

NO. 22998

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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NELSON MIYASHIRO, individually, and as special administrator  
of the Estate of HIROKO MIYASHIRO, and LARRY S. MIYASHIRO,  
JEFFREY S. MIYASHIRO, and LINDA N. YOSHIMOTO,  
Plaintiffs-Appellants,

vs.

GERALD A. HIATT, M.D., and  
C.R. BARD, INC., a foreign corporation,  
Defendants-Appellees,

and

JOHN DOES 1-10; JANE DOES 1-10; and DOE ENTITIES 2-10,  
Defendants.

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NO. 97-0671)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama,  
Ramil, and Acoba, JJ.)

The plaintiffs-appellants Nelson Miyashiro, individually and as special administrator of the Estate of Hiroko Miyashiro, and Larry S. Miyashiro, Jeffrey S. Miyashiro, and Linda N. Yoshimoto [hereinafter, collectively, "the plaintiffs"] appeal from the judgment of the first circuit court, the Honorable Gail C. Nakatani presiding, entered in favor of the defendants-appellees Gerald A. Hiatt, M.D. [hereinafter, "Hiatt"] and C.R. Bard, Inc., [hereinafter, "Bard"] and against the plaintiffs pursuant to circuit court's orders granting, respectively, (1) Hiatt's motion for summary judgment with respect to the plaintiffs' medical negligence and lack of

informed consent claims and (2) Bard's motion for summary judgment with respect to the plaintiffs' product liability claim.

Upon carefully reviewing the record and the briefs submitted and giving due consideration to the arguments advanced and the issues raised by the parties, we hold that, insofar as the affidavit of the medical expert that the plaintiffs proffered in response to Hiatt's motion for summary judgment, when construed in the light most favorable to the plaintiffs, (1) did not, as to the plaintiffs' medical malpractice claim, contain any opinion regarding legal causation (rather, at most, the affidavit contained only an opinion that Hiatt had breached the requisite, but unarticulated, standard of care he had owed to his patient), see Devine v. Queen's Medical Center, 59 Haw. 50, 52, 574 P.2d 1352, 1353 (1978) (plaintiff must establish legal causation in a medical malpractice claim with expert medical testimony), and (2) did not, as to the plaintiff's lack of informed consent claim, contain any opinion regarding the materiality of the risk, see Carr v. Strobe, 79 Hawai'i 475, 486, 904 P.2d 489, 500 (1995) (plaintiff must establish "materiality" of the risk in an informed consent claim with expert medical testimony), the plaintiffs failed to carry their burden of proffering evidence sufficient to create a genuine issue of material fact as to essential elements of their claims against Hiatt. Accordingly, the circuit court did not err in granting summary judgment in Hiatt's favor as to the plaintiffs' claims against him. Because we affirm the circuit court's judgment as to the plaintiffs' medical malpractice claim on the basis that the plaintiffs failed to adduce the requisite expert medical testimony regarding legal causation, we need not and do not reach the plaintiffs' argument that the circuit court erred in determining that the plaintiffs

had failed to adduce the expert medical testimony requisite to establishing the relevant standard of care.

With respect to the plaintiffs' products liability claim against Bard, we hold that the circuit court did not err in granting summary judgment in favor of Bard and against the plaintiffs. The plaintiffs failed to adduce any testimony that the product at issue in this case was defective in any respect. Hiatt's isolated remark in his deposition testimony, upon which the plaintiffs solely rely in seeking to establish the alleged defect, is not reasonably susceptible, in light of Hiatt's subsequent unequivocal and unambiguous assertions that the product was not defective, to the interpretation that the plaintiffs urge.

Finally, we hold that the circuit court did not abuse its discretion in denying the plaintiffs relief under Hawai'i Rules of Civil Procedure (HRCP) Rule 56(f). See, e.g., Acoba v. General Tire, Inc., 92 Hawai'i 1, 11-12, 986 P.2d 288, 298-99 (1999) (holding that party's general request for relief under HRCP Rule 56(f) was inadequate to warrant a continuance and that party must provide reasons why he or she could not presently adduce facts to support his or her opposition and demonstrate how postponement of a ruling on the motion would enable him or her, by discovery or other means, to rebut the moving party's showing of the absence of a genuine issue of material fact).

Therefore,

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

DATED: Honolulu, Hawai'i, February 20, 2002.

On the briefs:

Leslie S. Fukumoto, for the  
plaintiffs-appellants Nelson  
Miyashiro, Larry S. Miyashiro,  
Jeffrey S. Miyashiro, and  
Linda N. Yoshimoto

Arthur F. Roeca and Kari A.  
Wilhelm (Roeca Louie &  
Hiraoka), for the defendant-  
appellee Gerald A. Hiatt, M.D.

Corlis J. Chang and Thomas  
Benedict (Goodsill Anderson  
Quinn & Stifel), for the  
defendant-appellee C.R.  
Bard, Inc.