

Electronically Filed
Intermediate Court of Appeals
CAAP-24-0000563
29-OCT-2026
11:57 AM
Dkt. 109 SO

NO. CAAP-24-0000563

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

MARIAN TETSUKO GRAMLEY, Plaintiff-Appellant,
v.
UNIVERSITY CLINICAL, EDUCATION & RESEARCH ASSOCIATES
dba UNIVERSITY HEALTH PARTNERS;
THE QUEEN'S MEDICAL CENTER, Defendants-Appellees,
and DOE DEFENDANTS 1-100, Defendants.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CASE NO. 1CCV-21-0001237)

SUMMARY DISPOSITION ORDER

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

Plaintiff-Appellant Marian Tetsuko Gramley (**Gramley**)
appeals from the Circuit Court of the First Circuit's
July 22, 2024 Final Judgment and various underlying orders.¹

¹ The Honorable Dean E. Ochiai presided. Gramley appeals from the following underlying orders:

1. April 9, 2024 "Order Granting in Part and Denying in Part Defendant[-Appellee] The **Queen's** Medical Center's Motion in Limine No. 1 Re: The Issue of Causation, Filed on March 4, 2024";

(continued . . .)

Additionally, Gramley appeals from several oral rulings made during trial.

On appeal, Gramley raises five points of error (**POE**), challenging the circuit court's (1) evidentiary rulings (POE 1-3); (2) denial of challenge for cause (POE 4); and (3) award of costs to Defendant-Appellee The **Queen's** Medical Center (POE 5).²

(. . . continued)

2. March 28, 2024 "Special Verdict Form";

3. July 2, 2024 "Order Granting Defendant The Queen's Medical Center's Motion for Taxation of Costs Against Plaintiff Pursuant to Rules 54 and 68 [Hawai'i Rules of Civil Procedure (**HRCP**)], Filed on May 3, 2024."

(Formatting altered.)

² Gramley's five POE are presented as follows:

1. The trial court abused its discretion in limiting the testimony of expert surgeon, Dr. Steven McCarus. Dr. McCarus was confined to the four corners of his expert report even though he reserved to supplement his opinions based on further acquired information and his additional opinions were disclosed during his deposition by [Queen's].
2. The trial court abused its discretion in excluding the testimony of hospital administrator expert, Dr. John Hyde. [Queen's] objections went to weight rather than admissibility. It was an abuse of discretion to wholesale exclude Dr. Hyde from testifying.
3. Regarding the Motion in Limine, it was abuse of discretion to prevent Yukari Nakatsuji from testifying about what she was told about Appellant that happened during the surgery, i.e. that it was known that there was a bowel perforation before Appellant was discharged.
4. Whether the trial court improperly denied the for-cause challenge to the juror seated in Chair Number Twelve who was a current [Queen's] employee and did so in a prejudicial manner by making the for-cause challenge be done in front of the other jurors rather than a side

(continued . . .)

Upon careful review of the record and the briefs submitted by the parties, and having given due consideration to the issues raised and the arguments advanced, we resolve this appeal as discussed below and affirm.

On February 12, 2019, Gramley underwent a robotic hysterectomy performed at Queen's by Michael E. Carney, M.D. (**Dr. Carney**). No complications were communicated to Gramley at the close of surgery, and Gramley was discharged from the hospital that evening. Three days later, Gramley's condition worsened and became critical, requiring emergency surgery, which revealed a bowel perforation.

In her January 2022 Second Amended Complaint, Gramley sued Queen's and Dr. Carney's employer, University Clinical, Education & Research Associates dba University Health Partners of Hawai'i (**Defendant UCERA**).³ Gramley asserted Negligence,

(. . . continued)

bar. Appellant was forced to do aa [sic] for cause challenge to a [Queen's] employee in front of the other jurors rather than at a side bar. Such a procedure was highly prejudicial to Appellant. Appellant objected and asked for the juror to be excused which was denied.

5. Whether the trial court abused its discretion in awarding [Queen's] Costs? The Court erred in awarding costs to [Queen's] based on the disparity between the parties, the vagueness in the [HRCF R]ule 68 offer.

(Record citations omitted and formatting altered.)

