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NO. CAAP-24-0000643

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

ALEXA JACOBS, Plaintiff-Appellee,
v.
ANDREW CABRAL, Defendant-Appellant, and
CLIFTON PERREIRA; JEREMY PALLONE-DE LA TORRE;
NOLAN WADA, Defendants-Appellees,
and
JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; and
DOE GOVERNMENTAL ENTITIES 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CASE NO. 2CCV-23-0000185)

SUMMARY DISPOSITION ORDER

(By: Leonard, Presiding Judge, McCullen and Guidry, JJ.)

Defendant-Appellant Andrew Cabral (**Cabral**) appeals
from the Circuit Court of the Second Circuit's¹ (**circuit court**)
July 15, 2024 "Order Denying [Cabral's] Motion to Dismiss

¹ The Honorable Michelle L. Drewyer presided.

Complaint, Filed July 6, 2023" (**Order Denying the Motion to Dismiss**).²

On July 6, 2023, Plaintiff-Appellee Alexa Jacobs (**Jacobs**) filed a Complaint against Cabral, and Defendants-Appellees Clifton Perreira, Jeremy Pallone-De La Torre, and Nolan Wada (collectively, **Defendants-Appellees**). Jacobs' Complaint alleged that, on or about February 4, 2022, she had suffered personal injuries as a new Maui Police Department (**MPD**) recruit. The Complaint set forth claims of failure to render aid and intentional infliction of emotional distress against Cabral and Defendants-Appellees.

Pursuant to Rule 28 of the Rules of the Circuit Courts of the State of Hawai'i (**RCCH**),³ Jacobs' deadline to serve the Complaint was January 6, 2024. Each of the Defendants-Appellees

² This is an interlocutory appeal. On April 15, 2025, this court temporarily remanded the case to the circuit court to allow for the entry of an appropriate amended order granting leave for an interlocutory appeal. On April 23, 2025, the circuit court entered its "Amended Order Granting [Cabral's] Motion for Leave to File Interlocutory Appeal from Order Denying [Cabral's] Motion to Dismiss Complaint, Filed July 6, 2023, to Sever the Claims, and Stay Proceedings with Respect to [Cabral], Filed July 25, 2024."

³ RCCH Rule 28, which governs dismissal for want of service, provides,

A diligent effort to effect service shall be made in all actions. **An action or claim may be dismissed sua sponte with written notice to the parties if no service is made within 6 months after the action or claim has been filed. Such dismissal may be set aside and the action or claim reinstated** by order of the court for good cause shown upon motion duly filed not later than ten (10) days from the date of the order of dismissal.

(Bolded emphasis added.)

were timely served with the Complaint by August 8, 2023.

Cabral, who no longer resided in Hawai'i, was not served when Defendants-Appellees were served, or by January 6, 2024.

On April 15, 2024, Jacobs filed an "Ex Parte Motion for First Extension of Time to Serve Complaint" (**Ex Parte Motion**) pursuant to Hawai'i Rules of Civil Procedure (**HRCP**) Rule 6(b),⁴ seeking additional time in which to serve Cabral. The circuit court granted Jacobs' motion that same day, extending the deadline to serve Cabral to July 6, 2024. Defendants-Appellees filed a motion for reconsideration, which the circuit court denied.

In April 2024, Jacobs located Cabral in Nixa, Missouri and served him with the Complaint via certified mail, return receipt requested. Jacobs received a return receipt showing that Cabral received service of the Complaint on April 22, 2024.

On May 9, 2024, Cabral filed his Motion to Dismiss. The circuit court heard the motion, and ordered the parties to file supplemental memoranda on the matter of whether Jacobs'

⁴ HRCP Rule 6(b) states, in relevant part,

When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, **the court for cause shown may at any time in its discretion . . . (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect[.]**

(Emphasis added.)

delayed service of Cabral was due to "excusable neglect." The circuit court heard additional argument on July 11, 2024, and entered its Order Denying the Motion to Dismiss on July 15, 2024.

Cabral sets forth four points of error on appeal, contending that the circuit court erred when it: (1) "granted [Jacobs'] ex parte motion for extension of time to serve process to [Cabral]"; (2) "found good cause sufficient to extend the time to serve [Cabral]"; (3) "tolled the statute of limitations with respect to the claims against [Cabral] by granting the ex parte motion"; and (4) "denied [Cabral's] motion to dismiss."

Upon careful review of the record, briefs, and relevant legal authorities, and having given due consideration to the arguments advanced and the issues raised by the parties, we consolidate and resolve Cabral's contentions of error as follows.

In Cabral's Motion to Dismiss, he sought dismissal of Jacobs' Complaint "due to expiration of the statute of limitations set forth in [Hawaii Revised Statutes (**HRS**)] § 657-7 [(2016)]." In addressing Cabral's motion, the circuit court considered "matters outside the pleading," such as the declarations of Jacobs' counsel Peter C. Hsieh (**Hsieh**). Under such circumstances,

If, on a motion asserting [an HRCF Rule 12(b)(6) defense] to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in [HRCF] Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by [HRCF] Rule 56.

Andrade v. Cnty. of Hawai'i, 145 Hawai'i 265, 269, 451 P.3d 1, 5 (App. 2019) (citation omitted). Accordingly, we apply the de novo standard of review applicable to an order denying a motion for summary judgment under HRCF Rule 56. Id.

