

NO. 29781

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

JUSTIN M. WALTHALL, Plaintiff-Appellant,
v.
THE DEPARTMENT OF PUBLIC SAFETY OF THE STATE
OF HAWAII (HCCC HILO), Plaintiff-Appellee

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
NORTH AND SOUTH HILO DIVISION
(CIVIL NO. 3RC07-1-0456)

SUMMARY DISPOSITION ORDER

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

In a civil case arising out of an alleged personal injury, Plaintiff-Appellant pro se Justin M. Walthall (Walthall) appeals from the Decision and Judgment filed on April 6, 2009 in the District Court of the Third Circuit, North and South Hilo Division (district court).¹ The district court entered judgment in favor of Defendant-Appellee State of Hawaii Department of Safety (State) and against Walthall.

On appeal, Walthall appears to argue that the district court erred in finding that he presented insufficient evidence to carry his burden of proof.

¹ Per diem District Court Judge Andrew P. Wilson presided.

On August 13, 2007, Walthall filed a complaint in district court, alleging that he had been injured on December 13, 2005 while he was incarcerated at the Hawai'i Community Correctional Center in Hilo, Hawaii. He alleged that on December 13, he was put on work detail over his objection that prior injuries and a medical note precluded him from working and that while he was moving equipment across a wooden walkway, the walkway collapsed. As a result, he received injuries to his left knee and lower back/shoulder that persisted for nine months. He claimed damages in the amount of \$20,000, due to his inability to work, pay bills, or keep a place to live.

Trial was held on February 27, 2009. On April 6, 2009, the district court filed the Decision and Judgment in favor of the State and against Walthall, finding that Walthall had not met the burden of proof by a preponderance of the evidence that the injuries he claimed were caused by the negligence of the State. On April 17, 2009, Walthall filed a timely notice of appeal.

Upon careful review of 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, as well as the relevant statutory and case law, we conclude that Walthall's appeal is without merit.

In his opening brief, Walthall does not provide a concise statement of the case, standards of review, or points of error, as required by Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b).² He also does not provide a record of the proceedings below upon which this court can review any allegations of error. Although Walthall filed on May 5, 2009 a

² The State's answering brief fails to comply with HRAP Rule 28(b)(3) by failing to include in the statement of the case, "record references supporting each statement of fact or mention of court . . . proceedings." (Emphasis added.) The State's counsel is warned that future non-compliance with HRAP 28(b)(3) may result in sanctions against them.

request for the February 27, 2009 trial transcript (the Transcript), his motion to waive payment of the transcript fee was denied by this court on June 2, 2009. Walthall failed to provide this court with the Transcript.

As the appellant, Walthall has a duty to include a relevant transcript as part of the record on appeal. Lepere v. UPW, 77 Hawai'i 471, 474, 887 P.2d 1029, 1032 (1995). Without the Transcript, we have no basis upon which to review the decision of the district court, which we therefore leave undisturbed. Bettencourt v. Bettencourt, 80 Hawai'i 225, 231, 909 P.2d 553, 559 (1995).

Therefore,

IT IS HEREBY ORDERED that the Decision and Judgment filed on April 6, 2009 in the District Court of the Third Circuit, North and South Hilo Division, is affirmed.

DATED: Honolulu, Hawai'i, October 27, 2010.

On the briefs:

Justin M. Walthall,
Plaintiff-Appellant pro se.

Dennis K. Ferm and
Caron M. Inagaki,
Deputy Attorneys General
for Defendant-Appellee.

Presiding Judge

Associate Judge

Associate Judge