³ On January 20, 2022, Gramley stipulated to dismiss Dr. Carney as a defendant and to substitute in Defendant UCERA.

Informed Consent, Breach of Contract/Breach of Warranty, Corporate Negligence, Unfair or Deceptive Acts or Practices, and Abandonment claims.

On March 7, 2024, in an effort to resolve the matter under Hawai'i Rules of Civil Procedure (**HRCP**) Rule 68,⁴ Queen's made an offer of settlement in the amount of \$70,000, which Gramley declined.

On March 12, 2024, Gramley settled all claims against Defendant UCERA. The scope of the trial shifted, and the only remaining claim was for direct negligence against Queen's. All other claims, including any claim that Queen's was vicariously liable for the conduct of Dr. Carney, were dismissed.

⁴ HRCP Rule 68 provides in part:

At any time more than 10 days before the trial begins, any party may serve upon any adverse party an offer of settlement or an offer to allow judgment to be taken against either party for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall, in accordance with the agreement, enter an order of dismissal or a judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer.

(Emphasis added.)

On March 18, 2024, the parties proceeded to trial on the issue of whether Queen's negligently discharged Gramley following the robotic hysterectomy.

On March 28, 2024, the jury returned a special verdict in which all twelve jurors found that Queen's did not breach the applicable nursing standard of care in its treatment of Gramley.

On July 2, 2024, the circuit court granted Queen's request of \$45,969.14 in costs, pursuant in part to HRCF Rule 68. Gramley timely appealed.

(1) First, Gramley argues the circuit court abused its discretion by limiting the testimony of her expert, Steven D. McCarus, M.D. (**Dr. McCarus**), to the opinions in his expert report (POE 1). Gramley relies on HRCF Rule 26(e)(1).

HRCF Rule 26(e)(1) establishes a party's continuing duty to seasonably supplement discovery responses and disclosures, including the substance of expert witness testimony. This rule, however, does not allow parties to circumvent the deadline for expert disclosures.

Gramley's deadline for expert disclosures in this case was November 19, 2023. During voir dire, Dr. McCarus acknowledged that none of the opinions in his report concerned the care of Queen's nursing staff, and that the only opinion rendered as to the nursing staff was in his deposition.

Dr. McCarus was deposed on February 29, 2024, three months after expert disclosures were due and only three weeks before trial was scheduled to begin on March 18, 2024. As such, the additional opinions regarding the nursing staff were untimely. See Glover v. Grace Pac. Corp., 86 Hawai'i 154, 163-64, 948 P.2d 575, 584-85 (App. 1997) (holding that the trial court did not abuse its discretion by excluding all of plaintiff's documents requested by defendant but not produced before discovery cutoff date).

Under these circumstances, the circuit court did not abuse its discretion by confining Dr. McCarus's testimony to the contents of his report.

(2) Second, Gramley contends the circuit court "abused its discretion" by excluding her expert, John C. Hyde, II, Ph.D. (**Dr. Hyde**), from testifying (POE 2). Gramley argues Dr. Hyde "established his expertise in the area of hospital administration" and "explained his expert opinions that the Queen's nurses displayed a culture of not having been properly trained as they discussed in their depositions a conditional discharge for [Gramley] even though the policies and procedures did not do so."

The circuit court excluded Dr. Hyde's testimony as irrelevant. Gramley, however, makes no relevancy argument on appeal.

Hawai'i Rules of Evidence (**HRE**) Rule 401 defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." We review a trial court's relevance determination pursuant to HRE Rule 401 under the right/wrong standard. State v. Pulse, 83 Hawai'i 229, 247, 925 P.2d 797, 815 (1996).

Here, the parties went to trial on the issue of "medical negligence as to whether or not the patient should have been discharged in the known condition that she was discharged in."

Dr. Hyde testified that he has "a master's in health care administration[] and a Ph.D. in health care administration." Dr. Hyde confirmed that he was not a physician. Dr. Hyde was critical of "the conditional discharge, failure to have a written policy that had definitions and parameters of what would constitute a conditional discharge." But he acknowledged he did not know where the term "conditional discharge" appeared in Gramley's medical record; instead, Dr. Hyde testified that the "nurses brought this up during the deposition." Dr. Hyde explained, "I'm not the one to really look much into medical records. I looked at medical records,

but it's not -- as a non-clinician and a non-medical information person."

