PANG,)	
)	APPEAL FROM THE JUDGMENT,
Plaintiffs-Appellants,)	filed on July 26, 1999
)	
vs.)	FIRST CIRCUIT COURT
)	
HAWAIIAN HUMANE SOCIETY, PAMELA)	
BURNS, REBECCA RHOADES, MICHAEL)	
BURGWIN, SUSAN KROMER, ROBERT)	
SYLVIA, CITY AND COUNTY OF)	
HONOLULU,)	
)	
_____Defendants-Appellees,)	
)	
and)	
)	
JOHN DOES 1-10; JANE DOES 1-10;)	
DOE PARTNERSHIPS 1-10; DOE)	
CORPORATIONS 1-10; DOE ENTITIES)	
1-10; DOE GOVERNMENTAL UNITS 1-)	
10,)	
)	
Defendants.)	
_____)	

SUMMARY DISPOSITION ORDER

The plaintiff-appellants Animal Haven, Inc., Bonnie Pang, and Norman M.W. Pang (collectively, the Pangs) appeal from the first circuit court's judgment, filed on July 26, 1999, entered in favor of the defendants-appellees Hawaiian Humane Society (HHS), Pamela Burns, Rebecca Rhoades, Michael Burgwin, Susan Kromer, Robert Sylvia, and the City and County of Honolulu (collectively, the defendants). On appeal, the Pangs generally assert that the circuit court erred in granting summary judgment as to counts 1, 3, 4, 6, 7, and 10 of their eleven-count

complaint, filed on July 28, 1997, because the circuit court wrongly concluded that the two-year statute of limitations applicable to these claims had begun to run on February 7, 1995. With regard to count 2 of their complaint, the Pangs specifically contend that summary judgment on their malicious prosecution claim was improperly granted because the circuit court erroneously concluded that the prior criminal proceedings were initiated upon probable cause. With regard to count 5 of their complaint, the Pangs specifically contend that summary judgment on their conversion claim was improperly granted, inasmuch as their conversion claim is predicated on HHS's taking of the Pangs' animals under a release, which the Pangs alleged was coercively obtained, and, therefore, the circuit court was wrong to predicate summary judgment on this claim on the ground that the animals were seized under the authority of a lawfully issued and executed search warrant. With regard to count 9 of their complaint, the Pangs specifically contend that the circuit court erroneously concluded that the allegedly defamatory statements attributable to HHS's employees were not defamatory per se. The Pangs do not contest the circuit court's order granting summary judgment on counts 8 and 11 of their complaint.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we affirm the judgment in the present matter. With regard to counts 1, 3, 4, 6, 7, and 10 of the Pangs' complaint, we hold that the circuit court's order granting summary judgment must be affirmed because the question whether the statute of limitations had run on these claims is not subject to review by this court, inasmuch as (1) the Pangs have failed to advance any argument with regard to this point of error that complies with Hawai'i Rules of

Appellate Procedure Rule 28(b)(7) (1995) and, thereby, have failed properly to preserve it on appeal, see Weinberg v. Mauch, 78 Hawai'i 40, 49, 890 P.2d 277, 286 (1995), and (2) the Pangs have offered this court nothing more than bare allegations and unsupported factual conclusions with regard to what acts or omissions were committed by HHS or its employees after February 7, 1995 as to each of the claims alleged in counts 1, 3, 4, 6, 7, and 10 and, consequently, have provided this court with an insufficient basis upon which to reverse the circuit court's orders in the present matter, see Reed v. City and County of Honolulu, 76 Hawai'i 219, 225, 873 P.2d 98, 104 (1994).

With regard to count 2, we hold that the Pangs' argument on appeal raises factual allegations that are not supported by the record; thus, even if the Pangs' legal argument is correct, as far as it goes (i.e., that the circuit court should not have concluded that the doctrine of "law of the case" applied to imbue a district court's remarks in Bonnie Pangs' prior criminal proceeding with preclusive effect in the Pangs' present civil proceeding), the Pangs have, nevertheless, failed to include any evidence in the record that would support their bare allegation that the defendants did not have probable cause to issue a citation to Bonnie for committing the offense of cruelty to animals, and, therefore, have provided this court an insufficient basis upon which to reverse the circuit court's order granting summary judgment on the Pangs' malicious prosecution claim. See Reed, supra.

With regard to count 5, we hold that the Pangs' argument is not properly preserved for review by this court, inasmuch as it is advanced for the first time on appeal; and, in any event, the Pangs' allegation that a release was coerced has no support in the record on appeal, inasmuch as the Pangs did not

adduce any evidence in the circuit court regarding the alleged release. See Reed, supra; City and County of Honolulu v. Toyama, 61 Haw. 156, 158 n.1, 596 P.2d 168, 179 n.1 (1978).

With regard to count 9, the Pangs similarly have failed to carry their burden of demonstrating on appeal that the circuit court's conclusion that printed statements attributable to the defendants were not defamation per se was erroneous, inasmuch as the Pangs have failed to support their assertion on appeal that the statements were "outrageously defamatory" by reference to evidence and facts contained in the record, see Bettencourt v. Bettencourt, 80 Hawai'i 225, 230-31, 909 P.2d 553, 558-59 (1995); Reed, supra; Toyama, supra. Therefore,

IT IS HEREBY ORDERED that the orders from which the appeal is taken are affirmed.

DATED: Honolulu, Hawai'i, July 17, 2000.

On the briefs:

John L. McDermott, for
the plaintiffs-appellants,
Animal Haven, Inc., Bonnie
L. Pang, and Norman M.W.
Pang

RONALD T. Y. MOON
Chief Justice

Gregory K. Markham, Keith
K. Kato, Jeffrey S.
Masatsugu, and Jacqueline
E. De Tamble (Chee &
Markham),
for the defendants-appellees,
Hawaiian Humane Society,
Pamela Burns, Rebecca
Rhoades,
Michael Burgwin, Susan
Kromer,
Robert Sylvia, and City and
County of Honolulu

STEVEN H. LEVINSON
Associate Justice

PAULA A. NAKAYAMA
Associate Justice

MARIO R. RAMIL
Associate Justice

SIMEON R. ACOBA, JR.
Associate Justice