IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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RANGER INSURANCE COMPANY, Plaintiff-Appellee

vs.

SHU HUA KAO HINSHAW, Real Party in Interest-Appellant

and

JUAN RAMON RIVAS, KYOKO TAKEDA, DAVID REARDON, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, NATIONWIDE INSURANCE COMPANY, JOHN DOES 1-10, DOE PARTNERSHIPS 1-10, DOE CORPORATIONS 1-10, Defendants
(CIV. NO. 98-0477)

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, AN Illinois Corporation, Plaintiff

vs.

FRANK HINSHAW; JUAN RAMON RIVAS; SKYDIVE ACADEMY OF HAWAII CORPORATION, dba SKYDIVE HAWAII; and KYOKO TAKEDA, Defendants
(CIV. NO. 98-0159)

NO. 22532

APPEAL FROM THE FIRST CIRCUIT COURT

NOVEMBER 14, 2003

MOON, C.J., LEVINSON, NAKAYAMA, AND DUFFY, JJ., AND ACOBA, J., CONCURRING IN PART AND DISSENTING IN PART

OPINION OF THE COURT BY NAKAYAMA, J.

Defendant-appellant Skydive Academy of Hawaii[1] (Skydive) appeals from the April 21, 1999 order of the circuit court of the first circuit, the Honorable Kevin S.C. Chang presiding, denying Skydive's motion, filed on December 17, 1998, for an award of attorneys' fees and costs. On appeal, Skydive

[1] On December 13, 2001, a motion to substitute Shu Hua Kao Hinshaw for Skydive Hawaii as the real party in interest was approved by the court.

argues that the circuit court erroneously (1) ruled that Skydive failed to meet its burden of proving that it was entitled to an award of attorneys' fees and costs and (2) failed to award attorneys' fees pursuant to Hawai'i Revised Statutes (HRS) §§ 607-14 (Supp. 2002),[2] 431:10-242 (1993),[3] 632-3 (1993),[4] 607-9

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[2] HRS § 607-14 provides in relevant part:

> In all the courts, in all actions in the nature of assumpsit, and in all actions on a promissory note or other contract in writing that provides for an attorney's fee, there shall be taxed as attorney's fees, to be paid by the losing party and to be included in the sum for which execution may issue, a fee that the court determines to be reasonable; provided that the attorney representing the prevailing party shall submit to the court an affidavit stating the amount of time the attorney spent on the action . . . . The court shall then tax attorneys' fees, which the court determines to be reasonable, to be paid by the losing party[.]

[3] HRS § 431:10-242 provides:

> Where an insurer has contested its liability under a policy and is ordered by the courts to pay benefits under the policy, the policyholder, the beneficiary under a policy, or the person who has acquired the rights of the policyholder or beneficiary under the policy shall be awarded reasonable attorney's fees and the costs of suit, in addition to the benefits under the policy.

[4] HRS § 632-3 provides that "[f]urther relief based on a declaratory judgment may be granted whenever necessary or proper, after reasonable notice and hearing, against any adverse party whose rights have been adjudicated by the judgment."

(1993),[5] and Hawai‘i Rules of Civil Procedure (HRCP) Rule 54(d).[6] Because the circuit court failed to adequately explain its denial of Skydive's motion for costs, and the denial of attorneys' fees lacked sufficient support in the record, the circuit court abused its discretion by denying Skydive's motion for attorneys' fees and costs based solely on S. Utsunomiya Enters., Inc. v. Moomuku Country Club, 76 Hawai‘i 396, 879 P.2d 501 (1994). Accordingly, we vacate the circuit court's order and remand this case for further proceedings.

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[5] HRS § 607-9 provides:

> No other costs of court shall be charged in any court in addition to those prescribed in this chapter in any suit, action, or other proceeding, except as otherwise provided by law.
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> All actual disbursements, including but not limited to, intrastate travel expenses for witnesses and counsel, expenses for deposition transcript originals and copies, and other incidental expenses, including copying costs, intrastate long distance telephone charges, and postage, sworn to by an attorney or a party, and deemed reasonable by the court, may be allowed in taxation of costs. In determining whether and what costs should be taxed, the court may consider the equities of the situation.

