
NO. 22610

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

RODERICK CASINO; SHIRLY LAYUGAN; EVANGELINE LOSBOG;
UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO,
Plaintiffs-Appellants

vs.

STATE OF HAWAI'I, DEPARTMENT OF HEALTH; CHIYOME L. FUKINO, M.D.,¹
DIRECTOR, in her official capacity as Director, Department
of Health; LINDA LINGLE,² in her official capacity as
Governor of the State of Hawai'i; INTER-STATE PHARMACY
CORP.; PHARMACY CORPORATION OF AMERICA, Defendants-Appellees

and

JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10;
DOE PARTNERSHIPS 1-10; ROE NON-PROFIT ORGANIZATIONS 1-10;
and ROE GOVERNMENTAL ENTITIES 1-10, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 97-2127)

AMENDED SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama,
Acoba, and Duffy, JJ.)

Plaintiffs-Appellants Roderick Casino, Shirly Layugan,
Evangeline Losbog (Plaintiffs Employees), and United Public
Workers (UPW), AFSCME, Local 646, AFL-CIO (collectively,

¹ Pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 43(c)(1), Chiyome L. Fukino, M.D., the current Director of the State of Hawai'i Department of Health, has been substituted for Lawrence Miike, the director at the time this case was decided by the first circuit court.

² Pursuant to HRAP Rule 43(c)(1), Linda Lingle, the current Governor of the State of Hawai'i, has been substituted for Benjamin Cayetano, the Governor at the time this case was decided by the first circuit court.

Plaintiffs) appeal from the May 18, 1999 Findings of Fact (findings), Conclusions Of Law (conclusions), and dismissal of the complaint by the first circuit court³ (the court).⁴ This appeal involves the privatization of governmental services provided by civil servants since the early 1980s at the Pharmacy (the Pharmacy) of the Hawai'i State Hospital (HSH). In 1995, the Pharmacy staff at the HSH consisted of eleven civil service positions. All of the permanent paramedical assistant (PMA) civil service positions at the HSH were assigned to bargaining unit 10 represented by UPW.

On April 27, 1995, the State issued an Invitation for Bids for Furnishing Pharmaceutical Services for HSH. On May 12, 1995, Plaintiff Employees were informed that the Pharmacy work would be turned over to Defendant-Appellee Inter-State Pharmacy Corporation (IPC) beginning May 15, 1995. On or about May 13, 1995, written notice of the May 15 privatization was posted on the Pharmacy bulletin board for employees to read. The court found that on May 15, 1995, IPC assumed operational control of the Pharmacy operations.

In June 1995, the State and IPC (collectively

³ The Honorable Marie N. Milks presided over this matter.

⁴ Plaintiffs also list the following on appeal: (1) the order of the court denying Plaintiffs' motion for summary judgment filed on August 10, 1998; and (2) the court's order denying Plaintiffs' eighth motion in limine to exclude testimony on inability to comply with state Pharmacy and Pharmacists laws, filed on January 13, 1999. Plaintiffs "present[] no discernable argument in support" of the appeal of these orders; "therefore it is our prerogative to disregard th[ese] claim[s]." State v. Moore, 82 Hawai'i 202, 206 n.1, 921 P.2d 122, 126 n.1 (1996).

Defendants) signed Contract No. 39370, an agreement for IPC to provide pharmaceutical service for HSH for the period of July 1, 1995 through June 30, 1996. The State extended Contract 39370 through June 30, 1997. IPC sold its pharmacies to Defendant-Appellee Pharmacy Corporation of America (IPC/PCA), and assigned contract 39370 and Supplemental Agreement No. 1 to PCA effective January 1, 1997. In February 1997, this court issued Konno v. County of Hawai'i, 85 Hawai'i 61, 937 P.2d 397 (1997), which held that the privatization of public services violated civil service laws and merit principles. Id. at 65, 937 P.2d at 401.

