

NOT FOR PUBLICATION

NO. 17601

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

DEBRA ANN DIRKS, DENISE LEE DIRKS, VONNIE LYNN DIRKS, and
GERALD EDWARD DIRKS, Plaintiffs-Appellees, v. NORMAN T.
BROOKS, Defendant, and BEVERLY H. BROOKS,
Intervenor-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(Civ. No. 4301(1))

MEMORANDUM OPINION

(By: Burns, C.J., Watanabe, and Lim, JJ.)

In this appeal, Intervenor-Appellant Beverly H. Brooks (Beverly or Intervenor) challenges the October 7, 1993 Findings of Fact and Conclusions of Law; Order (the 1993 Order), issued by the Circuit Court of the Second Circuit (the circuit court), Judge E. John McConnell presiding, denying Beverly's December 17, 1991 Complaint for Declaratory and Injunctive Relief. We affirm.

BACKGROUND

On September 6, 1979, John L. Franklin, Personal Representative of the Estate of Roy L. Dirks, Deceased (Dirks)¹

^{1/} On November 30, 1993, the Circuit Court of the Second Circuit (the circuit court) granted Intervenor-Appellant Beverly H. Brooks' Motion for Up-Date of Plaintiff's Assignment of Judgment to Reflect True Plaintiffs on Court Captions. Pursuant to a May 14, 1991 Assignment of Judgment, filed in the Circuit Court of the State of Oregon for Lane County, John L. Franklin, Personal Representative of the Estate of Roy H. Dirks, Deceased (Franklin), had assigned the Dirks Estate's interest in this matter to Roy L. Dirks' four adult children: Debra Ann Dirks, Denise Lee Dirks, Vonnice Lynn Dirks, and

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filed a Complaint in the circuit court to domesticate an Oregon wrongful death judgment against Defendant-Appellant Norman T. Brooks (Norman or Defendant). On September 7, 1979, Dirks filed a Motion for Preliminary Injunction to enjoin Norman, during the pendency of the lawsuit, "from selling, leasing, assigning or in anyway [sic] alienating his interest in the real property located at tax map key number 2-8-005-102" (the Maui property). The recorded deed for the Maui property reflected that Norman owned the Maui property with Beverly as joint tenants with the right of survivorship.

The circuit court granted Dirks' Motion for Preliminary Injunction by an Order filed on October 9, 1979.

On August 7, 1981, Dirks moved for judgment on the pleadings. On October 21, 1981, the circuit court, Judge Kase Higa presiding, entered: (1) an Order Granting [Dirks'] Motion for Judgment on the Pleadings, which noted that Norman did not appear at the hearing on the motion; (2) a Judgment for Dirks and against Norman for \$1,200,000.00, the amount claimed by Dirks, as well as interest, costs, and attorney fees totaling \$227,209.20; and (3) a Notice of Entry of Order or Judgment.²

^{1/}(...continued)
Gerald Edward Dirks. For convenience in this opinion, these four children shall also be referred to collectively as "Dirks."

^{2/} On June 12, 1984, Franklin filed an ex parte motion to correct a clerical mistake in the captions of the three documents filed by the circuit court on October 21, 1981. Specifically, the captions referred to the deceased as "Roy L. Kirks" rather than "Roy L. Dirks." The circuit court entered an order allowing for the correction on June 21, 1984.

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On July 12, 1991, new counsel entered an appearance for Dirks, whose prior counsel had died. The same day, an Execution of the October 21, 1981 Judgment was filed in the circuit court, commanding the sheriff or deputy sheriff of the State of Hawai'i to levy upon Norman's Maui property. On August 26, 1991, a deputy sheriff filed a Notice of Execution, certifying that he had levied upon all of the right, title and interest of Norman in the Maui property.

On August 30, 1991, Dirks filed an ex parte motion to revive the October 21, 1981 Judgment against Norman, on grounds that no part of the judgment had yet been paid or satisfied. An order granting the motion was entered on August 30, 1991.

