***** FOR PUBLICATION *****

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

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FRANCIS KAHALE, JR. and RACHAEL KAHALE,
Individually and as next friend of BRANDZIE KAHALE, a Minor,
Plaintiffs-Appellants,

vs.

CITY AND COUNTY OF HONOLULU, Defendant-Appellee

and

DOE DEFENDANTS 1-25, Defendants

and

CITY AND COUNTY OF HONOLULU,
Third-Party Plaintiff-Appellee

vs.

ALFRED ALAMEDA, Third-Party Defendant-Appellee

NO. 23934

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIV. NO. 99-1009)

MAY 12, 2004

MOON, C.J., LEVINSON, AND NAKAYAMA, JJ., WITH ACOBA, J., CONCURRING SEPARATELY AND DISSENTING, AND WITH WHOM CIRCUIT JUDGE CHAN, ASSIGNED BY REASON OF VACANCY, JOINS

OPINION OF THE COURT BY LEVINSON, J.

The plaintiffs-appellants Francis Kahale, Jr. (Francis), individually, and Rachael Kahale (Rachael), individually and as next friend of Brandzie Kahale (Brandzie), a minor [collectively, the "Plaintiffs"], appeal from (1) the

September 29, 2000 order of the first circuit court, the Honorable Sabrina S. McKenna presiding, granting the motion of the defendant-appellee City and County of Honolulu (the "City") for summary judgment, and (2) the November 9, 2000 judgment, signed by Judge McKenna, in favor of the City and against the Plaintiffs. On appeal, the Plaintiffs contend that, inasmuch as they brought suit against the City pursuant to Hawai'i Revised Statutes (HRS) § 657-7 (1993),[1] the circuit court erred in concluding that the statute of limitations governing their claims was not tolled by the provisions of HRS § 657-13(1) (1993).[2] In response, the City argues that the Plaintiffs actually brought their claim against the City pursuant to HRS § 662-4 (1993),[3] rather than HRS § 657-7, and that HRS § 657-13 does not apply to actions commenced under HRS § 662-4, such that the statute of limitations was not subject to the tolling provisions of HRS § 657-13 and had run over a year prior to the date on which the Plaintiffs filed their complaint.

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[1] HRS § 657-7 provides that "[a]ctions for the recovery of compensation for damage or injury to persons or property shall be instituted within two years after the cause of action accrued, and not after, except as provided in section 657-13."

[2] HRS § 657-13 provides in relevant part:

> **Infancy, insanity, imprisonment.** If any person entitled to bring any action specified in . . . part [I of HRS chapter 657] . . . is, at the time the cause of action accrued . . . :
>
> (1) Within the age of eighteen years;
>
> . . . .
>
> such person shall be at liberty to bring such actions within the respective times limited in this part, after the disability is removed or at any time while the disability exists.

[3] HRS § 662-4 provides that "[a] tort claim against the State shall be forever barred unless action is begun within two years after the claim accrues, except in the case of a medical tort claim when the limitation of action provisions set forth in section 657-7.3 shall apply."

We hold that HRS § 46-72 (1993)[4] is the statute of limitations applicable to the present matter. We therefore overrule the holding of Salavea v. City and County of Honolulu, 55 Haw. 216, 221, 517 P.2d 51, 54-55 (1973), that, with respect to tort claims against the counties of this state, "HRS § 662-4 is the applicable statute of limitations, superceding HRS § 46-72[.]" We also hold, pursuant to HRS § 657-13(1), that the counties of this state are subject to the infancy tolling provision generally applied in personal injury actions and that HRS § 657-13(1) tolled the running of the statute of limitations as to Brandzie's claims. Lastly, we hold that, inasmuch as Francis and Rachael, as individuals, suffered no disability for purposes of HRS § 657-13, Francis's and Rachael's claims, in their individual capacities, were not similarly tolled. Accordingly, we (1) vacate the circuit court's (a) September 29, 2000 order granting the City's motion for summary judgment as to Rachael's claims in her capacity as Brandzie's next friend and (b) November 9, 2000 judgment in favor of the City and against Rachael as Brandzie's next friend, (2) affirm the circuit court's

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[4] HRS § 46-72 provided as follows:

> **Liability for damages; notice of injuries.** Before the county shall be liable for damages to any person for injuries to person or property received upon any of the streets, avenues, alleys, sidewalks, or other public places of the county, or on account of any negligence of any official or employee of the county, the person so injured, or the owner or person entitled to the possession, occupation, or use of the property so injured, or someone in his behalf, shall, within six months after the injuries are received, give the chairman of the board of supervisors or the city clerk of Honolulu notice in writing of the injuries and the specific damages resulting, stating fully in the notice when, where, and how the injuries occurred, the extent thereof, and the amount claimed therefor.

