

ORDER GRANTING APPELLEES ALEXANDER & BALDWIN, INC.,
AND EAST MAUI IRRIGATION CO., LTD.'S MOTION TO DISMISS
APPELLANTS NA MOKU AUPUNI O KO'OLAU HUI, BEATRICE KEKAHUNA,
MARJORIE WALLETT, AND MAUI TOMORROW'S NOTICE OF APPEAL TO CIRCUIT
COURT, STATEMENT OF THE CASE, AND DESIGNATION OF RECORD ON APPEAL
FILED APRIL 18, 2005, AND AMENDED NOTICE OF APPEAL TO CIRCUIT COURT
FILED APRIL 20, 2005 (Filed May 9, 2005)

Appellees Alexander & Baldwin, Inc., and East Maui Irrigation Co. Ltd.'s ("EMI")
Motion to Dismiss Appellants Na Moku Aupuni O Ko'olau Hui, Beatrice Kekahuna, Marjorie
Wallett, and Maui Tomorrow's Notice of Appeal to Circuit Court, Statement of the Case, and
Designation of Record on Appeal Filed April 18, 2005, and Amended Notice of Appeal to
Circuit Court Filed April 20, 2005 (Filed May 9, 2005) (the "Motion") came on for hearing
before the Honorable Eden Elizabeth Hifo on June 22, 2005, at 8:45 a.m.

Alan T. Murakami, Moses K.N. Haia, III, and M. U'ilani Pauole appeared on behalf of
Appellants Na Moku Aupuni O Ko'olau Hui, Beatrice Kekahuna, Marjorie Wallett, and
Elizabeth Lapenia ("Na Moku"). David Schulmeister, Randy K. Ishikawa, and Elijah Yip
appeared on behalf of Appellee EMI. Linda L.W. Chow appeared on behalf of Appellee State of
Hawaii, Board of Land and Natural Resources ("BLNR"). Jane Lovell appeared on behalf of
Appellee County of Maui, Department of Water Supply (the "County"). Sat Freedman appeared
on behalf of Appellee Hawaii Farm Bureau Federation ("HFB"). David Merchant appeared
telephonically on behalf of Appellee Maui Land & Pineapple Co., Inc. Appellant Maui
Tomorrow did not make an appearance.

HFB filed a joinder to the Motion and moved separately to dismiss the instant appeal.
The BLNR filed a joinder to the Motion. The County filed a limited joinder to the Motion.

The Motion is based on three arguments: (1) the Notice of Appeal to Circuit Court,
Statement of the Case, and Designation of Record on Appeal Filed April 18, 2005, and the

Amended Notice of Appeal to Circuit Court Filed April 20, 2005 (collectively, "Notice of Appeal") was not timely filed within the 30-day appeals period set forth in Haw. Rev. Stat. ("HRS") § 91-14(b) and Haw. R. Civ. P. 72(b); (2) the appeal is premature because it is taken from a preliminary ruling rather than a final order, and deferral of review pending entry of a subsequent final decision would not deprive Appellants Na Moku and Maui Tomorrow (collectively, "Appellants") of adequate relief; and (3) to the extent Appellants seek relief under HRS § 632-1, the Court lacks jurisdiction to entertain an action brought under that provision in light of the availability of a statutory remedy under HRS § 91-14. The Court addresses each argument in turn.

I. TIMELINESS OF APPEAL

The Court finds that Appellants timely filed their Notice of Appeal. HRS § 91-14(b) states that "proceedings for review shall be instituted in the circuit court within thirty days after the preliminary ruling or within thirty days after service of the certified copy of the final decision and order of the agency pursuant to rule of court" Rule 72(b) of the Hawai'i Rules of Civil Procedure states that "[t]he notice of appeal shall be filed in the circuit court within 30 days after the person desiring to appeal is notified of the rendering or entry of the decision or order, or of the action taken, in the manner provided by statute." The order that is the subject of this appeal is the Prehearing Order Regarding Petitioners' Motions For Summary Relief ("Prehearing Order" or "Order"). A copy of the Prehearing Order was distributed to counsel via email by the Hearing Officer on March 14, 2005. However, the thirty-day period for filing an appeal from the Prehearing Order did not begin to run until the order was served. The Prehearing Order was not served until, at the earliest, March 18, 2005, when it was filed in the Department of Land & Natural Resources ("DLNR"). Because thirty days from March 18, 2005 falls on April 17, 2005,

which is a Sunday, Appellants had, at minimum, until the next weekday, or April 18, 2005, to file their Notice of Appeal. See Haw. R. Civ. P. 6(a). The Notice of Appeal, which was filed on April 18, 2005, was therefore timely.