[6] HRCP Rule 54(d) provides in relevant part:

> (1) Costs other than attorneys' fees. Except when express provision therefor is made either in a statute or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the State or a county, or an officer or agency of the State or a county, shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on 48 hours' notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court.
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> (2) Attorneys' Fees.
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> (A) Claims for attorneys' fees and related nontaxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to be proved at trial.
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> (B) Unless otherwise provided by statute or order of the court, the motion must be filed and served no later than 14 days after entry of an appealable order or judgment; must specify the judgment and the statute, rule, or other grounds entitling the moving party to the award; and must state the amount or provide a fair estimate of the amount sought. If directed by the court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which claim is made. . . .

I. BACKGROUND

A. Factual Background

On August 27, 1995, Kyoko Takeda (Takeda), a Japanese tourist, and her friends registered and paid for a skydiving session with Skydive. Because the military was using Dillingham Airfield, Skydive attempted to entertain Takeda and the group by taking them sightseeing. At one stop, Juan Rivas (Rivas), an employee of Skydive, rode up on his motorcycle. Translating for the group, the bus driver asked if anyone wanted to ride on the motorcycle, and everyone responded in the negative. Rivas then entered the bus and escorted Takeda off the bus. The bus left and Takeda felt that she had to go with Rivas. While Rivas and Takeda were on the motorcycle, Rivas rear ended a motor vehicle operated by David Reardon (Reardon), and both Rivas and Takeda were ejected from the motorcycle.

B. Procedural Background

1. Takeda's suit, Civil No. 97-3031-07

On May 21, 1998, Takeda filed a second amended complaint against Rivas, Skydive, Reardon, and unnamed Doe defendants, alleging that Rivas negligently operated the motorcycle and that Skydive was liable because Rivas was acting within the scope of his employment.[7] Takeda alleged that she sustained (1) "multiple bodily injuries including, but not limited to, injuries to her head, neck, back, legs, and hands," (2) mental and emotional distress, (3) loss of income, (4) diminished earning capacity, (5) limitation of activities, (6)

[7] The record on appeal does not provide ample information regarding Takeda's lawsuit. This court, however, may take judicial notice of the record in Civil No. 97-3031, pursuant to Hawai'i Rules of Evidence (HRE) Rule 201, to provide an account of Takeda's lawsuit. See State v. Shimabukuro, 100 Hawai'i 324, 335 n.4, 60 P.3d 274, 285 n.4 (2002) (Nakayama, J., dissenting).

loss of enjoyment of life, and (7) medical, rehabilitative, and miscellaneous expenses. Takeda sought general and special damages "in an amount to be determined at trial."

Ranger's answering brief explains that, at the time of the accident, Skydive was insured under a commercial general liability insurance policy issued by the plaintiff-appellee Ranger Insurance Company (Ranger) as well as under an automobile insurance policy issued by State Farm Mutual Automobile Insurance Company (State Farm). State Farm provided Skydive's defense, subject to a reservation of rights, and Ranger provided Rivas's defense, also subject to a reservation of rights. Ranger further agreed to provide Skydive a defense as an excess insurer, subject to a reservation of rights. Reardon's automobile insurer, Nationwide Insurance Company (Nationwide), provided Reardon's defense.

All parties entered into court annexed arbitration, and, on October 10, 1998, a sealed arbitration award was filed with the circuit court. Following a settlement conference, the case was settled for $225,000. State Farm and Ranger agreed to pay $100,000 each, and Nationwide agreed to pay $25,000. On February 24, 1999, all parties stipulated to a dismissal of all claims with prejudice. With the exception of Skydive reserving its claim against Ranger for attorneys' fees and costs, all parties also agreed to bear their own attorneys' fees and costs.

2. State Farm's complaint for declaratory judgment, Civil No. 98-0159-01, and Ranger's complaint for declaratory judgment, Civil No. 98-0477-02

On January 14, 1998, prior to the arbitration award and the settlement agreement, State Farm filed a complaint for declaratory judgment, praying that the circuit court adjudge its

rights, duties, and liabilities under its policy issued to Skydive. On February 3, 1998, Ranger filed a complaint for declaratory judgment, praying that the circuit court declare that (1) Ranger's policy did not cover the claims alleged in Takeda's complaint, (2) Ranger had no duty to indemnify Skydive, and (3) Ranger was entitled to attorneys' fees. On April 20, 1998, the circuit court granted Skydive's March 10, 1998 motion to consolidate State Farm's and Ranger's complaints for declaratory relief.

