

NO. CAAP-12-0000099

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

COUNTY OF HAWAII,
Plaintiff-Appellee,

v.

H. KIMURA STORE, INC., IRENE KIMURA, BRIAN KIMURA,
Defendants-Appellees

and

MICHAEL TIERNEY,
Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 00-1-377)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding J., Leonard and Ginoza, JJ.)

In an appeal arising out of an interpleader action, Defendant-Appellant Michael Tierney appeals from a January 27, 2012 Final Judgment entered in the Circuit Court of the Third Circuit¹ (circuit court) in favor of Tierney and Defendants-Appellees H. Kimura Store, Inc., Irene Kimura and Brian Kimura

¹

The Honorable Glenn S. Hara presided.

and against Plaintiff-Appellee County of Hawai'i.

Tierney allegedly burglarized a store that Defendants-Appellees H. Kimura Store, Inc., Irene Kimura and Brian Kimura owned and operated. Tierney allegedly stole money in the amount of \$3,698. The County arrested Tierney and seized the \$3,689. However, the County never asserted criminal charges against Tierney. Consequently, the County desired to return the \$3,698 to the rightful owner. In an attempt to return the money to the rightful owner, the County filed a complaint for interpleader against the Kimuras and Tierney. The County never served Tierney with the complaint.

On June 7, 2001, the circuit court entered an order dismissing the County's complaint for want of service as to Tierney pursuant to the Rules of the Circuit Court of the State of Hawai'i (RCCH) Rule 28.

On July 30, 2001, the circuit court entered an order dismissing the remainder of this case for want of prosecution pursuant to RCCH Rule 12(q).

The circuit court did not immediately enter a final judgment.

This case remained inactive for approximately nine years.

On April 7, 2010, Tierney filed a motion entitled "Chief Judge Ronald Ibarra Police Report F-93960 Motion for Return of Property \$5,000.00[.]" The circuit court deemed this motion to be an Hawai'i Rules of Civil Procedure Rule 60(b) motion to set aside the June 7, 2001 order dismissing the County's complaint as to Tierney.

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On July 1, 2010, the circuit court entered an order denying Tierney's motion entitled "Chief Judge Ronald Ibarra Police Report F-93960 Motion for Return of Property \$5,000.00[.]"

On July 21, 2010, Tierney filed a document that appears to be a notice of appeal from the July 1, 2010 order denying Tierney's motion entitled "Chief Judge Ronald Ibarra Police Report F-93960 Motion for Return of Property \$5,000.00[.]" The appellate court clerk gave this appeal appellate court case number 30630.

On September 2, 2011, this court entered an order dismissing appellate court case number 30630 for lack of jurisdiction.

On January 27, 2012, the circuit court entered a final judgment in favor of Tierney and the Kimura Defendants and against the County.

On February 15, 2012, Tierney filed a notice of appeal from the January 27, 2012 judgment. This appeal received appellate court case number CAAP-12-0000099.

On March 6, 2012, Tierney filed a second notice of appeal from the January 27, 2012 judgment. This appeal received appellate court case number CAAP-12-0000136.

On May 21, 2012, this court entered an order consolidating appellate court case numbers CAAP-12-0000099 and CAAP-12-0000136 under appellate court case number CAAP-12-0000099.

Upon careful review of the record and the brief submitted and having given due consideration to the argument advanced and the issue raised, as well as the relevant statutory and case law, we conclude this appeal is without merit.

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Therefore,

IT IS HEREBY ORDERED that the Final Judgment entered on January 27, 2012 in the Circuit Court of the Third Circuit is affirmed.

DATED: Honolulu, Hawai'i, April 22, 2013.

On the brief:

Michael C. Tierney
Defendant-Appellant pro se.

Presiding Judge

Associate Judge

Associate Judge