The record is clear that Jacobs did not serve Cabral by January 6, 2024, as required by RCCH Rule 28. Upon discovering this missed deadline, Jacobs moved, in April 2024 and pursuant to HRCF Rule 6(b), for an extension of time in which to serve Cabral. Cabral contends on appeal that the circuit court erroneously granted the extension, the statute of limitations was not tolled, and that Jacobs' claims were time-barred because Jacobs served Cabral after the two-year statute of limitations had expired.

We first consider whether the circuit court abused its discretion by extending the time in which to serve Cabral. See Bank of Hawai'i v. Shaw, 83 Hawai'i 50, 56, 924 P.2d 544, 550 (App. 1996) (reviewing orders disposing of motions for extension of time on the ground of excusable neglect, brought pursuant to the analogous District Court Rules of Civil Procedure Rule 6(b)(2), under the abuse of discretion standard).

"Fundamentally, the determination of whether a party has shown excusable neglect is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." Eckard Brandes, Inc. v. Dep't of Lab. & Indus. Rels., 146 Hawai'i 354, 360, 463 P.3d 1011, 1017 (2020) (cleaned up). The following circumstances are relevant here. In his declaration in support of the Ex Parte Motion, Hsieh represented he had informed Deputy Corporation Counsel John J. Gores (**Gores**)⁵ on October 3, 2023 that Jacobs had not been able to locate and serve Cabral. Gores informed Hsieh that Cabral had retired from the MPD and was living on the mainland. Gores did not know Cabral's address, but offered to find and provide Cabral's address to Hsieh.

Hsieh has also declared on the record that his legal assistant resigned in November 2023, his office experienced "a major disruption," and this had caused Hsieh to miss the January 2024 deadline to serve Cabral. Hsieh became aware of the missed deadline, and contacted Cabral's new counsel, Anna Elento-Sneed (**Elento-Sneed**), on April 4, 2024, to request Cabral's current address. Elento-Sneed did not provide Cabral's address, and Hsieh endeavored to locate Cabral through his own investigation.

⁵ Gores was counsel for Defendants-Appellees and Cabral until January 2, 2024, when Anna Elento-Sneed (**Elento-Sneed**) was substituted as counsel.

On April 15, 2024, Hsieh filed the Ex Parte Motion, obtained additional time in which to serve Cabral with process, located Cabral in Missouri, and mailed the Complaint and Summons to Cabral's residence by certified mail, return receipt requested. The return receipt shows that Cabral received service on April 22, 2024.

On this record, we conclude that the circuit court did not abuse its discretion by finding that Jacobs' failure to serve Cabral within six months was due to Hsieh's "excusable neglect."

We next address Cabral's contention that Jacobs' claims against Cabral were time-barred because Jacobs served him more than two years after her alleged injury occurred. Jacobs alleges that her injury occurred on February 4, 2022. Pursuant to HRS § 657-7, a tort claim alleging personal injury "**shall be instituted** within two years" of this date. (Emphasis added.)

Jacobs sought to institute her action through her filing of the Complaint on July 6, 2023, which was within the two-year deadline for tort claims set forth by HRS § 657-7. See HRCP Rule 3 ("A civil action is commenced by filing a complaint with the court."). Pursuant to HRS § 657-22 (2016), the filing of a complaint "shall not be deemed the commencement of an action" if taken "without any intent that [process] should be served." The record reflects that Jacobs intended to serve

Cabral with process when she filed the Complaint; among other things, Jacobs' process server represented that he unsuccessfully attempted to serve Cabral around the time he served Defendants-Appellees.

The United States District Court for the District of Hawai'i's analysis in Heiser v. Ass'n of Apartment Owners of Polo Beach Club provides helpful guidance here. 848 F. Supp. 1482 (D. Haw. 1993). In Heiser, the district court concluded that plaintiffs' claims were not time-barred because,

First, **Plaintiffs have complied with the literal requirements of the Hawaii statute of limitations and rules of procedure.** Plaintiffs filed a complaint with this Court within two years after their tort action accrued. This complies with [HRS] § 657-7 and [HRCF Rule] 3.

Second, **[HRS] § 657-22 does not require a plaintiff to actually serve the defendant or to exercise due diligence. Instead, the threshold inquiry is a determination of the plaintiff's intent at the time "any process was issued."** The legislature, by limiting the inquiry to the time of issuance of process, apparently recognized the possibility that the intent of a plaintiff to serve process may change after process is issued but that under some circumstances there may still be justification for tolling the statute of limitations.

Id. at 1484-85 (emphasis added).

The record reflects that Jacobs timely filed the Complaint within the two-year statute of limitations, intended to promptly serve Cabral with the Complaint and Summons but was unable to do so, ultimately moved for and obtained an extension of time in which to serve Cabral, and served Cabral with the Complaint and Summons prior to the new service deadline. Jacobs' timely commencement of her claims against Cabral

therefore tolled the statute of limitations pursuant to HRS § 657-7 and § 657-22, and HRCP Rule 3. Jacobs' claims are not time-barred.

For the foregoing reasons, we affirm the Order Denying the Motion to Dismiss.

DATED: Honolulu, Hawai'i, October 6, 2026.

On the briefs:	/s/ Katherine G. Leonard Presiding Judge
Anna Elento-Sneed, for Defendant-Appellant.	/s/ Sonja M.P. McCullen Associate Judge
Peter C. Hsieh, for Plaintiff-Appellee.	/s/ Kimberly T. Guidry Associate Judge