On May 22, 1997, Plaintiffs filed this lawsuit. Plaintiffs challenged the validity of Contract 39370 between the State and IPC/PCA. On July 20, 1998, Act 230 became effective. See 1998 Haw. Sess. Law Act 230, at 785, 789-90. Act 230 allows state or county officials to contract with a private entity to provide goods, services, or construction notwithstanding civil service laws, merit principles, and collective bargaining laws. See 1998 Haw. Sess. Law Act 230, at 785, 789-90.

On appeal, Plaintiffs contest the court's May 18, 1999 dismissal of their complaint and argue, inter alia, that the court erred in: 1) finding that UPW lacked standing as a plaintiff; 2) retroactively applying Act 230 and finding the complaint moot;⁵ and 3) applying the statute of limitations to

⁵ Plaintiffs also argued that the court erred in: 1) finding applicable, and applying the exhaustion doctrine; 2) concluding that Hawaii's civil service laws were preempted by the 1995 Stipulation and Order;

(continued...)

dismiss the complaint in light of public policy and equitable issues alleged therein. Plaintiffs are correct as to their second argument and assuming arguendo that UPW had standing, it is incorrect as to their final argument.

The court erred in retroactively applying Act 230 to find the complaint moot. Initially, the court was wrong in its determination that "the 1995 Contract which Plaintiffs seek to nullify expired on September 30, 1998." Although Defendants put out an invitation to bid on specifications not contained in Contract 39370 with an advertisement date of July 24, 1998, this bid was cancelled. In actuality, PCA continued to provide the pharmaceutical services under Contract 39370. The State did not enter into a new contract after July 20, 1998, but extended Contract 39370. Hence, Contract 39370 did not expire on September 30, 1998.

The court was also wrong in deciding that Act 230 applied to this case. Section 14(a) of Act 230 states that "[t]his Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun prior to the effective date of this Act[, July 20, 1998]." The alleged violation of Plaintiffs "rights," namely the "privatiz[ation of] the . . . [civil] worker positions in

⁵(...continued)

3) misinterpreting and misapplying HRS §§ 76-6 and 76-16(17) in violation of constitutional and statutory merit principles; and 4) failing to extend to employees of the Pharmacy the protection of merit principles under Art. XVI § 1 of the Hawai'i Constitution and to grant Plaintiffs relief consistent with Konno.

question," occurred prior to the July 20, 1998 effective date of Act 230. See Konno, 85 Hawai'i at 64, 937 P.2d at 400. The present proceedings, filed May 22, 1997, also "were begun prior to" July 20, 1998, "the effective date" of Act 230. Since Plaintiffs' "rights . . . matured," and their May 22, 1997 complaint commenced proceedings "prior to the effective date of [Act 230]," Act 230 does not apply to the present case.

However, assuming arguendo that UPW had standing, the court correctly held that the statute of limitations barred Plaintiffs' complaint. In conclusion 2, the court, citing Vail v. Employees' Ret. Sys., 75 Haw. 42, 54-55, 856 P.2d 1227, 1235 (1993), held that "[i]t is well established that a claim 'first accrues' under HRS § 661-5 when a plaintiff knew or reasonably should have known, that an actionable wrong has been committed against him or her." The court's conclusion that the State committed an "actionable wrong" against Plaintiffs when the State sent UPW the January 26, 1995 letter informing it that Pharmacy operations would be privatized, is arguable.⁶

⁶ Transmittal of the January 26, 1995 letter might not constitute an actionable wrong, but may be viewed as merely forewarning Plaintiffs that an injury was going to occur in the future. The letter stated that "[t]he purpose of th[e] letter is to inform you that [HSH] will be closing its Pharmacy effective May 18, 1995" and that the State would keep Plaintiffs "informed on the status of the relocation of staff from the Pharmacy." On the other hand, the letter may be viewed as indicative of the State's decision to privatize, and the decision itself treated as the actionable wrong. The Department of Health's response letter to UPW's inquiries stated that, as of March 21, 1995, "no bid ha[d] been announced . . . [and] no contractor ha[d] been selected," but HSH "intend[ed] to contract for pharmacy services . . . through a private contractor[] not later than May 1, 1995." (Emphasis added.) Thus, as of January 26, 1995, it is not clear whether an "actionable wrong" had been committed against Plaintiffs Employees, such that "Plaintiffs knew or should have known that an actionable wrong [had] been committed." (Emphasis (continued...))