On November 29, 1991, Beverly filed a Motion for Leave to Intervene as a party to the action against Norman and be allowed to file a complaint seeking declaratory judgment "that [Beverly] is the equitable and sole owner of [the Maui property] and directing reformation of the deed to reflect sole ownership by [Beverly.]"

Beverly's Motion for Leave to Intervene was granted on January 2, 1992.

Following a July 12, 1993 bench trial, the circuit court, on October 7, 1993, issued the 1993 Order, denying Beverly's proposed declaratory judgment and reformation of deed.

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The 1993 Order explained in detail the background of the case and the circuit court's reasoning for denying Beverly's order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on for non-jury trial on July 12, 1993, before the HONORABLE E. JOHN McCONNELL, presiding, upon the action of the Intervenor, BEVERLY BROOKS, for a declaratory judgment that she is the sole legal and equitable owner of certain improved real property and for reformation of a recorded deed concerning that property. Attorney Carolyn Burton appeared on behalf of the Intervenor, BEVERLY BROOKS ("Intervenor"), and the Defendant, NORMAN T. BROOKS ("Defendant"), both of whom were present in court throughout the trial. Attorneys Steven Guttman and Ronald S. Adelman appeared on behalf of the Plaintiff, JOHN L. FRANKLIN ("Plaintiff"). The [c]ourt having heard and considered the oral and documentary evidence received at trial, the stipulations of the parties, the issues raised by the pleadings, and the arguments of counsel; and the [c]ourt being fully advised in the premises, and good cause appearing therefor, the [c]ourt hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Intervenor, an educated woman now aged 64, has continuously since August of 1978 cohabitated with the Defendant, now aged 50, at improved real property located at 120 Waonehele Place, Haiku, Maui, Hawaii 96708, bearing TMK 12-2-8-005-102 ("the subject property").

2. The Intervenor first met the Defendant in Oregon in 1973 through the Intervenor's daughter, Maureen, who was then living with the Defendant. At that time, the Intervenor was married to Dr. Robert Daugherty, and her legal name was Beverly Felice Benton Daugherty. The Intervenor had been married to Dr. Daugherty since 1946, and they had four children, all daughters.

3. From 1973 to 1975, the Intervenor visited with the Defendant and her daughter Maureen at least once per month. On July 1, 1975, the Intervenor separated from her husband and moved in with the Defendant's family. At that time, the Defendant was the father of three natural children and three adopted children ("the Defendant's children"). The Intervenor filed a divorce action against her husband. She engaged the services of an attorney to handle the divorce. She was granted a final decree of divorce in

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January of 1976, and received a property settlement which included the payment to her of \$300,000.00 cash by her ex-husband in December of 1975.

4. In 1975, the Plaintiff filed a wrongful death action in Oregon against the Defendant and others concerning the shooting death of deputy sheriff Roy L. Dirks.

5. In 1975, in a separate criminal proceeding, the Defendant was convicted and incarcerated in the Oregon State Penitentiary, and served three years, from August, 1975, until he was released in August, 1978.

6. On August 13, 1975, the Intervenor had her name legally changed in Oregon to Beverly Happy Brooks. She engaged the services of an attorney to handle the change of name. The Intervenor testified that the name change signified her commitment to the Defendant as a life partner, made her a member of the Norman T. Brooks family, and meant that she had become the godmother to the Defendant's children. The Intervenor's daughter, Maureen, had her name legally changed to Marry Brooks.

7. In January or early February of 1976, the Intervenor and the Defendant agreed that the entire Brooks family should be moved out of Oregon, the Defendant to join them upon his release from prison. They further agreed that the Intervenor would provide the funds to purchase property for the family home. The Defendant, as head of the family, preferred moving the family to Texas. The Intervenor, who had visited Maui several times since 1973, preferred moving the family to Maui. The Intervenor prevailed.

