

***** NOT FOR PUBLICATION *****

NO. 23565

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

GREGORY BARNETT, Plaintiff-Appellant,

vs.

HAWAI'I PAROLING AUTHORITY,
an executive agency of the
State of Hawai'i, Defendant-Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIV. NO. 98-0092-01)

SUMMARY DISPOSITION ORDER

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

The plaintiff-appellant Gregory Barnett appeals from the order of the first circuit court, the Honorable Gary Won Bae Chang presiding, filed on June 22, 2000, granting the defendant-appellee Hawai'i Paroling Authority's (HPA's) motion for judgment on the pleadings, pursuant to Hawai'i Rules of Civil Procedure (HRCP) Rule 12(c) (2000). On appeal, Barnett contends that the circuit court erred in: (1) granting HPA's motion for judgment on the pleadings, pursuant to HRCP Rule 12(c); and (2) finding, in its May 25, 2000 minute order, that there were no genuine issues of material fact and, therefore, that HPA was entitled to judgment as a matter of law.

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 order of the circuit court. Hawai'i Rules of Appellate Procedure (HRAP) Rule 10(a) (2000) provided that "[t]he original papers and exhibits filed in the court or agency

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appealed from, the transcript of any proceedings, and the indexes prepared by the clerk of the court or agency appealed from shall constitute the record on appeal in all cases." HRAP Rule 28(b)(3) (2000) provided in relevant part that "the appellant shall file an opening brief, containing . . . [a] concise statement of the case . . . with record references supporting each statement of fact or mention of trial proceedings. In presenting those material facts[,], all supporting and contradictory evidence shall be presented . . . with appropriate record references. . . ." However,

documents, such as clerk minutes and letters to and from the court, that are in, attached to, or appended to the lower court record but which have not been "filed" in the lower court record as evidenced by the court clerk's file stamp, are not a part of the record on appeal. In other words, for purposes of the appeal, these documents do not exist and may not be cited as if they exist.

Webb v. Harvey, No. 24851, 2003 WL 22329030, at *3 (Haw. Ct. App. Oct. 13, 2003) (citations omitted) (emphases added); Donnelly v. Donnelly, 98 Hawai'i 280, 281 n.1, 47 P.3d 747, 748 n.1 (App.), cert. denied, 98 Hawai'i 497, 50 P.3d 973 (2002) (noting that a minute order setting forth the family court's decision and order, which "was merely placed in the back of the court record where the court minutes prepared by the clerk . . . and other unfiled documents are placed," was not part of the record on appeal).

In the present matter, Barnett's two points of error rely entirely on the circuit court's May 25, 2000 minute order, which the lower court attached to the back of the folder containing the record on appeal. Although Barnett attached a photocopy of the May 25, 2000 minute order to his objection to the proposed order granting HPA's motion for judgment on the pleadings, there is no evidence in the record to establish the

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authenticity of the attachment -- i.e., a file stamp or other notation by the clerk of the court identifying the document as a true and correct copy of the circuit court's minute order. Consequently, the circuit court's May 25, 2000 minute order constitutes inadmissible hearsay for which there is no recognized exception to the hearsay rule. See Hawai'i Rules of Evidence (HRE) Rule 801(3) (1993) ("Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."); HRE Rule 802 (1993) ("Hearsay is not admissible except as provided by these rules, or by other rules prescribed by the Hawaii supreme court, or by statute."). Accordingly, the circuit court's May 25, 2000 minute order is not a part of the record on appeal, and, thus, this court is precluded from addressing the merits of Barnett's appeal. Therefore,

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

DATED: Honolulu, Hawai'i,

On the briefs:

Gregory Barnett, Pro se

Lisa M. Itomura, deputy
attorney general, for
the defendant-appellee
Hawai'i Paroling Authority