Dr. Hyde also opined that "[a] sentinel event requires a root-cause analysis to be conducted. It was not. The nurses that were involved were never interviewed." (Formatting altered.) Dr. Hyde thus concluded that in Gramley's situation, "there had to be a root-cause analysis conducted" and that "gets back to the culture issue or cultural issue" at Queen's.

The circuit court determined that Dr. Hyde's testimony was not relevant:

From what the Court has heard, one of the primary complaints in terms of "the culture" of Queen's hospital is the fact that they did not do a post-event review.

What happened after the event is irrelevant. What happened prior to the event that led to her discharge is absolutely relevant, and that is the crux of this case.

So anything after the event, the Court will strike. So any testimony as to a culture of not reviewing later or examining mistakes we've made, that's not going to be allowed.

With respect to conditional discharge, which seems to be something that has been just twined up into knots; Dr. Carney said it best, A conditional discharge is, I'm placing additional conditions on this patient before we discharge her.

And the record is clear, he ordered a [CBC] with differential prior to discharge, and I haven't heard anything to say that the [CBC] results showed that the patient's blood work was such that she needed to be kept in the hospital. No one has brought that to the Court's attention.

I reject Dr. Hyde's opinion that there is a culture that is so horrible at Queen's that is pervasive, because if that is true, Queen's would not be certified as a Level 1 trauma center.

All the complaints in his report appear to be directed to the failings of Dr. Carney, who he had made certain assumptions as to the relationship with Queen's which, in fact, turns out to be a misunderstanding on his part, because apparently he does not understand how the professional relationships at Queen's are in place.

So accordingly, the Court finds he does not meet the test of being able to provide the Court with relevant evidence, and although he may be an expert in the field of hospital administration, policies, and procedures, he has not articulated any that could have prevented the problems encountered by the plaintiff in this case.

. . . .

So the Court is operating under the assumption that we are just proceeding forward with medical negligence as to whether or not the patient should have been discharged in the known condition that she was discharged in.

So thank you, Dr. Hyde, but the Court will not be allowing your testimony.

Counsel for Gramley then requested that Dr. Hyde's testimony be limited to "the issue of the nurses' testimony that there was a conditional discharge policy." However, counsel for Gramley acknowledged that the discharge order "says discharge patient" and "[t]here's no conditional discharge order."

Gramley does not explain how Dr. Hyde's testimony regarding the nurses' use of the term "conditional discharge" made it more or less probable that there was "medical negligence as to whether or not [Gramley] should have been discharged in the known condition that she was discharged in." As the circuit court explained, Dr. Carney stated that there were conditions that had to be met before Gramley could be discharged. And it is not clear from his testimony how Dr. Hyde interprets "conditional discharge." Thus, Gramley has not shown how

Dr. Hyde's "conditional discharge" testimony was relevant to the medical negligence claim.

Gramley also does not articulate how Dr. Hyde's testimony regarding the absence of a root-cause analysis after Gramley's situation came to light would make it more or less probable that there was "medical negligence as to whether or not [Gramley] should have been discharged in the known condition that she was discharged in."

Accordingly, we cannot say that Gramley met her burden of showing the circuit court erred by excluding Dr. Hyde's testimony as irrelevant. See State v. St. Clair, 101 Hawai'i 280, 286, 67 P.3d 779, 785 (2003) ("A trial court's determination that evidence is 'relevant' within the meaning of HRE Rule 401 (1993) is reviewed under the right/wrong standard of review.").

(3) Third, Gramley challenges the circuit court's exclusion of one of Yukari Nakatsuji's (**Nurse Nakatsuji**) deposition corrections, which stated she was told a bowel perforation was repaired during the operation (POE 3). Nurse Nakatsuji was one of several Queen's nurses that cared for Gramley during her post-anesthesia recovery following the operation.

"Hearsay is not admissible except as provided by these rules, or by other rules prescribed by the [Hawai'i Supreme Court], or by statute." HRE Rule 802. "Hearsay" is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." HRE Rule 801.

