

**Electronically Filed
Intermediate Court of Appeals
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NO. CAAP-19-0000786

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

U.S. BANK TRUST, N.A., AS TRUSTEE FOR
LSF9 MASTER PARTICIPATION TRUST, Plaintiff-Appellee, v.
CLARENCE ALCIDE DELUDE, III; KARI JEAN DELUDE;
STATE OF HAWAII - DEPARTMENT OF TAXATION, Defendants-Appellees,
and
SEAN HAYWORTH, Proposed Intervenor-Appellant,
and
JOHN AND MARY DOES 1-20; DOE PARTNERSHIPS,
CORPORATIONS OR OTHER ENTITIES 1-20, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO.1CC161000277)

SUMMARY DISPOSITION ORDER

(By: Ginoza, Chief Judge, Leonard and Hiraoka, JJ.)

Proposed-Intervenor-Appellant Sean Hayworth (**Hayworth**),
self-represented, appeals from the October 9, 2019 Order Denying
Non-Party Movant Sean Hayworth's [August 19, 2019] Non-Hearing
Motion for Reconsideration (**Order Denying Reconsideration**)
entered by the Circuit Court of the First Circuit (**Circuit**

Court).¹ The Order Denying Reconsideration again denied the relief requested in Hayworth's July 16, 2019 Renewed Motion to Intervene as a Defendant (**Renewed Motion to Intervene**), by denying reconsideration of the Circuit Court's oral ruling denying the Renewed Motion to Intervene.²

Hayworth raises four points of error on appeal. Hayworth's first three points of error seek to challenge the Circuit Court's March 20, 2019 Findings of Fact and Conclusions of Law; Order Granting Plaintiff's Renewed Motion for Summary Judgment and for Interlocutory Decree of Foreclosure (**Foreclosure Decree**), and March 20, 2019 Judgment (**Judgment**), which entered a final judgment on the Foreclosure Decree pursuant to Hawai'i Rules of Civil Procedure (**HRCP**) Rule 54(b). In Hayworth's fourth point of error, Hayworth contends that the Circuit Court erred in entering the Order Denying Reconsideration.

Upon careful review of the record and the briefs submitted by the parties, and having given due consideration to

¹ The Honorable Jeannette H. Castagnetti presided.

² On June 26, 2019, Hayworth filed a Motion to Intervene as a Defendant, which was *sua sponte* stricken by the Circuit Court in an order entered on July 1, 2019, based on multiple infirmities, without prejudice to the filing of a corrected motion. Hayworth filed the Renewed Motion to Intervene, and an opposition was filed by Plaintiff-Appellee U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust (**U.S. Bank**), on July 17, 2019. At an August 13, 2019 hearing, the Circuit Court announced that the Renewed Motion to Intervene was denied. Hayworth filed a non-hearing motion for reconsideration six days later, which was denied in the Order Denying Reconsideration. No written order was entered on the court's oral ruling on the Renewed Motion to Intervene.

the arguments advanced and the issues raised by the parties, we address Hayworth's points of error as follows:

As a preliminary matter, we address U.S. Bank's argument that Hayworth's appeal is moot because the subject property has transferred to a third-party, good-faith purchaser pursuant to the Circuit Court's order confirming the sale of the property and judgment thereon. We conclude, however, that U.S. Bank has not carried its heavy burden of establishing mootness. See In re Thomas H. Gentry Revocable Trust, 138 Hawai'i 158, 172, 378 P.3d 874, 888 (2016) (party asserting mootness has a heavy burden). *Inter alia*, U.S. Bank has not cited any evidence in the record establishing that the subject property was purchased by a third-party, good-faith purchaser.³ Accordingly, we reject U.S. Bank's request to dismiss this appeal on the grounds of mootness.

(1-3) As noted above, Hayworth's first three points of error seek to challenge the Foreclosure Decree and Judgment. However, no appeal was timely filed from the Foreclosure Decree and Judgment. The failure to seek timely appellate review of the Circuit Court's Judgment on the Foreclosure Decree pursuant to Hawaii Revised Statutes (**HRS**) § 667-51(a)(1) (2016) rendered the Foreclosure Decree and Judgment "final and binding." Mortg. Elec. Regis. Sys. Inc., v. Wise, 130 Hawai'i 11, 17, 304 P.3d

³ U.S. Bank has not requested a remand to the Circuit Court for a factual determination concerning whether the purchaser of the subject property was a third-party, good-faith purchaser. Cf. Wilmington Sav. Fund Soc'y, FSB v. Domingo, SCWC-18-0000099, 2023 WL 2017392, *8 (Haw. Feb. 15, 2023) (mem. op.).