On October 30, 1998, following the settlement agreement, Skydive noticed the deposition of Ranger's claim adjuster, Paul H. Leonard (Leonard). On November 5, 1998, Ranger filed a motion for a protective order regarding Leonard's deposition and for leave to dismiss its declaratory judgment action (Civil No. 98-0477-02). On November 9, 1998, Skydive filed a motion to withdraw its notice of taking Leonard's deposition. On December 15, 1998, the circuit court dismissed Ranger's complaint for declaratory relief with prejudice.

On January 11, 1999, State Farm and Skydive filed a stipulation to dismiss State Farm's complaint for declaratory relief, Civil No. 98-0159-01, with prejudice. Pursuant to the stipulation, State Farm agreed to dismiss all claims against Skydive with prejudice. The parties further agreed that "[e]ach party shall bear his or its own attorneys' fees and costs; except that Frank Hinshaw and Skydive Hawaii reserve the right to seek recovery of their attorneys' fees and costs from Ranger Insurance Company."

3. Attorneys' Fees

On December 17, 1998, Skydive filed a motion for attorneys' fees and costs against Ranger for $56,947.42 in

attorneys' fees and $2,685.18 in costs associated with Takeda's lawsuit, State Farm's declaratory action, and Ranger's declaratory action. On April 21, 1999, the circuit court denied Skydive's December 17, 1998 motion for attorneys' fees and costs. The court simply stated that Skydive had "failed to sustain its burden of establishing valid legal grounds for an award of attorneys' fees and costs in this action," citing S. Utsunomiya Enters., Inc. On May 20, 1999, Skydive filed a timely notice of appeal.

II. STANDARD OF REVIEW

A. Attorneys' Fees

> This court reviews the circuit court's denial and granting of attorney's fees under the abuse of discretion standard. The trial court abuses its discretion if it bases its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence. Stated differently, an abuse of discretion occurs where the trial court has clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant.

TSA Int'l Ltd. v. Shimizu Corp., 92 Hawai'i 243, 253, 990 P.2d 713, 723 (1999) (citations, brackets, and internal quotation marks omitted).

B. Interpretation of a Statute or Rule

"When interpreting rules promulgated by the court, principles of statutory construction apply. Interpretation of a statute is a question of law which we review de novo." Molinar v. Schweizer, 95 Hawai'i 331, 334-35, 22 P.3d 978, 981-82 (2001) (citations and quotation marks omitted).

III. DISCUSSION

In its motion for attorneys' fees, Skydive requested attorneys' fees and costs incurred in (1) Takeda's lawsuit, (2) State Farm's declaratory action, and (3) Ranger's declaratory

action. On appeal, Skydive argues that the circuit court erroneously (1) ruled that Skydive failed to meet its burden of proving that it was entitled to an award of attorneys' fees and costs, and (2) failed to award attorneys' fees pursuant to HRS §§ 607-14, 431:10-242, 632-3, 607-9, and HRCP Rule 54(d). Because the circuit court failed to adequately explain the denial of costs, and, in our view, the denial of attorneys' fees lacked sufficient support in the record, we hold that the circuit court abused its discretion by denying Skydive's motion for attorneys' fees and costs based solely on S. Utsunomiya Enters., Inc.

"Generally, under the 'American Rule,' each party is responsible for paying for his or her own litigation expenses." TSA Int'l. Ltd., 92 Hawai'i at 263, 990 P.2d at 734 (citations omitted). An exception exists to the "American Rule" in which "attorneys' fees may be awarded to the prevailing party where such an award is provided for by statute, stipulation, or agreement." Id. (citations omitted). Because HRS § 607-14 provides that attorneys' fees be paid by the "losing party" and HRCP Rule 54(d) awards costs to the "prevailing party," this court must first determine whether Skydive was a "prevailing party" and Ranger a "losing party" when Ranger voluntarily dismissed its declaratory action against Skydive.

A. In Ranger's declaratory action, Skydive is the "prevailing party" and Ranger is the "losing party" for purposes of applying HRS § 607-14 and HRCP Rule 54(d).

Skydive argues that it is the "prevailing party" and that Ranger is the "losing party." Ranger argues that there is no prevailing party and no losing party because there was no judgment on the merits. Neither HRS § 607-14 nor HRCP Rule 54(d) require a judgment on the merits.