Effective June 22, 1998, the legislature amended HRS § 46-72 in technical respects not material to this appeal. See 1998 Haw. Sess. L. Act 124, § 1 at 479.

(a) September 29, 2000 order granting the City's motion for summary judgment against Francis, generally, and Rachael, in her individual capacity, and (b) November 9, 2000 judgment against Francis, generally, and Rachael, in her individual capacity, and (3) remand this matter to the circuit court for further proceedings consistent with this opinion.

I. BACKGROUND

The Plaintiffs' complaint alleges the following. On May 26, 1996, Brandzie (who apparently was two months shy of seven years of age at the time) was lawfully on the premises of Waimānalo District Park, where she was attacked by a pit bull dog owned by the third-party defendant-appellee Alfred H. Alameda. As a result of the attack, she suffered bodily injury and emotional distress.

On March 11, 1999, Brandzie's parents, Francis, in his individual capacity, and Rachael, individually and as Brandzie's next friend, filed a complaint against the City, alleging that the City's negligence legally caused injuries to Brandzie (Count I) and inflicted emotional distress and loss of consortium on Francis and Rachael (Count II).[5] Additionally, the Plaintiffs

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[5] The Plaintiffs' complaint sets forth the following allegations relating to the Plaintiffs' causes of action:

> 8. On or about May 26, 1996, Plaintiff BRANDZIE KAHALE was lawfully on the premises of the Waimānalo District Park ("the Park") in Waimānalo, Hawai'i.
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> 9. On the same date and at the same time, ALFRED H. ALAMEDA was on the premises of the Park and tied a pitbull which he owned to a pole.
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> 10. On the date and at the place indicated above, said pit bull without provocation attacked Plaintiff BRANDZIE KAHALE, resulting in severe and permanent bodily harm, including but not limited to muscle damage, abrasions and contusions, hospitalization and surgery and severe emotional distress.
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> 11. Although animals are not allowed at the Park, MR. ALAMEDA

(continued...)

sought punitive damages against the City (Count III).

On April 13, 1999, the City filed a third-party complaint against Alameda, praying for contribution with respect to any judgment that the Plaintiffs might obtain against the City. On April 17, 2000, the Plaintiffs filed a cross-claim against Alameda, alleging that Alameda breached his duty to prevent his canine from causing Brandzie's injuries and further that Alameda's negligence had caused Francis and Rachael to suffer loss of consortium and the infliction of emotional distress. On April 20, 2000, the City filed a counterclaim against Francis and Rachael in their individual capacities, alleging that any injuries and/or damages to the Plaintiffs were the result of negligence or wrongful conduct on Francis's and Rachael's part.

On August 23, 2000, the City filed a motion for summary judgment against the Plaintiffs, arguing that HRS § 662-4, see supra note 3, a provision of HRS chapter 662, the State Tort Liability Act (STLA), barred all of the Plaintiffs' claims against the City because the Plaintiffs had not brought them within the two-year period of the applicable statute of limitations.

On December 8, 2000, the Plaintiffs filed a notice of appeal from the circuit court's September 29, 2000 order granting the City's motion for summary judgment and the November 9, 2000 final judgment in favor of the City and against the Plaintiffs.

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[5](...continued)
regularly tied this same pitbull to the same pole and others repeatedly brought animals onto the park.

12. The CITY AND COUNTY knew or in the exercise of reasonable diligence should have known of this practice by MR. ALAMEDA and others. . . .

On November 16, 2000, the Plaintiffs filed a motion to stay proceedings,[6] which the circuit court granted on December 26, 2000.

II. STANDARD OF REVIEW

> We review the circuit court's grant or denial of summary judgment de novo. Hawai'i Community Federal Credit Union v. Keka, 94 Hawai'i 213, 221, 11 P.3d 1, 9 (2000). The standard for granting a motion for summary judgment is settled:
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> > [S]ummary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A fact is material if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. The evidence must be viewed in the light most favorable to the non-moving party. In other words, we must view all of the evidence and the inferences drawn therefrom in the light most favorable to the party opposing the motion.
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> Id. (citations and internal quotation marks omitted).