8. In February of 1976, the Intervenor went to Maui to look for property to purchase. She carried with her \$150,000 in cash in a briefcase for the purpose of using it to purchase land on Maui. She contacted a local realtor, Harry Holt, who showed her several properties, none of which she found acceptable. On her own, without a realtor, she found the subject property, called the telephone number on a posted for sale sign, and, on or about February 26, 1976, contracted to purchase the unimproved property from the owners, Dr. and Mrs. Pfaeltzer, for \$100,000.

9. It was the Intervenor's intention to purchase the land jointly with Defendant with rights of survivorship, thereby potentially benefitting her godchildren upon the death of Intervenor and Defendant. The Intervenor did not have a legal will. She testified that the realtor, Harry Holt, had told her that the easiest way to accomplish her intention was to have the Defendant's name on the deed. However, the Intervenor chose not to have any realtor or attorney advise or assist her in closing the transaction.

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10. The Intervenor went to Security Title Corporation in Wailuku and opened an escrow. She then met with escrow officer Riki Inciong to work out the particulars of the transaction. The Intervenor never said anything to the escrow officer about buying the property to provide for any children, or about setting up a trust, or about holding the property in trust for any children.

11. The Intervenor told the escrow officer that she and the Defendant, who was in Oregon, were husband and wife. As a result, all of the closing documents, including the Deed, listed them as husband and wife. Although the Intervenor and Defendant were not then, and never have been, legally married, the Intervenor believed that the Defendant was her "life partner" and felt that their relationship qualified as a marriage under a dictionary definition. The Intervenor signed the Defendant's name on the closing documents, including the escrow instructions.

12. The escrow officer explained to the Intervenor the four basic ways in which title to real property could be held in Hawaii: tenants by the entirety, joint tenants, tenants in common, and tenant in severalty. The Intervenor expressly directed the escrow officer that, in addition to her name, she wanted the Defendant's name on the deed. The Intervenor decided to hold title and co-own the property with the Defendant as joint tenants, with right of survivorship. As a result, all of the closing documents, including the Deed, listed the Intervenor and the Defendant as joint tenants.

13. On March 1, 1976, the transaction was closed through escrow, and a Deed dated March 1, 1976, was recorded with the Bureau of Conveyances, State of Hawaii, in Liber 11272, Page 321, by which Dr. and Mrs. Pfaeltzer sold to the Defendant and the Intervenor, as joint tenants, the subject property, which was fully and legally described in the Deed.

14. Upon returning to Oregon on March 15, 1976, the Intervenor visited the Defendant in prison and told him about the subject property, including the fact that his name was on the title as co-owner. The Intervenor testified that she spoke with an Oregon attorney named Price about removing the Defendant's name from the Deed and was told that it could be done. However, she admitted that she did not do anything about it, as she did not think it was important, and that thereafter she procrastinated and never got around to pursuing the name removal.

15. In April of 1976, while in Oregon, the Intervenor received a copy of the recorded Deed from the escrow officer. When the Intervenor received the Deed, she noted that both her name and the Defendant's were on the

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Deed, that they were listed as joint tenants, and that they were listed as being husband and wife. Thereafter, the Intervenor sent correspondence to the escrow officer, but none of her correspondence mentioned changing the title or having the Defendant's name removed from the Deed.

16. On May 13, 1976, the Defendant signed and sent a letter to the escrow officer concerning the subject property. Defendant's letter made no mention of changing the title or having his name removed from the Deed.

17. On July 30, 1976, at the Oregon State Penitentiary, the Intervenor and the Defendant both signed, in the presence of a notary public, a document which granted a utilities easement over the subject property to Maui Electric Company, Ltd. The easement document listed them as husband and wife. The easement document was recorded in the Bureau of Conveyances on September 10, 1976.

18. During 1976, certain improvements were made to the subject property, including the construction of a dwelling. The Intervenor paid for these improvements. The Intervenor testified that the Defendant was the designer of the property.

19. On or about August 10, 1978, the Defendant was released from prison and moved to the subject property on Maui with the Intervenor and joined the rest of his family.

