

NO. CAAP-14-0000856

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

NICHOLAS R. PAO, JR., Plaintiff-Appellant, v.
RICHARD C. DEWAELE, Attorney-at-Law, Defendant-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 04-1-1339)

SUMMARY DISPOSITION ORDER

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

Plaintiff-Appellant Nicholas R. Pao, Jr. (**Pao**), appeals from an April 29, 2014 Final Judgment entered in the Circuit Court of the First Circuit¹ (**circuit court**) in favor of Defendant-Appellee Richard C. Dewaele (**Dewaele**).

On July 22, 2004, Pao filed a Verified Complaint for legal malpractice against Dewaele. After the entry and setting aside of a default, Dewaele filed his answer on August 15, 2005. This was the last litigation activity of significance in the case.

Eight and a half years later, the circuit court filed a February 18, 2014 "Order of Dismissal Without Prejudice for Failure to Prosecute" because of the absence of litigation activity to prosecute the instant action since August 15, 2005.

On February 28, 2014, Pao filed a "Motion to Set Aside Submission and Reopen Case" (**Motion to Reopen Case**). The Motion to Reopen Case came on for hearing on March 21, 2014. Pao

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The Honorable Gary W.B. Chang presided.

appeared in person at the hearing as a self-represented party and Dewaele appeared by telephone.

Pao stated the reason for his lack of prosecution of his case was in inability to secure legal representation by an attorney. He indicated that he had asked a number of lawyers to represent him. Dewaele claimed he was unduly prejudiced by the long delay in that he had relocated his residence to the mainland and his health had severely deteriorated.

The circuit court denied Pao's Motion to Reopen Case, concluding that eight and a half years is a reasonable amount of time to attempt to retain legal counsel and that there was an insufficient showing of good cause to support reopening the case.

The circuit court did not abuse its discretion in denying Pao's Motion to Reopen Case pursuant to Hawai'i Rules of Civil Procedure Rule 41(b) for failure to prosecute. Hawaii Automotive Retail Gasoline Dealers Assoc. v. Brodie, 2 Haw. App. 99, 626 P.2d 1173 (1981). Pao did not pursue his case in a diligent fashion and prejudice to Dewaele resulted. Id.

Therefore,

IT IS HEREBY ORDERED that the April 29, 2014 Final Judgment entered pursuant to the "Order Denying Motion to Set Aside Submission and Reopen Case Filed On 2/18/14" in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, March 31, 2015.

On the brief:

Nicholas R. Pao, Jr.
Plaintiff-Appellant pro se.

Presiding Judge

Associate Judge

Associate Judge