SCI Management Corp. v. Sims, 101 Hawai'i 438, 445, 71 P.3d 389, 396 (2003) (quoting Coon v. City and County of Honolulu, 98 Hawai'i 233, 244-45, 47 P.3d 348, 359-60 (2002)).

III. DISCUSSION

On appeal, the Plaintiffs argue that the circuit court erred in granting the City's motion for summary judgment, inasmuch as HRS § 657-13(1), see supra note 2, tolled the Plaintiffs' claims. Although the Plaintiffs acknowledge that, in Orso v. City and County, 56 Haw. 241, 534 P.2d 489 (1975), this court applied the two-year statute of limitations provided for in HRS § 662-4, see supra note 3, to claims against the state's

[6] At the time of the Plaintiffs' motion to stay proceedings, the circuit court had not yet resolved the Plaintiffs' claims against Alameda.

counties, they contend that the circuit court erred in interpreting Whittington v. State, 72 Haw. 77, 806 P.2d 957 (1991), as standing for the proposition that the City is excepted from the infancy tolling provision of HRS § 657-13(1). The Plaintiffs assert that, because the Whittington "infancy tolling exception" applies only to tort claims against the state brought pursuant to the STLA, and inasmuch as the Plaintiffs have grounded their claims against the City in the class of actions described in HRS § 657-7, see supra note 1, the provisions of HRS § 657-13(1) therefore govern the present matter.

The Plaintiffs further maintain that "[this] Court in Orso did not extend the application of the entire [STLA] to claims against the counties, only the two[-]year statute of limitations," and that neither the jurisprudence of this court nor the legislative intent underlying HRS §§ 662-4 and 657-13 support the extension of the Whittington "infancy tolling exception" to the counties. Lastly, the Plaintiffs argue that "[t]he law in this State is abundantly clear that because of the vast differences between the State and the counties, the latter are not entitled to the same types of protection against claims as those enjoyed by the State." Based on the foregoing assertions, the Plaintiffs contend, pursuant to HRS § 657-13(1), that the statute of limitations does not begin to run on Rachael's claims on Brandzie's behalf until Brandzie reaches the age of majority in the year 2007 and that Francis's and Rachael's claims in their individual capacities are also tolled because they are derivative of Brandzie's claims for relief.

The City responds that, by virtue of the Orso decision, the Plaintiffs' "tort claim against the City . . . is governed by HRS Section 662-4"; from the foregoing premise, the City suggests that because "Whittington holds that HRS Section 657-13 . . . does not apply to actions brought under 662-4," "there is no tolling" of the two-year statute of limitations. Correlatively, the City asserts that Orso stands for the proposition that "[HRS] Section 657-7 is inapplicable in this action[,]" inasmuch as "[HRS] Section 662-4 is the two[-]year statute of limitations provision for a 'tort claim' against . . . the counties." The City therefore contends that "the tolling statute does not apply . . . [and] all claims against the City must be barred . . . ."

For the reasons discussed infra, we agree with the Plaintiffs that the statute of limitations governing Rachael's claims in her capacity as Brandzie's next friend is tolled by HRS § 657-13(1). We disagree, however, that Francis's and Rachael's claims in their individual capacities are tolled by HRS § 657-13.

A. HRS § 46-72 Is The Statute Of Limitations Applicable To The City Inasmuch As The STLA Does Not Impact The Tort Liability Of The State's Political Subdivisions.

Our analysis begins with Salavea, in which this court held that, with respect to tort claims against the counties of this state, including the City and County of Honolulu, "HRS § 662-4 is the applicable statute of limitations, superceding HRS § 46-72." 55 Haw. at 221, 517 P.2d at 54-55; see supra note 4. This court based the foregoing holding on the following statutory construction of the STLA:

> . . . [A] statute providing for tort liability of the State and its political subdivisions is a law of general application throughout the State of Hawaii on a matter of state-wide interest and concern. Thus, we hold that HRS § 662-4 is the applicable statute . . . .