20. On August 29, 1979, in the Oregon wrongful death case, judgment was entered in favor of the Plaintiff and against the Defendant ("the Oregon Judgment"). The Plaintiff was awarded damages totalling \$1,200,000 against the Defendant.

21. On September 6, 1979, the complaint in this case was filed which sought to domesticate the Oregon Judgment. Following a hearing held on September 27, 1979, a preliminary injunction was entered in this case on November 20, 1979, which enjoined the Defendant "during the pendency of this action from selling, leasing, assigning or in any way alienating his interest in the real property located at TMK 2-8-005-102." The preliminary injunction order was recorded with the Bureau of Conveyances on November 20, 1979.

22. On October 21, 1981, a judgment was entered in this case in favor of Plaintiff and against Defendant domesticating the Oregon Judgment and awarding to the Plaintiff damages totalling \$1,427,209.20. On August 30, 1991, this judgment was renewed, and the total damages awarded to the Plaintiff against the Defendant, with accrued interest, increased to \$2,810,624.40.

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23. On November 8, 1991, the Intervenor filed her Motion for Intervention in this case. On December 17, 1991, she filed her complaint for declaratory judgment and injunctive relief.

24. At all times since the Intervenor had the Defendant's name placed on the Deed to the subject property on March 1, 1976, up to the date of trial, she knew that his name remained on the title.

25. During the period August 1978 to September 1979, when the Intervenor and the Defendant first cohabited together at the subject property, neither of them took any action to have the Defendant's name removed from the title to the subject property.

26. At the time that the Plaintiff sought the preliminary injunction against the Defendant in this case in September of 1976, the Intervenor knew of the Oregon Judgment, knew of the filing of this action, and knew of the injunctive relief sought by Plaintiff.

27. She admitted at trial that prior to filing her motion for intervention in 1991, she never engaged a Hawaii attorney to have the Defendant's name removed from the title.

28. There was no evidence adduced at trial that the Defendant ever engaged a Hawaii attorney to have his name removed from the title to the subject property.

29. From the time that the Intervenor and the Defendant jointly took title to the subject property on March 1, 1976, until the Intervenor filed her Motion for Intervention in this case on November 8, 1991, no action was taken by either of them to remove the Defendant's name from the title to the subject property. The Motion for Intervention was filed only after an order had been entered in this case on October 29, 1991, for the appointment of an appraiser, as the Plaintiff was moving forward to foreclose on the Judgment lien against the Defendant.

30. To the extent that any of the foregoing findings of fact constitute conclusions of law, they shall be so considered.

CONCLUSIONS OF LAW

1. A deed, apparently valid on its face, carries with it a presumption of validity. Chen Chew Phang v. Chen Chew Kee, 49 Haw. 62, 71 (1966).

2. The Intervenor has the burden of proof in this proceeding and must prove her entitlement to relief by clear

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and convincing evidence. The Plaintiff has the benefit of the evidentiary presumption stated in Rule 304(c)(1) of the Hawaii Rules of Evidence which states that the traditional common law presumption that the "owner of legal title to property is presumed to be the owner of the full beneficial title". Therefore, the Defendant, as a legal titleholder to the subject property is presumed to also have beneficial title.

3. The Plaintiff also has the benefit of the evidentiary presumption stated in Rule 304(c)(3) of the Hawaii Rules of Evidence which states that a person "is presumed to intend the ordinary consequences of the person's ordinary act".

4. Sections 502-81 through 502-83 of the Hawaii Revised Statutes support the public policy of requiring recordation of interests in real property in the Bureau of Conveyances in order to give notice to the world to identify who is presumed to be the titleholder of real estate. The presumption of non-transfer is conclusive if such a conveyance is not recorded. The recording statutes reflect and carry out equitable and due process principles of notice and reliance.

5. Reformation is an equitable remedy used to correct mistakes in written documents in order to accurately state the true facts and thereby implement the originally desired effect. As an equitable remedy, reformation is subject to and may be barred by equitable defenses, such as waiver, estoppel, unclean hands and laches.

