
NO. 23559

IN THE SUPREME COURT OF THE STATE OF HAWAII

JAMES K. SKELLINGTON, Plaintiff-Appellant,

vs.

ANTHONY J. LOPEZ, JR., ATTILIO K. LEONARDI,¹ in his official capacity of Fire Chief for the City and County of Honolulu, and the CITY AND COUNTY OF HONOLULU, Defendants-Appellees,

and

DOE INDIVIDUALS 1-100, DOE GOVERNMENTAL ENTITIES 1-100, and DOE ENTITIES 1-100, Defendants.

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 97-1009)

SUMMARY DISPOSITION ORDER

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

Plaintiff-appellant James K. Skellington appeals from the judgment of the first circuit court, the Honorable Kevin S.C. Chang presiding, in favor of defendants-appellees Anthony J. Lopez, Jr. (Fire Chief Lopez), Attilio K. Leonardi (Fire Chief Leonardi), and the City and County of Honolulu [hereinafter collectively, defendants]. Specifically, Skellington appeals from the circuit court's final judgment, filed on June 22, 2000, dismissing Skellington's suit for want of prosecution and denying

¹ At the time this case arose, Anthony J. Lopez, Jr. was the Fire Chief for the City and County of Honolulu. The plaintiff sued Fire Chief Lopez in his individual and official capacities. Therefore, Anthony J. Lopez remains a named party in his individual capacity; pursuant to Hawai'i Rules of Appellate Procedure, Rule 43(c) (2003) (entitled "Substitution of parties"), however, the current Fire Chief, Attilio K. Leonardi, has been substituted for Anthony J. Lopez in his official capacity.

Skellington's motion to set aside the circuit court's order of dismissal.

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to the arguments advocated and the issues raised, we hold that the circuit court abused its discretion in denying Skellington's motion to set aside the October 25, 1999 order of dismissal. In Lim v. Harvis Const., Inc., 65 Haw. 71, 647 P.2d 290 (1982), this court reversed the circuit court's dismissal of the plaintiff's case for want of prosecution. This court held that the circuit court's order of dismissal could not be upheld "[a]bsent deliberate delay, contumacious conduct or actual prejudice," none of which occurred in that case: "A dismissal of a complaint is such a severe sanction, that it should be used only in extreme circumstances where there is clear record of delay or contumacious conduct . . . and where lesser sanctions would not serve the interest of justice." Lim, 65 Haw. at 73, 647 P.2d at 292 (quoting Bagalay v. Lahaina Restoration Found., 60 Haw. 125, 132, 588 P.2d 416, 422 (1978)) (internal quotation signals and block quote formatting omitted) (ellipsis in original). See also Shasteen, Inc. v. Hilton Hawaiian Village Joint Venture, 79 Hawai'i 103, 107, 899 P.2d 386, 390 (1995) ("[F]ailure to otherwise prosecute a case does not, in and of itself, support dismissal. The failure must amount to a deliberate delay on the

part of the plaintiff."); Compass Dev., Inc. v. Blevins, 10 Haw. App. 388, 396-403, 876 P.2d 1335, 1339-42 (1994) (quoting Lim and vacating the circuit court's sua sponte order of dismissal).

While dismissal of a case for want of prosecution is appropriate in many instances, and this court strongly urges counsel to timely prosecute cases or face the ultimate sanction of dismissal, the facts of this case do not warrant dismissal of Skellington's case. First, the parties were actively pursuing parallel litigation before the Hawai'i Labor Appeals Board during the pendency of the civil suit. Second, defendants did not object to Skellington's motion to set aside the circuit court's order of dismissal or his motion for reconsideration. Third, defendants did not claim in the circuit court proceeding that they were prejudiced in any way by the delay in the circuit court proceeding. Fourth, one of the bases given by the circuit court for dismissal of Skellington's case was that he failed to file a pre-trial statement, which was erroneous as Skellington had filed a pre-trial statement. Therefore,

IT IS HEREBY ORDERED that (1) the circuit court's June 22, 2000 judgment, dismissing Skellington's claims with

prejudice, is vacated; and (2) the case is remanded to the circuit court for further proceedings.

DATED: Honolulu, Hawai'i, April 27, 2004.

On the briefs:

Michael J. Green,
David J. Gierlach, and
Debra A. Kagawa for
Plaintiff-Appellant
James K. Skellington

W. Anthony Aguinaldo,
Deputy Corporation Counsel,
for Defendants-Appellees
Anthony J. Lopez, Jr.,
Attilio K. Leonardi, and
City and County of Honolulu