1. HRS § 607-14

In Wong v. Takeuchi, 88 Hawai'i 46, 49, 961 P.2d 611, 614 (1998), this court held that a defendant was the prevailing party within the meaning of HRS § 607-14 when the plaintiff's action was dismissed by summary judgment on the grounds of laches or statute of limitations. "Usually the litigant in whose favor judgment is rendered is the prevailing party . . . . Thus, a dismissal of the action, whether on the merits or not, generally means that defendant is the prevailing party." Id. (quoting Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 2667 (1983)). This court further stated that "[t]here is no requirement that the judgment in favor of the prevailing party be a ruling on the merits of the claim." Id. In affirming its holding in Wong, this court held in Blair v. Ing, 96 Hawai'i 327, 331, 31 P.3d 184, 189 (2001), that "a defendant who succeeds in obtaining a judgment of dismissal is a prevailing party for the purpose of fees under HRS § 607-14."[8]

In Kona Enters. v. Estate of Bernice Pauahi Bishop, 229 F.3d 877, 889 (9th Cir. 2000), the plaintiffs contended that they should not be liable for attorneys' fees because they voluntarily dismissed their claims with prejudice. The United States Court of Appeals for the Ninth Circuit rejected the plaintiffs' argument because "Wong unequivocally held that any dismissal that results in judgment is sufficient to support an award of attorneys' fees under Hawai'i law." Id. The court further

[8] Blair also overruled Shanghai Inv. Co. v. Alteka Co., Ltd., 92 Hawai'i 482, 502, 993 P.2d 516, 536 (2000), Shubert v. Saluni, 9 Haw. App. 591, 597, 855 P.2d 858, 861 (1993), and Yoshida v. Nobrega, 39 Haw. 254, 256-57 (1952), to the extent that they held to the contrary. Ranger cited Yoshida and Shubert for the proposition that a judgment must be on the merits to award attorneys' fees pursuant to HRS § 607-14. It should be noted that Blair was published after the circuit court issued its decision and the briefs in the instant case were filed.

stated that it "has similarly held that a voluntary dismissal of a diversity action with prejudice is 'tantamount to a judgment on the merits' for purposes of attorneys' fees awards." Id. (quoting Zenith Ins. Co. v. Breslaw, 108 F.3d 205, 207 (9th Cir. 1997)).

In the instant case, Ranger voluntarily dismissed its declaratory judgment action against Skydive. Notwithstanding Ranger's assertion, the plain language of HRS § 607-14 does not require a judgment on the merits. Wong and Kona Enters. illustrate that a dismissal of Ranger's action, albeit voluntary, is sufficient to deem a defendant to be the prevailing party and the plaintiff the losing party. Thus, Skydive is the "prevailing party" and Ranger is the "losing party" for the purpose of awarding attorneys' fees pursuant to HRS § 607-14.

2. HRCP Rule 54(d)

Again, Wong determined that a dismissal, on the merits or not, generally renders the defendant the prevailing party for purposes of awarding attorneys' fees and costs. Wong, 88 Hawai'i at 49, 961 P.2d at 614. Additionally, federal appellate courts have held that a voluntary dismissal sufficiently confers prevailing party status on a defendant. Zenith Ins. Co., 108 F.3d at 207 (holding that a voluntary dismissal "was sufficient to confer prevailing party status on the [] defendants"); Schwarz v. Folloder, 767 F.2d 125, 130 (5th Cir. 1985) (holding that "[b]ecause a dismissal with prejudice is tantamount to a judgment on the merits, the defendant . . . is clearly the prevailing party and should ordinarily be entitled to costs"). Because HRCP Rule 54(d) is patterned after the Federal Rules of Civil Procedure (FRCP) Rule 54(d), "interpretations of the rule by the federal courts are highly persuasive in the reasoning of this

court." Molinar v. Schweizer, 95 Hawai'i 331, 336, 22 P.3d 978, 983 (2001).

In the instant case, Ranger voluntarily dismissed its declaratory action against Skydive. According to Hawai'i and federal law, Ranger's voluntary dismissal of its declaratory judgment action is sufficient to render Skydive the prevailing party. Thus, for the purpose of awarding costs pursuant to HRCP Rule 54(d), Skydive is the "prevailing party" and Ranger is the "losing party."[9]

B. The circuit court abused its discretion by denying costs without an adequate explanation.

Skydive argues that costs should be awarded as a consequence of Ranger's breach of duty to defend Skydive. Ranger argues that costs should not be awarded because the declaratory judgment action was voluntarily dismissed with prejudice and Skydive is not at risk of future litigation. Both arguments are without merit. Nonetheless, the circuit court erred by failing to adequately explain its denial of costs.

