

NO. 29653

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

ASHLEN AQUILA and IVY AQUILA, and on behalf of KYLIE DEWILDE,
GRACIE DEWILDE and LILY DEWILDE, Petitioners-Appellees, v.
ERIC L. DAVIES and MIRELLA M. DAVIES, Respondents-Appellants

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
WAIALUA DIVISION
(Civ. No. 1SS07-1-755)

SUMMARY DISPOSITION ORDER

(By: Nakamura, Presiding Judge, Fujise and Leonard, JJ.)

Respondents-Appellants Eric L. Davies and Mirella M. Davies (collectively the "Davies") appeal, pro se, from the summary denial of their "Motion for Relief from Order for Injunction and Relief from Order Granting Attorneys Fees" (Motion for Relief) entered on January 22, 2009 by the District Court of the First Circuit, Waialua Division (district court).¹ On appeal, the Davies assert that the district court abused its discretion when it denied the Motion for Relief without a hearing. The Davies argue that they were entitled to relief under Hawai'i District Court Rules of Civil Procedure (DCRCP) Rule 60(b)(6). We disagree.

This appeal arises out of a "Petition for Ex Parte Temporary Restraining Order and for Injunction Against Harassment" pursuant to Hawaii Revised Statutes (HRS) § 604-10.5 filed by Petitioners-Appellees Ashlen Aquila and Ivy Aquila (Aquilas) on June 13, 2007 seeking an order enjoining the Davies from certain acts towards the Aquilas. An "Order Granting

¹ The Honorable Hilary Benson Gangnes presided.

FILED

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JESSICA PRINOTTO
CLERK OF THE COURT
STATE OF HAWAII

Petition for Injunction Against Harassment" was entered on September 24, 2007 by the district court.

On November 6, 2007, the Aquilas filed a motion for attorneys' fees and costs based in part on HRS § 604-10.5(g). The district court entered an award for fees and costs on November 20, 2007.

The Davies filed a notice of appeal from the award of attorneys' fees and costs on December 18, 2007. In a summary disposition order filed on January 20, 2009, this court affirmed the order of the district court. Acquila v. Davies, No. 28914, 2009 WL 132045 at *2 (App. January 20, 2009).

On January 20, 2009, the Davies submitted the Motion for Relief. The Motion for Relief was "brought pursuant to Rules 7 and 60(b) of the District Court Rules of Civil Procedure" In denying the Motion for Relief, the district court wrote: "DCRCP does not apply to HRS § 604-10.5. See DCRCP Rule 81(a)(4)." The denied Motion for Relief was filed on January 22, 2009.

On January 30, 2009, the Davies submitted a "Motion to Reconsider Order Denying Motion for Relief from Order for Injunction and Relief from Order Granting Attorneys Fees" (Motion to Reconsider). The Motion to Reconsider was made pursuant to DCRCP Rules 7 and 59. In the Motion to Reconsider, the Davies argued that they were entitled to relief under DCRCP Rule 60(b)(6). The Motion to Reconsider was denied and filed on February 10, 2009.

Based on a review of the record, we conclude that the district court did not err in denying the Davies's Motion for Relief.

Therefore,

IT IS HEREBY ORDERED that the district court's denial of the "Motion for Relief from Order for Injunction and Relief

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from Order Granting Attorneys Fees" entered on January 22, 2009 in the District Court of the First Circuit, Waialua Division is affirmed.

DATED: Honolulu, Hawai'i, January 25, 2010.


On the briefs:

Eric L. Davies
Mirella M. Davies,
Respondents-Appellants pro se.


Chief Judge

R. Laree McGuire
(Porter Tom Quitiquit Chee &
Watts),
for Petitioners-Appellees.


Associate Judge


Associate Judge