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NO. CAAP-25-0000443

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

MADELEINE M. MCKAY, AS TRUSTEE OF THE REVOCABLE TRUST OF MADELEINE M. MCKAY, Plaintiff-Appellee,
v.
HUBERT GUEZ, INDIVIDUALLY, AND AS TRUSTEE OF THE GUEZ LIVING TRUST; Defendant-Appellant, and DOE DEFENDANTS 1-10, Defendants.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CASE NO. 1CC181000975)

SUMMARY DISPOSITION ORDER
(By: Hiraoka, Presiding Judge, Wadsworth and McCullen, JJ.)

Self-represented Defendant-Appellant Hubert Guez (**Guez**), individually and as trustee of the Guez Living Trust, appeals from the Circuit Court of the First Circuit's May 27, 2025 Final Judgment and the underlying findings and conclusions.[1]

On appeal, Guez raises two points of error, contending the circuit court erroneously (1) "sustained objections to and

[1] The Honorable John M. Tonaki presided.

improperly excluded testimony," and (2) "accepted and adopted expert testimony as substantive evidence regarding payments made."

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.

Guez and Plaintiff-Appellee Madeleine M. McKay (**McKay**) were family friends. McKay v. Guez, No. CAAP-19-0000396, 2024 WL 2293144, at *1 (Haw. App. May 21, 2024) (SDO). Following the death of McKay's husband in 2001, Guez advised McKay regarding her finances and, between 2003 and 2005, executed eight promissory notes documenting $3,150,000 in loans from McKay's various trusts to Guez. Id. Each note stated the principal amount Guez received and the applicable interest rate for the loan, which ranged from 5% to 12%. Id. The notes "permitt[ed] McKay to demand payment at any time on three or six months['] notice." Id.

In 2018, McKay demanded full payment, including interest due, but Guez did not pay. Id. McKay filed suit, the circuit court granted summary judgment in favor of McKay, and Guez appealed. Id. at *1-2.

In that appeal, this court held that "while there was no genuine issue of material fact as to the establishment of Guez's indebtedness to McKay as Trustee of the Trusts, the Circuit Court erred in granting summary judgment in favor of McKay as to the amounts of Guez's debts to the Trust." Id. at *6. This court remanded the case to the circuit court. Id. at *7.

On remand, the circuit court held an evidentiary hearing. The circuit court found that Guez received a total of $3,150,000 and, between 2003 to 2004, "paid a total of $75,000 toward the principal on the promissory notes."

McKay's expert in accounting was Garret J. Hoe (**Hoe**), a certified public accountant. Hoe prepared two reports. The first report, which was based on information McKay provided, opined that Guez owed $5,229,039 in principal and interest. To be conservative, Hoe recalculated the amount Guez owed based on payments Guez claimed he had made, giving him the benefit of the doubt. In the second report, Hoe opined that Guez owed $5,194,638 in principal and interest, $34,401 less.

During the period between Hoe's first and second reports, Guez made a $7,000 interest payment, which was not accounted for in Hoe's second report. Using Hoe's more conservative calculation of the total amount owed ($5,194,638), and accounting for a $7,000 reduction in accrued interest, the

circuit court determined that Guez owed $5,187,638 in principal and interest.

The circuit court also concluded that Guez's testimony that McKay "verbally agreed to modify the interest rates on the promissory notes and that there was new consideration for the modification" was "not credible."

The circuit court therefore awarded McKay $5,187,638, plus $579 per day in interest, and reasonable fees and costs. Guez appealed again.

As an initial matter, we note that none of Guez's points of error challenge the circuit court's findings in the manner prescribed by Hawaiʻi Rules of Appellate Procedure (**HRAP**) Rule 28(b)(4), and Guez references the appended findings only once on page 4 of his opening brief. See HRAP Rule 1(d) ("Attorneys and pro se parties are deemed to be aware of, and are expected to comply with, all of the provisions of these rules."). Unchallenged findings are binding on this court. Okada Trucking Co. v. Bd. of Water Supply, 97 Hawaiʻi 450, 458, 40 P.3d 73, 81 (2002) (explaining that findings of fact "not challenged on appeal are binding on the appellate court").

(1) Guez contends the circuit court "improperly sustained objections to and improperly excluded testimony regarding payments made by [him] in partial satisfaction of the

Promissory Notes at issue and regarding calculations of the interest rates applicable to the Notes."

