

NO. 23009

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

SIMON A. LI, Individually and as Guardian Prochein
Ami for Stephen Joseph Li, a minor,
and JULIAN LI, Plaintiff-Appellants,

vs.

THE ESTATE OF SIDNEY G. PERSHING, M.D.,
Defendant-Appellee,

and

NORTH SHORE HEALTH CENTER, a sole proprietorship,
SPECIALTY MEDICAL GROUP, INC., SPECIALTY
HEALTHCARE MANAGEMENT, INC.; KAHUKU HOSPITAL; THE
CITY AND COUNTY OF HONOLULU; and JOHN DOES
1-20, Defendants.

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 96-1327)

ORDER DENYING PLAINTIFFS-APPELLANTS'
MOTION FOR RECONSIDERATION

(By: Moon, C.J., Levinson, Nakayama, and Acoba, JJ.,
and Circuit Judge Ahn, in place of Duffy, J., recused)

Plaintiffs-appellants Simon A. Li, individually and as
Guardian Prochein Ami for Stephen Joseph Li, a minor (Stephen),
and Julian Li's [hereinafter, collectively, Plaintiffs] request
that this court reconsider its summary disposition order filed on
December 10, 2003 [hereinafter, the SDO]. Upon consideration of
Plaintiffs' December 15, 2003 motion for reconsideration, we
resolve Plaintiffs' contentions raised therein as follows.

The substance of Plaintiffs' July 1, 1998 Motion for Protective Order [hereinafter, Motion for Protective Order] -- which motion the Honorable Kevin S.C. Chang specifically "denied without prejudice to the trial judge['s] . . . determinations if any with regards to any motions in limine in this case" -- was subsumed under the September 8, 1998 Motion in Limine [hereinafter, Motion in Limine]. Although not stated in the SDO, upon initial review of Plaintiffs' appeal, we considered and rejected as being without merit Plaintiffs' contention regarding the effect of the filing of the Motion in Limine. As stated in Craft v. Peebles, 78 Hawai'i 287, 294, 893 P.2d 138, 145 (1995), "[w]here the motion in limine is denied and during trial, opposing counsel attempts to ask the questions challenged in the motion or offer the prejudicial evidence covered therein, a proper objection at that time is necessary to preserve the error for appellate review. An exception to this general rule is that objections need not be renewed if the prior ruling on the motion in limine amounted to an unequivocal holding concerning the issue raised." (Quoting Lussier v. Mau-Van Dev. Inc., 4 Haw. App. 359, 393-94, 667 P.2d 804, 826 (1983) (emphases added and citations omitted).) In the instant case, the trial court's ruling on the Motion in Limine was not unequivocal. See Craft, 78 Hawai'i at 295, 893 P.2d at 146 (ruling on motion in limine was not unequivocal where "the court did not rule with certainty that the evidence . . . would be allowed into evidence[]"); Lussier, 4

Haw. App. 359, 394, 667 P.2d 804, 826 (1983) (ruling on motion in limine was not unequivocal where trial court simply ruled that the motion was denied). Therefore, it was incumbent upon Plaintiffs to once again object at trial to Dr. Melish's testimony on the grounds raised in the Motion in Limine -- to wit, that her expert opinion or her testimony as a whole should be barred due to her ex parte communications with defense counsel -- in order to preserve this argument for appeal. Moreover, in view of the record -- in particular, the equivocal ruling on Plaintiffs' Motion in Limine and the fact that Plaintiffs called Dr. Melish to testify without any objection, reservation or motion to strike her testimony -- Plaintiffs' contention that judicial estoppel should not be applied in this case lacks merit. Therefore,

IT IS HEREBY ORDERED that Plaintiffs' motion for reconsideration is denied.

DATED: Honolulu, Hawai'i, December 24, 2003.

Randall L.K.M. Rosenberg
and Charles E. McKay (of
Garcia Rosenberg & McKay),
and Melvin Y. Agena, for
plaintiffs-appellants,
on the motion