
NO. 24445

IN THE SUPREME COURT OF THE STATE OF HAWAII

JULIA LYN BROWN, Plaintiff/Counterclaim
Defendant-Appellee,

vs.

MICHAEL E. CLEVELAND, Defendant/Counterclaimant
Cross-Claim Defendant-Appellant,

THOMAS F. PRIOR, Defendant/Counterclaimant
Cross-Claim Defendant,

DOROTHY JANE NEWKUMET and ROBIN LEE NEWKUMET,
Defendants/Cross-Claimants,

LANETTE K. YIM CLEVELAND and GILLIAN ENGLEDDOW,
Defendants/Cross-Claim Defendants,

GRACE GIROUX, IRWIN GIROUX, STATE OF HAWAII,
COUNTY OF MAUI, FRANCISCO C. LABUANAN, BRUCE
ANDERSON, JACQUELINE ANDERSON, JOHN C. ELLIOTT,
KENNETH E. GAFFEY, SR., APRIL M. GAFFEY,
JOHN AND/OR JANE DOES 1-100, and DOE ENTITIES,
Defendants.

APPEAL FROM THE SECOND CIRCUIT COURT
(CIV. NO. 94-0141(2))

SUMMARY DISPOSITION ORDER

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

Defendant/counter-claimant-appellant Michael E.

Cleveland appeals from the Circuit Court of the Second Circuit's¹
July 3, 2001 amended judgment. On appeal, Cleveland seeks review
of the following orders entered by the circuit court: (1) the
September 22, 1995 order granting in part plaintiff/counterclaim-

¹ The Honorable Shackley F. Raffetto presided over these matters.

defendant-appellee Julia Lyn Brown's motion for partial summary judgment; (2) the September 22, 1995 order denying Cleveland's motion for judgment on the pleadings; (3) the September 16, 1998 third amended findings of fact, conclusions of law, and decision and order; and (4) the February 4, 1999 order granting Brown's motion for writ of possession and order to vacate.

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 resolve Cleveland's contentions as follows:

Initially, we note that Cleveland has failed to meet his burden of furnishing this court with a sufficient record to positively show the circuit court's alleged errors by neglecting to request pertinent transcripts from the proceedings before the circuit court. See Union Bldg. Materials Corp. v. Kakaako Corp., 5 Haw. App. 146, 151, 682 P.2d 82, 87 (1984); see also Hawai'i Rules of Appellate Procedure (HRAP) Rule 10(b)(1)(A) (2004). Nevertheless, we address Cleveland's arguments based on the current state of the record.

(1) The divorce decree's division of property was final and conclusive. Hawai'i Revised Statutes (HRS) § 580-47(b) (Supp. 1997); HRS § 580-56(a) (1993); Cleveland v. Cleveland, 57 Haw. 519, 523-24, 559 P.2d 744, 747-48 (1977). However, the divorce decree did not transfer title to any portion of the Huelo property to Cleveland. See State ex rel. Pai v. Thom, 58 Haw. 8, 14-15, 563 P.2d 982, 987 (1977); Hulihee v. Hueu, 57 Haw. 312,

319, 555 P.2d 495, 500, reh'g denied, (1976); Hayselden v. Lincoln, 24 Haw. 169, 174 (1917); Moran v. Guerreiro, 97 Hawai'i 354, 375, 37 P.3d 603, 624 (App. 2001); Markham v. Markham, 80 Hawai'i 274, 289, 909 P.2d 602, 617 (App.), cert. denied, 80 Hawai'i 274, 909 P.2d 602 (1996).

(2) The circuit court did not err in concluding that HRS § 657-5 (1972)² barred Cleveland from enforcing the divorce decree's division of property. See Int'l Sav. & Loan Ass'n, Ltd. v. Wiig, 82 Hawai'i 197, 199, 921 P.2d 117, 119 (1996); Brooks v. Minn, 73 Haw. 566, 576-77, 836 P.2d 1081, 1086 (1992).

(3) The circuit court did not err in concluding that Cleveland failed to prove the existence of a constructive trust. See DeMello v. Home Escrow, Inc., 4 Haw. App. 41, 48, 659 P.2d 759, 764 (1983); Lee v. Wong, 57 Haw. 137, 139-40, 552 P.2d 635, 637-38 (1976).

(4) Cleveland has not established that Brown's first claim failed to state a claim upon which relief could be granted. Regarding Cleveland's allegations that HRS § 657-5 "cannot be the basis of an affirmation [sic] claim for relief" and that the divorce decree's award to Cleveland was "law of the case,"

² At the time the parties' divorce decree was entered, HRS § 657-5 provided:

Every judgment and decree of any court of record of the State shall be presumed to be paid and discharged at the expiration of ten years after the judgment or decree was rendered, and no action shall be commenced thereon after the expiration of ten years after the judgment or decree was rendered.

See 1972 Haw. Sess. Laws Act 105 at 409-10.

Cleveland has not provided this court with a sufficient record to review the circuit court's alleged error. Further, irrespective of the divorce decree's finality, Brown's first claim was not an attempt to appeal from, vacate, or modify the divorce decree, but to quiet title. Additionally, the circuit court's decision that Cleveland no longer has an enforceable interest in the property is not "[i]ncongruous[]" with its decision that the parties were precluded from relitigating the decree's division of property.

(5) Cleveland has waived his challenge to the circuit court's order granting Brown's motion for writ of possession and order to vacate for failing to provide any argument relating thereto. HRAP Rule 28(b)(7) (2004); Hawai'i Community Fed. Credit Union v. Keka, 94 Hawai'i 213, 226 n.10, 11 P.3d 1, 14 n.10 (2000). Therefore,

IT IS HEREBY ORDERED that the July 3, 2001 amended judgment from which this appeal was taken is affirmed.

DATED: Honolulu, Hawai'i, December 20, 2004.

On the briefs:

Tom C. Leuteneker (of
Carlsmith Ball), for
defendant/counterclaimant
cross-claim defendant-
appellant Michael E.
Cleveland

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