HRCP 54(d) states that "costs shall be allowed as of course to the prevailing party unless the court otherwise

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[9] The dissent suggests that "a defendant would acquire prevailing party status based only on some judicial declaration to the defendant's benefit, unless the defendant shows that the plaintiff's 'voluntary' dismissal was to avoid a disfavorable judgment on the merits." Dissent's Opinion at 11. To follow the dissent's suggestion would require the trial courts to conduct a "mini-trial" to determine whether the voluntary dismissal was to avoid a disfavorable judgment on the merits. Cf. Troyer v. Adams, 102 Hawai'i 399, 426, 77 P.3d 83, 110 (2003) (explaining that legislative intent to simplify procedures and reduce costs associated with claims involving joint tortfeasors would be difficult to accomplish if the trial courts were required to conduct "mini trials" to determine a party's likely proportionate liability). Such "mini trials" would clog the trial courts, discourage settlements, and frustrate judicial economy. Id. at 427, 77 P.3d at 111 ("It [would] clog our trial courts with unnecessary hearings, discourage the settlement of legitimate claims, and severely strain the resources of the parties and the trial and appellate courts of this state.") (Quoting Tech-Bilt, Inc. v. Woodward-Clyde & Assocs., 38 Cal.3d 488, 502, 213 Cal.Rptr. 256, 265, 698 P.2d 159, 168 (Cal. 1985) (Bird, C.J., dissenting) (brackets in original).).

directs[.]" A presumption exists in favor of awarding costs to the prevailing party and that presumption must be overcome by the losing party. Wong, 88 Hawai'i at 52, 961 P.2d at 617. Furthermore, a court must adequately explain its reasons for denying or reducing costs unless its reasons are clear from the record. Id.

> Rule 54(d) creates a strong presumption that the prevailing party will recover costs . . . . [T]he court may not deny costs to the prevailing party without explanation, unless the circumstances justifying denial of costs are plain from the record. Not only must the court explain its reasons for denying costs to the prevailing party, but the reasons given must also be adequate. The presumption that the prevailing party is entitled to costs must be overcome by some showing that an award would be inequitable under the circumstances. The losing party bears the burden of making this showing.

Id. (quoting 10 Moore's Federal Practice 54.101(1)(a-b) (3d ed. 1998)) (emphasis added); see also Schefke v. Reliable Collection Agency, 96 Hawai'i 408, 459, 32 P.3d 52, 103 (2001) (vacating and remanding the court's order as to costs because "the court did not explain its ruling, and its reasons for doing so are not readily discernible"); Finley v. Home Ins. Co., 90 Hawai'i 25, 38, 975 P.2d 1145, 1158 (1998) (holding that the "circuit court abused its discretion in reducing the amount of taxable costs awarded without explanation or a readily discernable rationale"); Zenith, 108 F.3d at 207 (remanding "because the district court failed to explain its decision in any detail").

In the instant case, a presumption exists that Skydive, as the prevailing party, should be awarded costs. Ranger's argument that there is no risk of future litigation is insufficient to overcome the presumption of awarding costs. Nonetheless, the circuit court denied costs, stating that Skydive "failed to sustain its burden of establishing valid legal grounds for an award of attorneys' fees and costs in this action[]" and

then cited to S. Utsunomiya Enters., Inc. S. Utsunomiya Enters., Inc. did not address costs, and the record is devoid of any evidence of impropriety on Skydive's part. Thus, the circuit court failed to provide any adequate explanation for denying Skydive's motion for costs, pursuant to HRCP Rule 54(d) as defined by HRS § 609-7, and the same is not clear from the record.

C. The circuit court abused its discretion by denying attorneys' fees based solely on S. Utsunomiya Enters., Inc.

Unlike costs pursuant to HRCP Rule 54(d), attorneys' fees pursuant to HRS § 607-14 are not presumptive and do not require an "adequate explanation" by the court. Finley, 90 Hawai'i at 39, 975 P.2d at 1159 (declining to extend the holding in Wong to attorneys' fees pursuant to HRS § 607-14). "The reasonableness of an expenditure of attorneys' fees is a matter within the discretion of the circuit court . . . [and, thus, a] detailed explanation of the rationale underlying the reduction in attorneys' fees awarded is not necessary." Id. However, the denial or reduction of attorneys' fees must have support in the record.