II. PREMATURITY OF APPEAL

The parties do not dispute that the Prehearing Order is a preliminary ruling instead of a final order or decision. The Court has jurisdiction to entertain an appeal from a preliminary ruling only if “deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief” HRS § 91-14(a). To meet this jurisdictional standard, the party appealing from a preliminary ruling must show that (1) the contested case hearing resulted in unfavorable agency action; (2) deferral of review of the preliminary ruling would deprive the Appellant of adequate relief; and (3) the Appellant followed the applicable agency rules. Public Access Shoreline Haw. v. Hawaii County Planning Comm’n (“PASH”), 79 Hawai‘i 425, 431-34, 903 P.2d 1246, 1252-55 (1995).

Appellants do not satisfy the requirements of HRS § 91-14(a) and the PASH test. The Prehearing Order does not constitute unfavorable agency action to Appellants because it does not dispose of the claims for relief sought by Appellants from the agency in this case, i.e., the BLNR. The Prehearing Order merely decided legal issues relating to the conduct of subsequent proceedings in the contested case, such as the evidentiary hearing ordered in the Prehearing Order. Indeed, the Prehearing Order does not have the imprimatur of the BLNR. After completion of the evidentiary hearing, the BLNR may adopt, modify, or reverse and remand to the Hearing Officer for further proceedings any matter decided by the Hearing Officer, including determinations of legal issues rendered in the Prehearing Order. Therefore, the Prehearing Order did not result in unfavorable agency action to Appellants.

Furthermore, deferral of review of the Prehearing Order would not deny Appellants of adequate relief because the Order provides for a procedure by which Appellants could obtain relief from the agency. Pursuant to the Prehearing Order, any party in the contested case may request an evidentiary hearing to resolve the factual issues in the case. Appellants have not availed themselves of this procedure. The Court finds that the appeal is premature given that Appellants have an opportunity to obtain relief from the BLNR by participating in the evidentiary hearing.

Accordingly, for the above-stated reasons, the Court holds that it lacks subject matter jurisdiction under HRS § 91-14(a) to entertain the appeal from the Prehearing Order. The appeal is therefore dismissed for lack of subject matter jurisdiction.

III. JURISDICTION UNDER HRS § 632-1

Appellants argue that, in the event the Court does not entertain their appeal under HRS § 91-14(a), the Court should nevertheless allow Appellants to seek relief under HRS § 632-1. However, Hawai'i case law is clear that an action for declaratory relief under HRS § 632-1 does not lie where the legislature has mandated that relief be sought pursuant to HRS § 91-14(a). Punohu v. Sunn, 66 Haw. 485, 666 P.2d 1133 (1983). Here, the statutory remedy under HRS § 91-14(a) is available to Appellants. The Court disagrees with Appellants' argument that it is futile to pursue an administrative remedy given that Appellants have not participated in the evidentiary hearing ordered in the Prehearing Order, and that the BLNR is empowered to review any findings and conclusions of the Hearing Officer or render findings and conclusions of its own. Accordingly, Appellants may not invoke HRS § 632-1 as an alternative to seeking relief pursuant to HRS § 91-14(a). To the extent Appellants brought the instant action pursuant to HRS § 632-1, the action is dismissed.

IV. CONCLUSION

IT IS HEREBY ORDERED that the Motion is GRANTED. The instant action is dismissed without prejudice.

DATED: Honolulu, Hawai'i, _____

AUG 15 2005

EDEN ELIZABETH HIFO



JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

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Na Moku Aupuni O Ko'olau Hui, et al. v. State, et al., Civil No. 05-1-0671-04; ORDER GRANTING APPELLEES ALEXANDER & BALDWIN, INC., AND EAST MAUI IRRIGATION CO., LTD'S MOTION TO DISMISS APPELLANTS NA MOKU AUPUNI O KO'OLAU HUI, BEATRICE KEKAHUNA, MARJORIE WALLETT, AND MAUI TOMORROW'S NOTICE OF APPEAL TO CIRCUIT COURT, STATEMENT OF THE CASE, AND DESIGNATION OF RECORD ON APPEAL FILED APRIL 18, 2005, AND AMENDED NOTICE OF APPEAL TO CIRCUIT COURT FILED APRIL 20, 2005 (Filed May 9, 2005)

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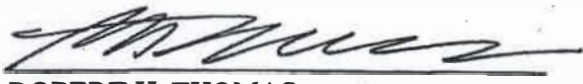
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