The proponent of hearsay bears the burden of establishing that the foundational requirements of the applicable exception are met. Wells Fargo Bank, N.A. v. Behrendt, 142 Hawai'i 37, 45-46, 414 P.3d 89, 97-98 (2018) (holding that the proponent failed to satisfy the foundational requirements for admission of business records because the witness was not qualified to authenticate the documents attached to her declaration and therefore could not establish the requisite foundation under the applicable exception); State v. Zukevich, 84 Hawai'i 203, 206-08, 932 P.2d 340, 343-45 (App. 1997) (holding that a homicide victim's statement, made moments before he was fatally shot, was admissible because the proponent satisfied the foundational requirements for admission under the excited utterance and present sense impression exceptions).

Otherwise, the proponent must establish personal knowledge as a general foundation for admissibility. HRE Rule 602 ("A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter."); Nationstar Mortg. LLC v. Kanahele, 144 Hawai'i 394, 403-04, 443 P.3d 86, 95-96 (2019) (holding that the loan servicer's representative lacked personal knowledge because she did not personally observe the prior affiant reviewing an outdated copy of the note and instead based her statement on communications with the prior affiant).

In advance of trial, the circuit court ruled that Nurse Nakatsuji could testify "as to her knowledge of personal events only and not the statements of others." (Emphasis added.) Nevertheless, at trial, Gramley sought to question Nurse Nakatsuji about her deposition correction that stated fellow nurse Marie Agustin (**Nurse Agustin**) had told her a bowel perforation occurred during the hysterectomy and was repaired intraoperatively.

Because Nurse Nakatsuji's out-of-court statement (the deposition correction) was offered to prove that Queen's nurses were aware of the bowel perforation at the time of discharge, the deposition correction regarding Nurse Agustin's alleged statement constitutes hearsay. See HRE Rules 801 and 802. Absent an exception to HRE Rule 802, Nurse Nakatsuji's

deposition correction remains inadmissible. Gramley asserts that several hearsay exceptions may apply but fails to provide any explanation.

The circuit court therefore appropriately limited Nurse Nakatsuji's testimony to her personal knowledge of events. See State v. Moore, 82 Hawai'i 202, 217, 921 P.2d 122, 137 (1996) ("[W]here the admissibility of evidence is determined by application of the hearsay rule, there can only be one correct result, and the appropriate standard for appellate review is the right/wrong standard." (citation modified)).

(4) Fourth, Gramley contends that the circuit court improperly denied her for-cause challenge to a prospective juror (**Juror 12**) because Juror 12 was a current Queen's employee and it "did so in a prejudicial manner by making the for-cause challenge be done in front of the other jurors rather than a side bar" (POE 4).

Under Hawai'i law, "any party may challenge for cause any juror drawn for the trial." State v. Carvalho, 79 Hawai'i 165, 170 n.4, 880 P.2d 217, 222 n.4 (App. 1994) (quoting HRS § 635-28 (1985)). "[T]he paramount question in determining whether to excuse for cause a prospective juror is whether the defendant would be afforded a fair and impartial trial based on the law and evidence, with the prospective juror as a member of the jury." State v. Baron, 80 Hawai'i 107, 114, 905 P.2d 613,

620 (1995). The decision of whether to excuse a prospective juror for cause "must be left to the sound discretion of the trial judge who is in a better position than the appellate court to ascertain from the answers of the juror whether the juror is able to be fair and impartial." Id.

Gramley's counsel initially "pass[ed] for cause," but then stated that, "being a Queen's employee, it's probably better that we find another case that [Juror 12] can sit." The circuit court replied, "[Juror 12] has responded and stated that she believes she could be a fair and impartial juror," and "Queen's, as she indicated, is a large place." The circuit court then asked if there was any other basis to remove Juror 12 for cause, to which Gramley's counsel responded, "No, Your Honor." Gramley presents no other grounds for which Juror 12 should have been removed for cause. See Baron, 80 Hawai'i at 114, 905 P.2d at 620.

