

NO. CAAP-13-0001075

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
STANLEY CLARKSON, JR., Defendant-Appellee, and
EXODUS BAIL BOND, Real-Party-In-Interest-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 11-1-1743)

SUMMARY DISPOSITION ORDER

(By: Nakamura, C.J., Foley and Fujise, JJ.)

Real-Party-in-Interest-Appellant Exodus Bail Bond (Exodus) appeals from the April 25, 2013 "Findings of Fact, Conclusions of Law, and Order Denying Exodus Bail Bond's Motion to Set-Aside Bail Forfeiture" (Order Denying Motion to Set Aside) entered by the Circuit Court of the First Circuit (Circuit Court).¹ This matter arises because Exodus posted bail on behalf of Defendant-Appellee Stanley Clarkson, Jr., (Clarkson) who failed to appear in court as required on July 12, 2012. On July 17, 2012, the Circuit Court entered its "Judgment and Order of Forfeiture of Bail Bond" (Forfeiture Judgment) against Clarkson and Exodus. On February 25, 2013, Exodus filed its "Motion to Set-Aside Bail Forfeiture" (Motion to Set Aside).

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The Honorable Randal K.O. Lee presided.

On appeal, Exodus argues² that the Circuit Court erred when it denied its Motion to Set Aside because (1) the Department of the Prosecuting Attorney is not authorized to represent Plaintiff-Appellee State of Hawai'i (State) in a bail forfeiture hearing; (2) the Department of the Prosecuting Attorney is not permitted to enforce the July 17, 2012 Forfeiture Judgment; (3) the July 17, 2012 Forfeiture Judgment is void; and (4) Exodus received notice of the July 17, 2012 Forfeiture Judgment on October 4, 2012 and Clarkson surrendered himself on October 12, 2012, within the thirty-day period under HRS § 804-51. Exodus also appears to argue that (5) the July 17, 2012 Forfeiture Judgment should be set aside because (a) good cause to set aside exists because Exodus changed its legal representation, and (b) Clarkson was returned to custody within thirty days of notice to Exodus.

After a careful review of the record, and due consideration of the arguments made by the parties, and the applicable authority, we resolve Exodus's arguments as follows and affirm.

1. Exodus argues that the Circuit Court erred when it failed to set aside the July 17, 2012 Forfeiture Judgment because the Department of the Prosecuting Attorney is not authorized to represent the State in a bail forfeiture hearing. Since the filing of the briefs in this case, this court has rejected this argument. State v. Miles, 135 Hawai'i 525, 532, 354 P.3d 178, 185 (App. 2015) ("[T]he Department of the Prosecuting Attorney is

² Exodus's opening brief fails to comply with Hawai'i Rules of Appellate Procedure (HRAP) Rule 28 in many ways, most notably that it contains no points on appeal section, which itself is ground for dismissal of the appeal and/or waiver of issues sought to be raised. Bettencourt v. Bettencourt, 80 Hawai'i 225, 230, 909 P.2d 553, 558 (1995); HRAP Rule 30 ("When the brief of an appellant is otherwise not in conformity with these Rules, the appeal may be dismissed[.]"); HRAP Rule 28(b)(4) & (7). However, because we seek to address cases on the merits where possible, we address Exodus's arguments to the extent they are discernable. Bettencourt, 80 Hawai'i at 230, 909 P.2d at 558. Exodus's counsel is cautioned to comply with HRAP Rule 28.

We also note that Exodus filed an opening brief on September 27, 2013 and a second opening brief on September 29, 2013. As Exodus failed to obtain leave to file the second, September 29, 2013 opening brief, it is hereby stricken and will not be considered.

authorized to act in regard to bail forfeiture proceedings established by [Hawaii Revised Statutes (HRS)] § 804-51[.]"

2. Exodus argues that the Circuit Court erred when it failed to set aside the July 17, 2012 Forfeiture Judgment because the Department of the Prosecuting Attorney is not permitted to enforce the Judgment of Forfeiture. The instant case does not involve enforcement of a forfeiture judgment, but rather the denial of Exodus's Motion to Set Aside under the provisions of HRS § 804-51 (2014). We therefore decline to address this argument. See Miles, at 526, 354 P.3d at 179.

