

NO. CAAP-13-0001474

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

EDMOND M. ABORDO, Plaintiff-Appellant, v.
DEPARTMENT OF PUBLIC SAFETY (DPS) MAINLAND BRANCH
ADMINISTRATOR SHARI KIMOTO, Defendant-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 11-1-2228)

SUMMARY DISPOSITION ORDER

(By: Nakamura, C.J., and Leonard and Reifurth, JJ.)

This case originated on September 8, 2011, with Plaintiff-Appellant Edmund M. Abordo filing a document in the Circuit Court of the First Circuit ("Circuit Court") entitled "[Hawai'i Rules of Penal Procedure] Rule 40(c)(2)(3) Nonconforming and Seprate [sic] Cause of Action" ("Petition"), alleging civil rights violations under state law stemming from a situation at Saguaro Correctional Center ("SCC"), where Abordo was incarcerated. The Petition and all subsequent documents were filed in case no. S.P.P. No. 11-1-0052.

On September 23, 2011, the Circuit Court filed an order directing that all documents in S.P.P. No. 11-1-0052 be processed as a civil proceeding in Civil No. 11-1-2228-09 VLC.^{1/} Abordo moved for summary judgment on December 6, 2011, "as to the liability of [Department of Public Safety Mainland Administrator] Shari Kimoto. . . ." Kimoto filed a cross-motion for summary judgment on May 1, 2013. On May 31, 2013, the Circuit Court entered an order granting summary judgment in favor of Kimoto and

^{1/} The Honorable Richard K. Perkins presided.

against Abordo.^{2/} On July 16, 2013, the Circuit Court entered a judgment consistent with the order ("Judgment"). Abordo timely appealed.

On appeal, Abordo contends that the Circuit Court (1) erred because "the weight of the exhibits submitted as evidence could not be refuted as to Abordo acting as a jailhouse lawyer in helping other inmates, with their post-conviction petitions"; and, furthermore, that the Circuit Court abused its discretion (2) "in not considering the Abordo's exhibits as evidence in the [M]otion for Summary Judgment"; (3) "in considering the argument of defense of vicarious liability . . . when Hawai'i law permits law suits for its Employees under [Hawaii Revised Statutes] § 662-2"; and (4) "in not allowing Abordo to demonstrate the liability of the defendants, by and through exhibits."

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 conclude that Abordo's appeal is without merit.

Abordo failed to establish that the Circuit Court did not review all of the evidence, including the exhibits that he submitted. See *State v. Metcalfe*, 129 Hawai'i 206, 223, 297 P.3d 1062, 1079 (2013) (holding that the circuit court did not abuse its discretion in stating that it reviewed records and files in denying a motion to dismiss when "there is nothing to indicate that the circuit court's statement is erroneous, or that the circuit court did not review the records that were before it[.]").

Abordo failed to establish or to raise any genuine issue of material fact to support his claims that Kimoto retaliated against him, that she had any involvement in or control over the decision by SCC staff to place him in segregation for violating SCC policies, that he was an intended beneficiary under the contract between the State of Hawai'i and Corrections Corporation of America ("CCA") so as to permit him to bring an action for breach of contract, or that CCA's policy

^{2/} The Honorable Virginia Lea Crandall presided.

requiring inmates at SCC to obtain prior approval for inmate-to-inmate assistance was not reasonably related to legitimate penological interests in protecting the inmate population at SCC. See *Wilder v. Tanouye*, 7 Haw. App. 247, 254-55, 753 P.2d 816, 821 (1988) (holding that summary judgment was proper where appellant prisoner failed to raise genuine issues of material fact).

Therefore, we affirm the Judgment entered July 16, 2013, in the Circuit Court of the First Circuit.

DATED: Honolulu, Hawai'i, February 23, 2015.

On the briefs:

Edmond M. Abordo,
Pro Se Plaintiff-Appellant. Chief Judge

April Luria and
Jodie D. Roeca
(Roeca Luria Hiraoka LLP) Associate Judge
for Plaintiff-Appellee.

Associate Judge