6. Intervenor's own testimony establishes that she expressly intended to place the Defendant's name on the title to the real property. There was no mistake. There was no undue influence, fraud, or duress. It is stipulated that the escrow officer specifically informed the Intervenor of the potential ways to hold title, and the Intervenor specifically elected to take title to the real property with the Defendant as joint tenants.

7. Intervenor knew how to engage the services of an attorney [sic]. She elected to engage counsel for her divorce and her name change, and she testified as to other involvements with attorneys, but she freely chose not to engage a Hawaii attorney prior to 1991 to try to remove the Defendant's name or otherwise change the Deed.

8. From March 1, 1976, until issuance of the preliminary injunction in November 20, 1979, there was no court order or other impediment which prohibited the Defendant or the Intervenor from changing the joint tenancy title or otherwise modifying the Deed. Nor was Intervenor at any time prohibited from intervening after the

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institution of this case and claiming the equitable reformation relief she is now requesting more than 15 years after title was taken to the real property in the joint names of the Intervenor and the Defendant.

9. Intervenor has failed to prove a prima facie case for reformation. Intervenor's own testimony establishes that title was taken in the exact manner she had directed and that no action was taken in Hawaii to change the legal title from the time the Deed was recorded until 1991, when the Plaintiff was moving forward with enforcing his rights as a judgment lien creditor of the Defendant. After recordation of the Deed, both the Intervenor and the Defendant, in correspondence with the escrow company and in executing the utility easement, held themselves out as husband and wife and as joint tenants and thereby ratified the Deed.

10. Alternatively, even assuming arguendo that a prima facie case had been proved, the [c]ourt concludes that the doctrines of estoppel and laches are applicable to this case and bar the Intervenor from obtaining any of the relief sought.

11. Reformation is not a remedy available to someone who wants to rewrite history. While the Intervenor may not have realized all of the implications and legal ramifications of her decision in 1976 to co-own the property with the Defendant as joint tenants, she could have engaged Hawaii counsel to advise her, and the evidence is unrefuted that she did exactly what she intended to do at that time. It was 15 years later, only after circumstances changed - i.e., the execution upon the judgments the Plaintiff has against the Defendant - that the Intervenor sought reformation.

12. To the extent that any of the foregoing conclusions of law constitute findings of fact, they shall so be considered.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED, ADJUDICATED and DECREED that the relief sought by the Intervenor for declaratory judgment and to reform the March 1, 1976 Deed is denied. Judgment shall be entered in favor of Plaintiff and against the Intervenor, with costs.

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On October 13, 1993, Beverly moved for Hawai'i Rules of Civil Procedure (HRCP), Rule 54(b) certification of the 1993 Order.

On October 7, 1993, Beverly's trial counsel filed a Motion for Withdrawal of Counsel, which was granted on November 2, 1993. Meanwhile, on October 25, 1993, Beverly filed a *pro se* Notice of Appeal.

An order granting Beverly's motion for HRCP Rule 54(b) certification was entered on November 9, 1993, and Beverly filed an Amended Notice of Appeal on November 15, 1993.

On April 14, 1994, a notice of filing of bankruptcy petition was filed by Plaintiff-Appellee Debra Ann Dirks (Debra). Proceedings in this case were stayed pending the outcome of Debra's bankruptcy. On May 14, 2002, the case was placed back on the ready calendar.

In her *pro se* appellate brief, Beverly does not seem to contest directly the circuit court's ruling denying reformation of the deed to the Maui property. Instead, she claims that the 1993 Order was "irrelevant and immaterial" because it did not get to the "real injury" in this case--"the fourteen and one/half year Judicial restraint on the right to alienate." Beverly also seems to argue that the judgments against Norman were void for various reasons.

