

NO. CAAP-14-0000637

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

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

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 13-1-0706)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding Judge, Fujise and Reifurth, JJ.)

Real-Party-in-Interest-Appellant Exodus Bail Bond (Exodus) appeals from the February 24, 2014 "Order Denying Defendant's Motion to Set Aside Bail Forfeiture" entered by the Circuit Court of the First Circuit (Circuit Court).¹ This matter arises because Exodus posted bail on behalf of Defendant-Appellee Takeru Mizoguchi (Mizoguchi), who failed to appear in court on September 10, 2013. On September 18, 2013, the Circuit Court entered its "Judgment and Order of Forfeiture of Bail Bond" (Forfeiture Judgment) against Mizoguchi and Exodus. On October 11, 2013, Exodus filed its "Motion to Set-Aside Bail Forfeiture." On February 24, 2014, the Circuit Court filed its "Order Denying Defendant's Motion to Set Aside Bail Forfeiture."

¹

The Honorable Colette Y. Garibaldi presided.

On appeal, Exodus argues² that the Circuit Court erred when it failed to set aside the September 18, 2013 Forfeiture Judgment because (1) the Department of the Prosecuting Attorney is not authorized to represent Plaintiff-Appellee State of Hawai'i (State) in a bail forfeiture proceeding; (2) the Department of the Prosecuting Attorney is not permitted to enforce the Forfeiture Judgment; and (3) the Forfeiture Judgment is void.

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 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 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 Forfeiture Judgment because the Department of the Prosecuting Attorney is not permitted to enforce the Judgment of Forfeiture. Exodus did not raise the issue of enforcement of a forfeiture judgment in its Motion to Set Aside and, as no transcript of the hearing on its motion has

² Exodus's opening brief fails to comply with Hawai'i Rules of Appellate Procedure (HRAP) Rule 28 in many ways, most notably that its "Points on Error" section, fails to comply with HRAP Rule 28(b)(4) 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) and (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 July 23, 2014, at 8:22 p.m., and a second opening brief on the same day at 8:29 p.m. As Exodus failed to obtain leave to file the second, 8:29 p.m. opening brief, it is hereby stricken and will not be considered.

been included in the record, we decline to address this argument. See Miles, 135 Hawai'i at 526, 354 P.3d at 179; Enoka v. AIG Hawaii Ins. Co., 109 Hawai'i 537, 546, 128 P.3d 850, 859 (2006) ("In general, failure to raise or properly reserve issues at the trial level would be deemed waived.") (citation and internal quotation marks omitted); and Bettencourt, 80 Hawai'i at 230, 909 P.2d at 558 ("The burden is upon appellant in an appeal to show error by reference to matters in the record, and he or she has the responsibility of providing an adequate transcript.") (citation, internal quotation marks, and brackets omitted).

3. Exodus argues that the Forfeiture Judgment is void because the "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 bail bond forfeiture proceedings pursuant to HRS § 804-51 (2014).

Exodus also relies on Hawai'i Rules of Civil Procedure (HRCP) Rule 60(b)(1) and (4). First, Exodus did not raise these grounds below in any of its three motions to set aside and therefore such argument was not preserved for appeal. Enoka, 109 Hawai'i at 546, 128 P.3d at 859.

Second, the HRCP do not apply to forfeiture of bonds. HRCP Rule 81(a)(8); State v. Vaimili, 131 Hawai'i 9, 13-14, 313 P.3d 698, 702-03 (2013). Exodus complains that "[t]he parameters under Vaimili are too stringent because it limits the bail bondsman to the tight parameters of HRS 804-51, even though caselaw in Camara clearly states bail bond hearings are civil." This is the very argument that the Supreme Court of Hawai'i rejected in Vaimili. Id.

Lastly, Exodus argues that "[a]ssuming the [ICA] allows its ruling in Vaimili to stand, bail bond forfeitures should be allowed relief under [Hawai'i Rules of Penal Procedure (HRPP) Rule 40]." However, "HRS § 804-51 establishes the exclusive means for an aggrieved party to seek relief from a judgment of forfeiture through a motion showing good cause. If that motion is denied, the statute prescribes the means for the challenging party to appeal the motion." State v. Vaimili, No. CAAP-12-0000034, 2013 WL 1789405, at *2 (App. Apr. 26, 2013)

cert. granted, No. SCWC-12-0000034, 2013 WL 4711476 (Haw. Aug. 28, 2013) and aff'd, 131 Hawai'i 9, 313 P.3d 698 (2013).

Moreover, HRPP Rule 40 governs "post-conviction proceedings." A bail bond forfeiture judgment is not a "post-conviction proceeding." Indeed, HRPP Rule 40 states a proceeding brought under this rule "shall be applicable to judgments of conviction and to custody based on judgments of conviction["]."

Therefore, HRPP Rule 40 is inapposite.

Based on the foregoing, the February 24, 2014 "Order Denying Defendant's Motion to Set Aside Bail Forfeiture," entered by the Circuit Court of the First Circuit, is affirmed.

DATED: Honolulu, Hawai'i, May 20, 2016.

On the briefs:

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

Presiding Judge

Loren J. Thomas,
Deputy Prosecuting Attorney,
City and County of Honolulu,
for Plaintiff-Appellee.

Associate Judge

Associate Judge