

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

BILL SOUTHWOOD, VALERIE YAMADA SOUTHWOOD, AND
MICHAEL A.S. CHUN, Plaintiffs-Appellants

vs.

EDWIN SHIROMA, TOBY MARTYN, EARL ANZAI, AND
KOREN KUBOTA, Defendants-Appellees

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 98-1896)

SUMMARY DISPOSITION ORDER

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

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve the plaintiffs-appellants Bill Southwood, Valerie Yamada Southwood, and Michael A.S. Chun's points of error as follows:

(1) The plaintiffs-appellants argue that the circuit court judge was required to recuse herself because she ruled in a prior litigation between the same parties with respect to an issue that also arises in the present matter. We hold that the circuit court judge was not required to recuse herself, inasmuch as the plaintiffs failed to adduce evidence that the judge was personally biased, prejudiced, or otherwise unable to carry out her judicial responsibilities with integrity, impartiality, and competence. See TSA Int'l Ltd. v. Shimizu Corp., 92 Hawai'i 243, 253-55, 990 P.2d 713, 723-25 (1999).

(2) The plaintiffs-appellants argue that the doctrines of res judicata and law of the case barred the defendants-appellees' second motion for summary judgment after a virtually identical prior motion had been denied by the circuit court for

failure to properly authenticate its attached exhibits. We hold that the doctrines of res judicata and law of the case did not preclude the circuit court from entertaining the defendants' second motion for summary judgment, inasmuch as (a) final judgment had not been entered at the time the defendants filed their second motion for summary judgment, see Citizens for Protection of North Kohala Coastline v. County of Hawai'i, 91 Hawai'i 94, 102, 979 P.2d 1120, 1128 (1999), and (b) the circuit court's decision to grant the second motion was not a modification of its prior ruling because the issues decided in the order denying the first motion for summary judgment were different from the issues decided in the order granting the second motion, see Stender v. Vincent, 92 Hawai'i 355, 362, 992 P.2d 50, 57 (2000).

(3) The plaintiffs-appellants argue that genuine issues of material fact precluded summary judgment. We hold that the defendants-appellees were entitled to summary judgment in their favor (a) in their individual capacities on the basis of the statutory immunity granted by Hawai'i Revised Statutes § 26-35.5 (1993), inasmuch as the plaintiffs-appellants failed to adduce sufficient evidence that the defendants-appellees acted with actual malice or with an improper purpose, see Medeiros v. Kondo, 55 Haw. 499, 522 P.2d 1269 (1974) and Runnels v. Okamoto, 56 Haw. 1, 525 P.2d 1125 (1974), and (b) in their official capacities on the basis of the doctrine of sovereign immunity, inasmuch as the plaintiffs-appellants sought damages against the state for the defendants-appellants' past actions where no express statutory waiver of the state's immunity was applicable, see Bush v. Watson, 81 Hawai'i 474, 918 P.2d 1130 (1996). Therefore,

IT IS HEREBY ORDERED that the judgment of the first circuit court, filed on August 19, 1999, from which the appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, November 29, 2000.

On the briefs:

Charles K.Y. Khim for the
plaintiffs-appellants
Bill Southwood, Valerie
Yamada Southwood, and
Michael A.S. Chun

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Shiroma, Toby Martyn, Earl
Anzai, and Koren Kubota