Gramley next asserts that the circuit court abused its discretion by denying her request to exercise a for-cause challenge at the bench. Relying on HRE Rules 103(c) and 104(c), Gramley asserts that the manner in which the for-cause challenge occurred created a "highly prejudicial situation for [her]." But those rules are inapplicable here because no "evidence" was presented to the jury panel during voir dire. Juror 12's statements were made in response to Gramley's voir dire and

concerned matters personal to her and specific to her employment. The information elicited from Juror 12 was consistent with information elicited from other potential jurors during the jury selection process.

Moreover, the record shows that the circuit court had decided, in advance of trial, that there would be no bench conferences at trial. The judiciary's then-existing COVID-19 protocols required parties to exercise challenges in open court. See Order, In re Judiciary's Response to the COVID-19 Outbreak, SCMF-20-0000152, docket #1 at 2, filed Mar. 16, 2020 (limiting in-person court proceedings and directing "[e]ach judicial circuit [to] issue orders and adjust court operations as warranted to address the urgent and rapidly evolving public health conditions"). The trial court has the authority to manage its own proceedings, including limiting bench conferences in accordance with COVID-19 public health protocols. See State v. Mondon, 121 Hawai'i 339, 367, 219 P.3d 1126, 1154 (2009) (recognizing the trial court's "discretion to determine the timing and duration of recesses" under its "power to control the examination of witnesses and other court processes"). Thus, the circuit court denied Gramley's request to approach the bench in order to comply with COVID-19 protocols.

Accordingly, we cannot say the circuit court abused its discretion by denying Gramley's request to exercise a for-cause challenge at the bench.

(5) Finally, Gramley argues the circuit court abused its discretion by awarding costs to Queen's (POE 5).

We review decisions regarding the taxation of costs under the abuse of discretion standard. Pulawa v. GTE Hawaiian Tel, 112 Hawai'i 3, 10-11, 143 P.3d 1205, 1212-13 (2006).

Here, Queen's sought to recover costs incurred in the course of litigation, including copying costs, deposition costs, and experts' expenses. The circuit court awarded costs pursuant to HRCP Rules 54 and 68. Gramley asks this court to consider that Queen's reported \$2.1 billion in revenue in 2024 and that Gramley "is over 80 years old, disabled and living in a care home."

HRCP 54(d)(1) creates a strong presumption that the prevailing party will recover costs, providing that "[e]xcept when express provision therefor is made either in a statute or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs[.]" The losing party must overcome the presumption by "showing that an award would be inequitable under the circumstances." Wong v. Takeuchi, 88 Hawai'i 46, 52, 961 P.2d 611, 617 (1998) (citation modified). Moreover, "when costs are awardable to a prevailing

party under HRCP Rule 54(d) and a particular taxable cost is allowed by statute or precedent, then actual disbursements for this purpose are presumptively reasonable. The adverse party has the burden of challenging the reasonableness of a particular cost request." Id. at 53-54, 961 P.2d at 618-19.

However, Gramley's opening brief does not challenge the reasonableness of any particular cost requested.

Additionally, under HRCP Rule 68, "[i]f the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer." HRCP Rule 68 was designed "to encourage settlements and discourage vexatious suits and thus diminish the burden of litigation." Canalez v. Bob's Appliance Serv. Ctr., 89 Hawai'i 292, 306-09, 972 P.2d 295, 309-12 (1999) (citation modified) (holding that expert witness costs were properly taxed against a party whose refusal to settle under HRCP Rule 68 necessitated a trial).

Gramley rejected Queen's offer of settlement and ultimately failed to obtain a more favorable result at trial. Thus, under HRCP Rule 68, Queen's is also entitled to costs incurred after making the offer.

In sum, the circuit court acted within its discretion in awarding costs.

Based on the foregoing, we affirm the circuit court's July 22, 2024 Final Judgment.

DATED: Honolulu, Hawai'i, October 29, 2026.

On the briefs:

/s/ Karen T. Nakasone
Chief Judge

Shawn A. Luiz,
Laura Ozak,
for Plaintiff-Appellant.

/s/ Sonja M.P. McCullen
Associate Judge

Michele-Lynn E. Luke,
Saori Takahashi,
(Kessner Umebayashi Bain &
Matsunaga),
for Defendant-Appellee.

/s/ Kimberly T. Guidry
Associate Judge