3. Exodus argues that the July 17, 2012 Forfeiture Judgment is void because "State must be represented by the Office of the Attorney General." Again, the State may be represented by the Department of the Prosecuting Attorney in the matter of bail bond forfeitures. Id.

On appeal, Exodus also relies on Hawai'i Rules of Civil Procedure (HRCP) Rule 60(b)(1) and (4) for this argument. First, Exodus did not make this argument before the Circuit Court and therefore did not preserve this argument for appeal. Second, the HRCP do not apply to forfeiture of bonds. HRCP Rule 81(a)(8). See Miles, 135 Hawai'i at 528 n.6, 354 P.3d at 181 n.6 citing State v. Vaimili, 131 Hawai'i 9, 10 n.3, 13-14, 313 P.3d 698, 699, 702-03 (2013).

4. Exodus argues that this court "must set aside the judgment because when Exodus Bail Bonds received actual notice of the Notice of Forfeiture is in question." However, Exodus failed to challenge the Circuit Court's finding that

14. On September 10, 2012, a copy of the Judgment and Order of Forfeiture was again mailed via certified mail, return receipt requested to Janis H. Fernandez, Exodus Bail Bond, 765 Amana Street, Suite 502, Honolulu, Hawaii 96814. (State's Memo in Opp. Ex. C.).

15. On September 27, 2012, at 9:17 a.m., the letter which contained the Judgment and Order of Forfeiture was accepted by "S. Yaw, Shane Yaw for Janis F." (State's Memo in Opp. Ex. C.)

Unchallenged findings of fact and conclusions of law are binding upon appeal. Okada Trucking Co., Ltd. v. Bd. of Water Supply, 97 Hawai'i 450, 458, 40 P.3d 73, 81 (2002). Therefore, there is no

longer any question about when Exodus received notice of the Order and Judgment of Forfeiture and the thirty-day period in which to file a motion to set aside ran from September 27, 2012.

5. Exodus also appears to argue that the Forfeiture Judgment should be set aside because (1) good cause to set aside exists because Exodus changed its legal representation, and (2) Clarkson was returned to custody within thirty days of notice to Exodus. Interpretation of statutes is reviewed de novo and an order granting or denying a motion to set aside a judgment of bail forfeiture is reviewed for abuse of discretion. See State v. Flores, 88 Hawai'i 126, 130, 962 P.2d 1008, 1012 (App. 1998).

Exodus was given notice of the July 17, 2012 Forfeiture Judgment on September 27, 2012. Exodus did not file its Motion to Set Aside until February 25, 2013, more than three months after the thirty-day deadline specified in HRS § 804-51 had expired.

The Supreme Court of Hawai'i has held that "pursuant to HRS § 804-51, after the court forfeits a bail bond, sureties are allowed thirty days to file a motion showing good cause as to why the forfeiture judgment should be vacated." State v. Vaimili, 131 Hawai'i at 17, 313 P.3d at 706. Where the motion to set aside "was not filed within the time limit imposed by HRS § 804-51, . . . the circuit court was therefore without power to consider it." State v. Ranger Ins. Co., 83 Hawai'i 118, 124 n.5, 925 P.2d 288, 294 n.5 (1996).

Relying on State v. Camara, 81 Hawai'i 324, 916 P.2d 1225 (1996), Exodus argues that "execution should not issue" because Clarkson was back in custody before the HRS § 804-51 thirty-day time limit had expired. However, Camara is not controlling because the bail bond-appellant there did file a motion to vacate within the thirty-day deadline. Camara, 81 Hawai'i at 327, 916 P.2d at 1228.

Based on the foregoing, the April 25, 2013 Findings of Fact, Conclusions of Law, and Order Denying Exodus Bail Bond's

Motion to Set-Aside Bail Forfeiture entered by the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, May 10, 2016.

On the briefs:

Anthony T. Fujii,
for Real-Party-in-
Interest-Appellant.

Chief Judge

Stephen K. Tsushima,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Associate Judge

Associate Judge