> We also hold that provisions of [HRS] § 46-72 are inconsistent with [HRS] § 662-4 and invalid. HRS § 46-72 was first enacted by Act 181, SLH 1943, while HRS § 662-4 is part of the [STLA] of 1957. Because of their respective dates of enactment, it is clear that provisions of the former cannot control over contrary provisions of the latter. . . . [A]lthough repeals by implication are not favored, implications of repeal is appropriate in some instances. Here, an intention of implied repeal may be logically inferred . . . .
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> First, . . . a conflict in statutes such as that presented in the instant case should be resolved in favor of the statute regulating state matters, rather than that controlling county affairs only.
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> . . . .
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> Finally, . . . [t]he basic theory of governmental tort liability in Hawaii is that the State and its political subdivisions shall be held accountable for the torts of governmental employees ". . . in the same manner and to the same extent as a private individual under like circumstances . . ." HRS § 662-2. Thus, it would be unreasonable to hold that a party's right to recover damages in tort from the City and County of Honolulu, a subdivision of the state, created by the legislature, is more restrictive than his right to recover from the State itself.
>
> We therefore hold that HRS § 662-4 is the applicable statute of limitations, superceding HRS § 46-72 . . . .

Id. at 219-21, 517 P.2d at 54-55 (emphases added) (citations omitted) (some ellipsis points added and some in original).

It is like shooting fish in a barrel to note that if the statute of limitations contained in the STLA, i.e., HRS § 662-4, governed tort claims against the City, then the entirety of the STLA would govern such claims as well, there being no logical basis for slicing and dicing the STLA into applicable and inapplicable pieces. And yet, in Orso, this court perceived "no valid reason to extend the applicability of any other provisions of HRS Chapter 662 to the City and County of Honolulu, and . . . specifically limit[ed] the holding of Salavea to the applicability of only HRS § 662-4 to the City and County of Honolulu." 56 Haw. at 247, 534 P.2d at 493. As it happens, there was method behind the Orso court's parsimonious view.

Obviously, HRS § 662-4 could have repealed HRS § 46-72 by implication only if the two statutes were truly "in conflict," by virtue of the STLA being, as the Salavea majority claimed, "a statute providing for tort liability of the State and its political subdivisions[.]" 55 Haw. at 219, 517 P.2d at 54 (emphasis added). But the STLA does not provide for the tort liability of the state's "political subdivisions." Pursuant to HRS § 662-2 (1993), "[t]he State . . . waive[ed] its immunity for liability for the torts of its employees and [was rendered] liable in the same manner and to the same extent as a private individual under like circumstances," except with respect to prejudgment interest and punitive damages. (Emphasis added.) HRS § 662-1 (1993) defines "[e]mployees of the State" to include "officers and employees of any state agency, members of the Hawaii national guard, Hawaii state defense force, and persons acting in behalf of a state agency in an official capacity, temporarily, whether with or without compensation." (Emphases added.) The statutory definition also includes county-employed lifeguards "designated to provide lifeguard services at a designated state beach park under an agreement between the State and that county." HRS § 662-1 (Emphases added.) And HRS § 662-1 defines "State agency" to include "the executive departments, boards, and commissions of the State," excluding "any contractor with the State." (Emphasis added.)

The City and County of Honolulu, having no sovereign immunity to waive, does not fall within the shadow of the STLA. See Kamau v. County of Hawaii, 41 Haw. 527, 552-53 (1957); see also infra section III.B. We therefore subscribe to the following remarks of Justice Bernard H. Levinson, concurring and

dissenting in Salavea:

> The majority opinion is a collapsible house of cards built with a stacked deck which includes a joker in the form of equating the statutory word "State" with the opinion's "State or political subdivision." It offers no support for its conclusion that the two-year statute of limitations for tort actions against the "State," HRS § 662-4, applies to this tort claim against the City and County of Honolulu. . . . Indeed, the majority's ipse dixit correlation of counties with the State is contrary to the reasoning of Kamau v. County of Hawaii, 41 Haw. 527 (1957), wherein this court held that the differences between State and local governments in terms of their law-making powers justified the rejection of the common-law doctrine of sovereign immunity with respect to the latter. . . .
>
> . . . I cannot agree that HRS § 662-4 has any relevance to the timeliness of the plaintiffs' claims in this case.

Salavea, 55 Haw. at 221-22, 517 P.2d at 55 (Levinson, J., concurring and dissenting). We also adopt the view advocated by Justice Marumoto, dissenting in Salavea:

> Under the State Tort Liability Act, the State has waived its immunity from liability for torts of its employees. The Act defines a State employee as including officers and employees of any State agency, and defines State agency as including the executive departments, boards, and commissions of the State.
>
> A county, including the City and County of Honolulu, is not an executive department, board, or commission of the State.

Id. at 225, 517 P.2d at 57 (Marumoto, J., dissenting).