In the instant case, the circuit court's denial of attorneys' fees lacks sufficient support in the record. In its order denying attorneys' fees, the circuit court stated that Skydive "failed to sustain its burden of establishing valid legal grounds for an award of attorneys' fees and costs in this action," citing to S. Utsunomiya Enters., Inc. In S. Utsunomiya Enters., Inc., this court held that it "ha[d] jurisdiction to award reasonable attorneys' fees incurred on appeal . . . if the requirements of HRAP 39(d) and HRS § 607-14 are met." HRAP Rule 39(d) was not relevant to the circuit court's order, inasmuch as

it pertains only to appellate procedure. Thus, the remaining explanation for the circuit court's denial of attorneys' fees is that Skydive failed to meet the requirements of HRS § 607-14.

As indicated supra at note 2, HRS § 607-14 provides,

> In all the courts, in all actions in the nature of assumpsit, and in all actions on a promissory note or other contract in writing that provides for an attorney's fee, there shall be taxed as attorney's fees, to be paid by the losing party and to be included in the sum for which execution may issue, a fee that the court determines to be reasonable; provided that the attorney representing the prevailing party shall submit to the court an affidavit stating the amount of time the attorney spent on the action.

Although the declaratory action was not premised upon a promissary note or other written contract that provided for attorneys' fees, it was in the nature of assumpsit. "Under Hawai'i case law, an action in the nature of assumpsit includes all possible contract claims." Leslie v. Estate of Tavares, 93 Hawai'i 1, 5, 994 P.2d 1047, 1051 (2000) (citation and internal quotation marks omitted). "The character of the action should be determined from the facts and issues raised in the complaint, the nature of the entire grievance, and the relief sought." Id. at 6, 994 P.2d at 1052.

In the instant case, Ranger filed a complaint against Skydive seeking a declaration that the policy that it issued to Skydive did not insure against liability for the claims alleged in Takeda's lawsuit. It is undisputed that the insurance policy is a contract between Skydive and Ranger. Thus, the declaratory action is in the nature of assumpsit, and Skydive met the requirements of HRS § 607-14 as discussed in S. Utsunomiya Enters., Inc. Accordingly, the circuit court erred when it based its denial on S. Utsunomiya Enters., Inc.

D. The circuit court did not abuse its discretion by denying attorneys' fees and costs pursuant to HRS §§ 431:10-242 and 632-3.

1. HRS § 431:10-242

Skydive is not entitled to attorneys' fees and costs pursuant to HRS § 431:10-242. The plain language of HRS § 431:10-242 states that "[w]here an insurer has contested its liability under a policy and is ordered by the courts to pay benefits under the policy, the policyholder . . . shall be awarded reasonable attorney's fees and the costs of the suit, in addition to the benefits under the policy." (Emphasis added.) In the instant case, although Ranger contested its liability under the policy issued to Skydive, it was not ordered by the court to pay any benefits thereunder. Thus, HRS § 431:10-242 is inapplicable, and we therefore affirm the circuit court's order in that respect.

2. HRS § 632-3

Skydive is not entitled to attorneys' fees and costs pursuant to HRS § 632-3. The plain language of HRS § 632-3 states that "[f]urther relief based on a declaratory judgment may be granted whenever necessary or proper, after reasonable notice and hearing, against any adverse party whose rights have been adjudicated by the judgment." (Emphasis added.) In the instant case, because the declaratory judgment was voluntarily dismissed, the court did not adjudicate the rights of any party. Thus, HRS § 632-3 is inapplicable, and we therefore affirm the circuit court's order in that respect as well.

IV. CONCLUSION

Accordingly, the circuit court's order is vacated, and this case is remanded for the following further proceedings: (1)

a determination as to whether costs should be awarded pursuant to HRCP Rule 54(d), as defined by HRS § 609-7, and if costs are denied, a recitation of adequate reasons for the denial; and (2) a determination as to whether attorneys' fees should be awarded pursuant to HRS § 607-14.

On the briefs:

Philip S. Nerney
(J. Ken Peterson with
him on the brief) for
defendant-appellant

Diane W. Wong (Calvin E.
Young with her on the
brief) for plaintiff-
appellee