(a) Payments

Guez points to objections sustained during his questioning of McKay regarding alleged principal repayments, as well as his questioning of Hoe regarding mathematical calculations.

An appellate court's review is confined to the record on appeal. See Hawaiʻi Revised Statutes § 641-2(b) (2016) ("Every appeal shall be taken on the record, and no new evidence shall be introduced in the supreme court."). "Anything that is not part of the record shall not be appended to the [opening] brief, except as provided in this Rule." HRAP Rule 28(b)(10).

Under HRAP Rule 10(a), the record on appeal "consist[s] of the trial court . . . record, as set out in Rule 4 of the Hawaiʻi Court Records Rules [(**HCRR**)]." HCRR Rule 4 provides in part that the record shall include "court reporters' notes, audio or video recordings of court proceedings, and any transcripts prepared from them[.]"

HRAP Rule 10(b) governs the preparation and filing of transcripts:

> Upon completion of each transcript and receipt of payment, the court reporter shall file the transcript through [the Judiciary Electronic Filing and Service System (**JEFS**)] or [the Judiciary Information Management System (**JIMS**)], designate the document as the "Transcript of proceedings held on <date>" and enter the date of the transcribed proceeding in the Notes field for the corresponding JEFS or JIMS docket entry.

HRAP Rule 10(b)(1)(G).

A review of the circuit court's evidentiary rulings necessarily requires this court to review transcripts of the proceedings. See HRAP Rule 10(b). Guez attaches the transcript from the evidentiary hearing to his opening brief. However, Guez has not shown that the transcript appended to his opening brief is in the record. See Doe v. Doe, 138 Hawaiʻi 142, 377 P.3d 1060, Nos. CAAP-14-0000741, CAAP-14-0001307, and CAAP-15-0000525, 2016 WL 3599924, at *3 n.4 (App. June 30, 2016) (SDO) ("When an appellant attaches a transcript to the opening brief and fails to include it in the record on appeal, we disregard the transcript, as it is not part of the record.").

Thus, there is insufficient evidence to review Guez's challenge to the circuit court's rulings on the contested objections. See State v. Hoang, 93 Hawaiʻi 333, 336, 3 P.3d 499, 502 (2000) ("Without the relevant transcript, there is insufficient evidence to review the alleged error, and [the appellant] carries the burden of demonstrating the alleged error in the record." (emphasis omitted)).

(b) Interest Rates

Guez argues that he and McKay orally modified the interest rates on the promissory notes. He asserts that the first modification reduced the interest rate on the first two notes from 12% to 7%, and the second modification reduced the "entire interest charge from $15,946 to $9,000."

The circuit court did not find Guez credible regarding the oral modifications. This court will not disturb the circuit court's credibility determination. State v. Pulse, 83 Hawaiʻi 229, 244-45, 925 P.2d 797, 812-13 (1996) ("[I]t is well-settled that an appellate court will not pass upon issues dependent upon the credibility of witnesses." (citation modified)).

(2) Guez also contends the circuit court "erroneously accepted and adopted expert testimony as substantive evidence regarding payments made, the terms of the Notes, and amounts owed under the Notes." Guez argues that "the substantive evidence admitted at trial largely contradicted the assumptions of [McKay]'s expert." This court will not reconcile conflicting evidence. Stanford Carr Dev. Corp. v. Unity House, Inc., 111 Hawaiʻi 286, 296, 141 P.3d 459, 469 (2006) ("In cases of conflicting evidence, the credibility of the witnesses and the weight to be given their testimony are within the province of

the trial court and, generally, will not be disturbed on appeal." (citation modified)).

Based on the foregoing, we affirm the circuit court's May 27, 2025 Final Judgment.

DATED: Honolulu, Hawaiʻi, November 18, 2026.

On the briefs:

Hubert Guez,
Self-represented
Defendant-Appellant.

Margery S. Bronster,
Catherine L. Aubuchon,
Robert M. Hatch,
(Bronster Fujichaku Robbins),
for Plaintiff-Appellee.

/s/ Keith K. Hiraoka
Presiding Judge

/s/ Clyde J. Wadsworth
Associate Judge

/s/ Sonja M.P. McCullen
Associate Judge