1192, 1198 (2013). Under the doctrine of *res judicata*, the failure of an aggrieved party to timely appeal from a judgment on a decree of foreclosure pursuant to HRS § 667-51(a)(1) precludes appellate review of that judgment on the decree of foreclosure by way of an appeal from a subsequent appealable order or judgment. See id. at 18-19, 304 P.3d at 1199-1200 (precluding subsequent appellate review of a judgment on a decree of foreclosure by way of an appeal from a judgment on an order confirming the sale of the foreclosed property).⁴

In this case, Hayworth appeals from the Order Denying Reconsideration, which denied Hayworth's request to intervene under HRCP Rule 24(a)(2). The Hawai'i Supreme Court has held that "[a]n order denying an application for intervention under HRCP Rule 24 is a final appealable order under HRS § 641-1(a)." Hoopai v. Civ. Serv. Comm'n, 106 Hawai'i 205, 215, 103 P.3d 365, 375 (2004) (citation omitted). Under HRS § 641-1(a) (2016), the collateral order doctrine, and the holding in Hoopai, the Order Denying Reconsideration is an independently appealable order. Hayworth is nevertheless precluded from appellate review of the Judgment and the related Foreclosure Decree. Thus, Hayworth's first three points of error are not reviewable in this appeal.

(4) Hayworth argues that the Circuit Court abused its discretion in entering the Order Denying Reconsideration because

⁴ We decline to address possible exceptions that were not argued and are not applicable here.

Hayworth had taken possession of the foreclosed property when it was vacant or abandoned, he demanded that U.S. Bank validate its interest in the subject property, U.S. Bank did not respond to his demand and therefore was in "default," and accordingly, he claimed an interest in the subject property as a Native Hawaiian and legal heir to the land title issued to Abner Paki in 1855 as Land Commission Award 10613 and Patent #2243 pursuant to the rights of indigenous Kānaka Maoli under Hawaiian Kingdom law.

Hayworth sought to intervene as of right in the foreclosure action pursuant to HRCF Rule 24(a)(2).⁵ It is well established that:

This court considers four factors in determining intervention as of right pursuant to HRCF Rule 24(a)(2): (1) "whether the application was timely"; (2) "whether the intervenor claimed an interest relating to the property or transaction which was the subject of the action"; (3) "whether the disposition of the action would, as a practical matter, impair or impede the intervenor's ability to protect that interest"; and (4) "whether the intervenor's interest was inadequately represented by the existing defendants."

Palisade Pointe Ests., Inc. v. Cabral, CAAP-11-0001068, 2015 WL 2452397, *1 (Haw. App. May 20, 2015) (SDO) (quoting Hoopai, 106

⁵ HRCF Rule 24 states, in pertinent part:

Rule 24. Intervention.

(a) Intervention of right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(Emphasis added).

Hawai'i at 216, 103 P.3d at 376). "Failure to meet even one factor prevents intervention 'by right' under HRCP Rule 24(a)(2)." Id. at *2 (brackets omitted) (quoting Baehr v. Miike, 80 Hawai'i 341, 345, 910 P.2d 112, 116 (1996)). Moreover, "motions to intervene filed after judgment has been entered are viewed with disfavor; and the moving party has a heavy burden to show facts or circumstances that justify intervention at that late date." Id. (quoting Chierighino v. Bowers, 2 Haw. App. 291, 294, 631 P.2d 183, 186 (1981)).

Here, Hayworth showed no facts or circumstances, and made no legal argument, justifying intervention months after the Foreclosure Decree and Judgment were entered. The Complaint was filed in February of 2016, and some time in late May or early June of 2017, Hayworth wrote to U.S. Bank, obliquely referencing foreclosure and offering to acquire the subject property upon U.S. Bank's satisfaction of numerous conditions including answers to a long list of generally unintelligible and baseless questions.⁶ U.S. Bank filed its renewed motion for summary judgment, seeking a decree of foreclosure, on October 30, 2018. The Foreclosure Decree and Judgment were entered on March 20, 2019. Hayworth first attempted to intervene on June 26, 2019. Hayworth's motion was untimely.

⁶ The document sent by Hayworth to U.S. Bank states that it is an offer made on November 18, 2016, but Hayworth's signature on the document is notarized on May 26, 2017, and on appeal, Hayworth represents that the document was received by U.S. Bank on June 5, 2017.

In addition, Hayworth does not present any cognizable legal authority supporting his claim of an interest in the subject property.⁷ The Circuit Court was not wrong in denying intervention.

In requesting reconsideration, Hayworth presented no new evidence and/or arguments that could not have been presented in the earlier Renewed Motion to Intervene. Thus, the Circuit Court did not abuse its discretion by denying reconsideration of its earlier ruling denying intervention. See Ass'n of Apartment Owners of Wailea Elua v. Wailea Resort Co., 100 Hawai'i 97, 110, 58 P.3d 608, 621 (2002).

For these reasons, the Circuit Court's October 9, 2019 Order Denying Reconsideration is affirmed.

DATED: Honolulu, Hawai'i, September 15, 2023.

On the briefs:

Sean Hayworth, Proposed Intervenor-Appellant, <i>Pro Se in Propria Persona.</i>	/s/ Lisa M. Ginoza Chief Judge
David B. Rosen, David E. McAllister, Justin S. Moyer, (Aldridge Pite, LLP), for Plaintiff-Appellee.	/s/ Katherine G. Leonard Associate Judge
	/s/ Keith K. Hiraoka Associate Judge

⁷ We note that this court rejected nearly identical arguments claiming an interest in a property in an appeal filed by Hayworth from an order denying intervention in a separate foreclosure action filed by U.S. Bank. See U.S. Bank Nat'l Ass'n v. Meyer, CAAP-20-0000421, 2023 WL 4105917, *2-3 (Haw. App. June 21, 2023) (SDO).