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JURISDICTION

Appeals from interlocutory civil judgments of a circuit court are authorized by Hawaii Revised Statutes § 641-1(b) (1993). Though not a final judgment, the 1993 Order was certified as appealable pursuant to HRCP Rule 58(b).³

Beverly filed a timely Notice of Appeal from the circuit court's 1993 Order on October 25, 1993, within the thirty-day period for appeal prescribed by Hawai'i Rules of Appellate Procedure Rule 4(a)(1).

Jurisdiction is thus proper for Beverly's appeal from the 1993 Order. To the extent that Beverly is attempting to appeal from every other judgment entered against Norman prior to Beverly's intervention as a party, this court does not have jurisdiction to consider her appeal.

ISSUE PRESENTED

The sole issue presented by this appeal is whether the circuit court erred by denying Beverly's petition for reformation of the deed for the Maui property.

STANDARD OF REVIEW

We review a trial court's FOFs under the clearly erroneous standard.

An FOF is clearly erroneous when, despite evidence to support the finding, the appellate court is left with the definite and firm conviction in reviewing the entire evidence that a mistake has been

^{3/} The requirement that every judgment be reduced to a separate and final document took effect March 31, 1994, after the Notice of Appeal in this case was filed. See Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

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committed. An FOF is also clearly erroneous when the record lacks substantial evidence to support the finding. We have defined 'substantial evidence' as credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion.

Hawai'i appellate courts review conclusions of law de novo, under the right/wrong standard. Under the right/wrong standard, this court examines the facts and answers the question without being required to give any weight to the trial court's answer to it.

Leslie v. Estate of Tavares, 91 Hawai'i 394, 399, 984 P.2d 1220, 1225 (1999) (brackets, citations, and quotation marks omitted).

DISCUSSION

In State v. Kahua Ranch, Ltd., 47 Haw. 28, 33, 384 P.2d 581, 585 (1963) ("Kahua Ranch"), the Supreme Court of Hawai'i succinctly explained when reformation of a deed or contract is appropriate:

[W]here private interests are involved, the general rule is that relief through reformation may be had when the written instrument does not, through a mutual mistake of fact, conform to the intention of the parties to the instrument. 3 Pomeroy, *Equity Jurisprudence*, 5th ed., § 870, pp. 384-386; 45 Am. Jur., *Reformation of Instruments*, § 55, p. 617; 5 Williston, *Contracts* (rev. ed.), § 1547, p. 4336; *Horner v. Horner*, 22 Haw. 9, 15; *Philippine Sugar Estate Dev. Co. v. Gov't of the Philippine Islands*, 247 U.S. 385.

See also In re Mokuleia Ranch & Land Co., 59 Haw. 534, 539, 583 P.2d 991, 994 (1978) (quoting the above passage).

The circuit court in this case explicitly found that no mistake had been made in this case.

6. Intervenor's own testimony establishes that she expressly intended to place the Defendant's name on the title to the real property. There was no mistake. There was no undue influence, fraud, or duress. It is stipulated that the escrow officer specifically informed the Intervenor of the potential ways to hold title, and the Intervenor

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specifically elected to take title to the real property with the Defendant as joint tenants.

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9. Intervenor has failed to prove a prima facie case for reformation. Intervenor's own testimony establishes that title was taken in the exact manner she had directed and that no action was taken in Hawaii to change the legal title from the time the Deed was recorded until 1991, when the Plaintiff was moving forward with enforcing his rights as a judgment lien creditor of the Defendant. After recordation of the Deed, both the Intervenor and the Defendant, in correspondence with the escrow company and in executing the utility easement, held themselves out as husband and wife and as joint tenants and thereby ratified the Deed.

Based on our review of the record, we cannot conclude that the circuit court's findings were clearly erroneous. Reformation of the deed was therefore not appropriate in this case.

Affirmed.

DATED: Honolulu, Hawai'i, March 11, 2003.

On the briefs:

Beverly H. Brooks,
intervenor-appellant, *pro se*.

Steven Guttman, Ronald S.
Adelman, and Susan A. Ing
(Law offices of Steven Guttman)
for plaintiffs-appellees.