

**Electronically Filed
Intermediate Court of Appeals
CAAP-21-0000186
10-DEC-2024
08:09 AM
Dkt. 63 SO**

NO. CAAP-21-0000186

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

WILMINGTON SAVINGS FUND SOCIETY, FSB, doing business as
CHRISTIANA TRUST AS OWNER TRUSTEE OF THE RESIDENTIAL CREDIT
OPPORTUNITIES TRUST III, Plaintiff-Appellee, v.
PUNOHU KEKAUALUA III, Defendant-Appellant, and
DOES 1-20, JANE DOES 1-20, DOE CORPORATIONS 1-20,
DOE ENTITIES 1-20, AND DOE GOVERNMENTAL UNITS 1-20,
Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(CASE NO. 5CCV-20-0000108)

SUMMARY DISPOSITION ORDER

(By: Leonard, Acting Chief Judge, Wadsworth, Nakasone, JJ.)

Defendant-Appellant Punohu Kekauualua III (**Kekauualua**)
appeals from the April 1, 2021 Final Judgment (**Judgment**) entered
by the Circuit Court of the Fifth Circuit (**Circuit Court**)¹ in
favor of Plaintiff-Appellee Wilmington Savings Fund Society, FSB,
d/b/a Christiana Trust as Owner Trustee of the Residential Credit
Opportunities Trust III (**Wilmington Savings**). Kekauualua also
challenges the Circuit Court's April 1, 2021 Findings of Fact;
Conclusions of Law; Order Granting [Wilmington Savings's] Motion
for Summary Judgment and Order for Declaratory Relief, Injunctive

¹

The Honorable Kathleen N.A. Watanabe presided.

Relief, Expungement of Unauthorized Recorded Instrument and Other Relief Filed January 15, 2021 [(**Motion for Relief**)]; Exhibit "A" (**Expungement Order**) .

Kekaulua raises five points of error on appeal, contending that the Circuit Court erred by: (1) granting the Motion for Relief based upon inadmissible evidence and in spite of the existence of genuine issues of material fact; (2) *inter alia*, taking judicial notice of pleadings/filings in separate court cases; (3) rejecting Kekaulua's request for a continuance so that he could obtain a Hawaiian language interpreter to translate documents from the Great Mahele and then prepare a response; (4) summarily denying Kekaulua's objections at the hearing on the Motion for Relief; and (5) granting Wilmington Savings's request for attorney's fees under Hawaii Revised Statutes (**HRS**) chapter 507D.

Upon careful review of the record and the briefs submitted by the parties, and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Kekaulua's points of error as follows:

(1-4) Kekaulua did not answer the Complaint, took no court action at any time with respect to the default that was entered against him, filed no response to the Motion for Relief, raised no evidentiary objection to the evidence brought forward by Wilmington Savings, and did not otherwise dispute the allegations of the Complaint or the evidence put forward by Wilmington Savings. Even when the Circuit Court allowed him to address the court at the hearing on the Motion for Relief,

Kekaulua did not deny any of the critical allegations that were raised in the Complaint and supported by Wilmington Savings in conjunction with the Motion for Relief. It is essentially undisputed that, *inter alia*: Wilmington Savings acquired title under a Commissioner's Deed in a prior foreclosure case; Kekaulua was a stranger to the borrowers and the subject property (**Property**), but nevertheless attempted to assert an interest in the Property, which was rejected in the foreclosure court and on appeal, but Kekaulua nevertheless moved into the Property and had to be evicted, and Kekaulua subsequently recorded a deed for the Property with the State of Hawai'i Bureau of Conveyances, from himself to himself, and has taken other actions (e.g., seeking TROs against Wilmington Savings' realtor) that have significantly interfered with Wilmington Saving's property rights. Kekaulua's oral explanation of a purported interest is loosely based on his assertion of a possibility that he has rights in the Property based on his genealogy and the assertion that there is no treaty of annexation here in Hawai'i, which is in "military occupation," and in the rules of war, as a Kingdom of Hawai'i national, he has rights to seek shelter and refuge, and he "took part in this" to provide a home and a place to grow food for his family.

The evidentiary objections Kekaulua seeks to raise for the first time on appeal were not properly raised in the Circuit Court. See MPM Hawaiian, Inc. v. Amigos, Inc., 63 Haw. 485, 486, 630 P.2d 1075, 1077 (1981); see also Hawai'i Rules of Appellate Procedure (**HRAP**) Rule 28 (b)(4) & (7). Under the circumstances

of this case, the Circuit Court did not abuse its discretion in denying Kekaulua's request for two or three more months to research the Great Mahele to try to substantiate a claim to the Property. Kekaulua's other procedural objections are both meritless and waived. See HRAP Rule 28 (b)(4) & (7).

(5) Kekaulua argues, for the first time on appeal, that his "wild deed" is not a lien within the meaning of HRS chapter 507D (2018), and therefore, the Circuit Court erred in awarding Wilmington Savings attorney's fees pursuant to HRS § 507D-7. This argument is waived. See HRAP Rule 28 (b)(4) & (7).²

For these reasons, the Circuit Court's April 1, 2021 Judgment is affirmed.

DATED: Honolulu, Hawai'i, December 10, 2024.

On the briefs:

Kai Lawrence, (Hawaii
Appellate Pro Bono Program)
for Defendant-Appellant

/s/ Katherine G. Leonard
Acting Chief Judge

Charles R. Prather,
Robin Miller,
Peter Stone, (TMLF Hawaii
LLLC) for Plaintiff-Appellee

/s/ Clyde J. Wadsworth
Associate Judge

/s/ Karen T. Nakasone
Associate Judge

² We nevertheless note that this abusive recording appears to be the sort of action that the legislature sought to address in enacting HRS chapter 507D. See, e.g., State v. Lorenzo, CAAP-16-0000410, 2019 WL 7167171, at *4 (Haw. App. Dec. 23, 2019) (SDO); Olson v. Lui, Civ. 10-00691 ACK, 2012 WL 39140, at *4-6 (D. Haw. Jan. 6, 2012) (Order).