However, the court also found that “[o]n May 12, 1995, Plaintiff Employees . . . were informed that the pharmacy work would be turned over to IPC/PCA beginning May 15, 1995, that “on or about May 13, 1995, written notice of the May 15, 1995 privatization was posted on the Pharmacy bulletin board for employees to read[,]” and that “[o]n May 15, 1995, IPC/PCA assumed operational control of the Pharmacy. Under these findings, Plaintiffs “knew or should have known,” on May 15, 1995 at the very latest, that “an actionable wrong had been committed.” See Vail, 75 Haw. at 54-55, 856 P.2d at 1235; Norris v. Six Flags Theme Parks, Inc., 102 Hawai‘i 203, 206, 74 P.3d 26, 29 (2003) (stating that “the moment at which a statute of limitations is triggered is ordinarily a question of fact” (citing Blair v. Ing, 95 Hawai‘i 247, 267, 21 P.3d 452, 472 (2001)). It cannot be said, under the evidence, that the court was clearly erroneous in its findings of fact. See Beneficial Hawaii, Inc. v. Kida, 96 Hawai‘i 289, 305, 30 P.3d 895, 911 (2001) (a trial court’s findings of fact are reviewed under the clearly erroneous standard). The court’s conclusion that Plaintiffs’ May 22, 1997 complaint was filed more than two years after May 15, 1995, and, thus, was barred by the statute of limitations, HRS § 661-5, was correct.

Plaintiffs assert that the court erred in applying the statute of limitations because it alleged public policy and

⁶(...continued)
added.) See Vail, 75 Haw. at 54-55, 856 P.2d at 1235.

equitable issues. This court has held that "[a] court in equity is not bound by the statute of limitations, but, in the absence of extraordinary circumstances, it will usually grant or withhold relief in analogy to the statute of limitations relating to law actions of like character." Yokochi v. Yoshimoto, 44 Haw. 297, 300, 353 P.2d 820, 823 (1960) (emphases added) (citations omitted); Small v. Badenhop, 67 Haw. 626, 640, 701 P.2d. 647, 656 (1985). "Inasmuch as the plaintiffs invoked the court's power to do equity, our primary concern is with laches." Id. at 639, 701 P.2d. at 656. The State informed Plaintiffs of the privatization of the Pharmacy on several occasions. The facts in the present case do not suggest any egregious conduct by the Defendants, or attempts to conceal disclosure of a cause of action by the Defendants. Thus, the circumstances "preclude any exception to the application of the statute of limitations." Yokochi, 44 Haw. at 301, 353 P.2d at 823-24.

Plaintiffs further assert that their claim against the privatization falls within a "continuing violation" exception to the statute of limitations. Plaintiffs, however, cite no Hawai'i authority to support their assertion that they fall within an exception to the statute of limitations because "privatization is a continuing violation."⁷ The cases cited by Plaintiffs from

⁷ Plaintiffs state as follows for this proposition: "See Davis v. Rosenblatt, 559 N.Y.S.2d 401, 404 (A.D. 3 Dept. 1990) (finding pay disparity of sitting judges continuously accruing); Sigurdson v. Isanti County, 448 N.W.2d 62 (Minn. 1989) (finding failure to advance female employee to position was continuing violation which extended time of prescribed statute of limitations); Intermedics v. Grady, 683 S.W.2d 842, 845-46 (Tex. App. 1985) (continued...)

various other jurisdictions are inapposite to the case at hand.
Therefore,

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the court's May 18, 1999 dismissal of Plaintiffs' May 22, 1997 complaint, from which the appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, January 12, 2004.

On the briefs:

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⁷(...continued)
(cause of action arises with each payment of continuing contract; 509 Sixth Avenue Corp. v. N.Y. City Transit Auth., 15 N.Y.2d 486, 488 (N.Y. App. 1964) (finding an encroaching structure was a continuing trespass that gave rise to successive causes of action)."