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NO. CAAP-25-0000409

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

KEAKA MARTIN, Plaintiff-Appellant,
v.
DEPARTMENT OF PUBLIC SAFETY, Defendant-Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CASE NO. 1CCV-22-0000493)

SUMMARY DISPOSITION ORDER

(By: Nakasone, Chief Judge, McCullen and Gluck, JJ.)

This case concerns claims by self-represented Plaintiff-Appellant Keaka Martin (**Martin**), a person incarcerated in a correctional facility, against Defendant-Appellee Department of Public Safety (**DPS**).¹ Martin appears to appeal from the May 30, 2024 "Order Granting in Part and Denying in Part Defendant [DPS]'s Motion for Summary Judgment filed on August 30, 2023" regarding Martin's Covid-related tort claims (**Covid Torts MSJ Order**);² the May 20, 2025 "Order Granting

¹ Effective January 1, 2024, DPS has been redesignated as the Department of Corrections and Rehabilitation. See "Website Notice," Department of Public Safety, available at <https://dps.hawaii.gov/> [<https://perma.cc/L9ZF-P4A4>].

² The Honorable Gary W.B. Chang presided over the summary judgment hearing on the Covid-related tort claims and entered the Covid Torts MSJ Order. As discussed below, Martin's points of error also reference a Circuit Court order dated December 20, 2023. This appears to refer to the Circuit Court's oral ruling on that date, which was subsequently entered as a written order on May 30, 2024.

Defendant [DPS]'s Motion for Summary Judgment Regarding Plaintiff's Deprivation of Judicial Access Claim filed on November 25, 2024" (**Judicial Access MSJ Order**); and the May 20, 2025 Final Judgment entered by the Circuit Court of the First Circuit (**Circuit Court**).³

Martin raises two points of error on appeal, contending that the Circuit Court erred by (1) granting DPS's motion for summary judgment on December 20, 2023 (regarding the Covid-related tort claims), and (2) concluding that Martin had provided no evidence to create any genuine issue of material fact. While not specifically raised as a point of error, Martin also presents argument on the Judicial Access MSJ Order, which we address.

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, we affirm.

Background: The following factual background is derived from the summary judgment motions and Martin's verified complaint (**Verified Complaint**).⁴ On August 5, 2014, Martin was convicted of various counts including attempted murder and multiple firearm violations. Martin appealed the judgment and, in State v. Martin, 146 Hawai'i 365, 463 P.3d 1022 (2020), the Hawai'i Supreme Court held that the trial court erred when it failed to read a merger instruction as to Martin's potentially duplicative firearm counts. Id. at 390, 463 P.3d at 1047. As such, the State was given the option to dismiss two of the three duplicative counts. Id. at 391, 463 P.3d at 1048.

³ The Honorable Jordon J. Kimura presided over the December 26, 2024 summary judgment hearing on the judicial access claims and entered the Judicial Access MSJ Order and Final Judgment.

⁴ Martin's Verified Complaint included a "Verification of Complaint" on the last page certifying that the allegations in the Complaint were "true and correct to the best of [his] knowledge under penalty of perjury."

On May 26, 2020, Martin's attorney filed a Motion to Withdraw as Counsel (**Motion to Withdraw**). On August 19, 2020, the State filed a Motion to Correct and/or Reduce Sentence (**Motion to Reduce**) pursuant to the Hawai'i Supreme Court's decision. A hearing on both motions was scheduled for October 1, 2020 (**October Hearing**). Martin was not transported for the October Hearing and instead consented to appear by video conference. At the hearing, the trial court granted the Motion to Reduce but denied the Motion to Withdraw.⁵

Following the October Hearing, Martin was housed at the Halawa Correctional Facility. Martin averred that on or about November 10, 2020, he tested negative for Covid but that on December 17, 2020, he was retested and was found positive. Following the positive test, DPS moved Martin to medical isolation and treated him for various medical issues. Martin averred that on one occasion during the isolation, he requested to be seen for "dietary purposes, regarding symptoms, weight loss and weakness, suffered from the virus" but that his request for medical care was denied. Martin was released from isolation and on or about June 3, 2021, he was transported to Saguaro Correctional Center where he continued to receive medical treatment.

On April 27, 2022, Martin filed a Verified Complaint with the Circuit Court alleging negligence by DPS. Martin averred that DPS failed to (1) ensure his presence at the October Hearing (allegedly violating his right to judicial access), and – regarding the Covid-related tort claims – that DPS allegedly failed to (2) "[p]rovide [him] with [a] greater level of health care because of his medical condition," (3) "[p]rovide medical attention," and (4) "[p]rotect [him] from

⁵ The Honorable Peter K. Kubota presided.

all/any harmful/hazardous conditions while under the care of [DPS]."

On August 30, 2023, DPS filed a Motion for Summary Judgment on all claims, including the Covid-related tort claims and the judicial access claim. On December 20, 2023, the Circuit Court granted the motion as to Martin's Covid-related claims because Martin had failed to meet the requirements of Hawai'i Revised Statutes (**HRS**) chapter 671 prior to filing the Complaint.⁶ However, the Circuit Court denied the State's motion regarding Martin's deprivation of judicial access claims without prejudice. The Circuit Court subsequently entered the May 30, 2024 Covid Torts MSJ Order.

Following the close of discovery, DPS filed a Motion for Summary Judgment Regarding Plaintiff's Deprivation of Judicial Access Claim. On May 20, 2025, the Circuit Court granted DPS's motion in the Judicial Access MSJ Order, and entered Final Judgment.⁷

Standards of Review: "An award of summary judgment is reviewed de novo under the same standard applied by the circuit court." Omerod v. Heirs of Kaheananui, 116 Hawai'i 239, 254, 172 P.3d 983, 998 (2007) (quoting Taniguchi v. Ass'n of Apartment Owners of King Manor, Inc., 114 Hawai'i 37, 46, 155 P.3d 1138, 1147 (2007)).

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A fact is material if proof of that fact would have the

⁶ The Honorable Gary W.B. Chang presided.

⁷ While Martin's Notice of Appeal prior to the entry of Final Judgment was premature, this court has appellate jurisdiction. See Hawai'i Rules of Appellate Procedure (**HRAP**) Rule 4(a)(2) (eff. 2020) ("If a notice of appeal is filed after announcement of a decision but before entry of the judgment or order, such notice shall be considered as filed immediately after the time the judgment or order becomes final for the purpose of appeal.").

effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. The evidence must be viewed in the light most favorable to the non-moving party. In other words, we must view all of the evidence and the inferences drawn therefrom in the light most favorable to the party opposing the motion.

Id. at 254-55, 172 P.3d at 998-99 (quoting Taniguchi, 114 Hawai'i at 46, 155 P.3d at 1147) (cleaned up).

Judicial Access MSJ: Martin argues that the Circuit Court improperly granted summary judgment as to his claim that DPS caused a violation of his judicial access rights by failing to transport him to the October Hearing. In its May 20, 2025 Order, the Circuit Court ruled that "the State's Motion is GRANTED in its entirety for the reasons stated in the State's Motion, reply, and on the record at the hearing by the State." DPS had argued, inter alia, that Martin had not established a right to be physically present at the October hearing. Martin makes no argument on appeal to the contrary and presents no authority to support the existence of a negligence claim for failure to transport him for a hearing on remand following his criminal appeal. See HRAP Rule 28(b)(7) (eff. 2022). As such, Martin has provided no basis on which to overturn the Circuit Court's ruling.

Covid Torts MSJ: Martin argues that the Circuit Court has subject matter jurisdiction over his tort claims because his claims were not "medical torts" as defined in HRS § 671-1 (2016). As such, he believes he was not required to submit his claims to the medical inquiry and conciliation panel (**MICP**), pursuant to HRS chapter 671, prior to filing his lawsuit.

Under HRS § 671-12 (2016), "[a]ny person . . . having concerns regarding the existence of a medical tort shall submit an inquiry to the [MICP] before a suit based on the circumstances of the inquiry may be commenced in any court of this State." Additionally, under HRS § 671-12.5(a)(1) (2016),

the party filing the inquiry with the MICP generally must certify that they have consulted a physician regarding the issue. HRS § 671-1 defines "medical tort" as "professional negligence, the rendering of professional service without informed consent, or an error or omission in professional practice, by a health care provider, which proximately causes death, injury, or other damage to a patient."

In the Verified Complaint, Martin appears to allege two possible negligence causes of action related to his contraction of Covid. See generally Dupree v. Hiraga, 121 Hawai'i 297, 314, 219 P.3d 1084, 1101 (2009) ("Pleadings prepared by pro se litigants should be interpreted liberally."). First, Martin alleges that DPS failed to "[p]rovide medical attention" and "[p]rovide [him] with greater level of health care because of his medical condition[.]" Second, Martin alleges that DPS was negligent in allowing Martin to be exposed to "harmful/hazardous conditions" while under DPS's care. Each claim is addressed below.

(a) Failure to provide medical attention and proper care: Martin's first claim was properly dismissed. Martin avers that after he tested positive for Covid, he was inadequately treated by various medical professionals who did not provide him the proper level of care and improperly denied him medical attention. We conclude this claim arises out of the practice of medicine, and is exactly the type of claim for which a physician would be qualified to render an opinion pursuant to HRS chapter 671. As such, this constituted a claim of "professional negligence" or "an error or omission in professional practice." See HRS § 671-1. The Circuit Court properly concluded that this claim constituted a medical tort and that, because Martin failed to submit an inquiry to the MICP prior to initiating suit, the Circuit Court lacked jurisdiction to hear the claim.

(b) Negligent exposure to "hazardous conditions":

Martin's Opening Brief does not explain this cause of action, nor does it provide any argument as to why the Circuit Court erred in determining that HRS chapter 671 barred his claim. As such, this argument is waived. See HRAP 28(b)(7) ("Points not argued may be deemed waived."). Martin's second Covid-related claim was likewise properly dismissed.

For the foregoing reasons, we affirm the May 30, 2024 "Order Granting in Part and Denying in Part Defendant [DPS]'s Motion for Summary Judgment filed on August 30, 2023," the May 20, 2025 "Order Granting Defendant [DPS]'s Motion for Summary Judgment Regarding Plaintiff's Deprivation of Judicial Access Claim filed on November 25, 2024," and the May 20, 2025 Final Judgment entered by the Circuit Court of the First Circuit.

DATED: Honolulu, Hawai'i, September 22, 2026.

On the briefs:

Keaka Martin,
Self-represented
Plaintiff-Appellant.

/s/ Karen T. Nakasone
Chief Judge

Roy H. Kwon and
Amanda J. Weston,
Deputy Attorneys General,
for Defendant-Appellee.

/s/ Sonja M.P. McCullen
Presiding Judge

/s/ Daniel M. Gluck
Associate Judge