On the foregoing bases, we overrule Salavea and all other decisions of the appellate courts of this state that rely on Salavea for the proposition that HRS § 662-4 supercedes HRS § 46-72. We hold that counties do not fall within the ambit of the STLA and that HRS § 46-72, which the legislature is free to amend, is the statute of limitations applicable to actions against the counties.[7] However, in order to avoid unfair

[7] Assuming arguendo that "an intention of implied repeal [of HRS § 46-72 could have been] logically inferred" from the legislature's enactment of HRS § 662-4 in 1957, Salavea 55 Haw. at 219, 517 P.2d at 54, the legislature's amendment of HRS § 46-72 in 1998 would have acted as an "implied (continued...)

[7](...continued)
reenactment" of the statute. See 1998 Haw. Sess. L. Act 124, § 1 at 479. Act 124, "[t]he purpose of [which was] to amend the Hawai[[`]i Revised Statutes to replace references to county boards of supervisors with references to the council of each county," see Hse. Conf. Comm. Rep. No. 86, in 1998 House Journal, at 985; Sen. Conf. Comm. Rep. No. 86, in 1998 Senate Journal, at 779, belies Justice Acoba's assertion, at 1 of his concurring and dissenting opinion, that "the majority's holding ignores . . . the great weight to be accorded the legislature's acquiescence in the Salavea rule," as well as his claim that, for the last thirty years, "the legislature has implicitly acquiesced to this court's application of [HRS §] 662-4 to the counties." Concurring and dissenting opinion at 9. If HRS § 46-72 were the statutory nullity -- long since abandoned out of legislative deference to this court's pronouncement in Salavea that "HRS § 662-4 is the . . . statute of limitations [applicable to the counties], superceding HRS 46-72," 55 Haw. at 221, 517 P.2d at 55 -- that Justice Acoba believes it to be, then the legislature would not have gone to the trouble of modernizing HRS § 46-72 in 1998, while at the same time expressly retaining the six-month statute of limitations prescribed in the statute. Ergo, the legislature has manifestly not "acquiesc[ed] in the Salavea rule," nor has it yet abandoned its six-month statute of limitations applicable to tort claims against the counties of this state, although it certainly could by further amending HRS § 46-72 or repealing it altogether.

Justice Acoba decries the majority's abrogation of the thirty-plus-year-old Salavea rule "without a showing of compelling justification." Concurring and dissenting opinion at 1, 5. We respectfully disagree with his assessment. The "compelling justification" for our abrogation of the Salavea rule is that its reasoning is analytically bankrupt. Indeed, we would be failing in our appellate responsibility if we were to turn a blind eye to that analytical bankruptcy. Unlike fine wine, analytically bankrupt appellate decisions do not improve with age. Justice Acoba makes no attempt to defend Salavea's central premise, namely, that the STLA provides "for tort liability of the State and its political subdivisions." 55 Haw. at 219, 517 P.2d at 54 (emphasis added). This is not surprising. Given the plain language of HRS §§ 662-1 and 662-2, Salavea's central premise is indefensible. See supra at 10-11.

> With regards to overruling a previous decision of this court,
>
> we do not lightly disregard precedent; we subscribe to the view that great consideration should always be accorded precedent, especially one of long standing and general acceptance. Yet, it does not necessarily follow that a rule established by precedent is infallible. If unintended injury would result by following the previous decision, corrective action is in order; for we cannot be unmindful of the lessons furnished by our own consciousness, as well as by judicial history, or the liability to error and the advantages of review. As this court has long recognized, we not only have the right but are entrusted with a duty to examine the former decisions of this court and, when reconciliation is impossible, to discard our former errors.

Francis v. Lee Enters., Inc., 89 Hawai'i 234, 236, 971 P.2d 707, 709 (1999) (internal citations, quotations, and bracket omitted); see also State v. Jenkins, 93 Hawai'i 87, 111-12, 997 P.2d 13, 37-38 (2000) (citing Francis, supra); Parke v. Parke, 25 Haw. 397, 401 (1920) ("It is generally better to establish a new rule than to follow a bad

(continued...)

prejudice to plaintiffs who have detrimentally relied upon Salavea with respect to the statute of limitations governing tort claims against the counties, we emphasize that our holding is prospective only and applies to all claims for relief accruing after the date of this opinion.[8] See State v. Ikezawa, 75 Haw.

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[7](...continued)
precedent.").

State v. Brantley, 99 Hawai'i 463, 465, 56 P.3d 1252, 1254 (2002), overruling State v. Jumila, 87 Hawai'i 1, 950 P.2d 1201 (1998); see also Jenkins, 93 Hawai'i at 111-12, 997 P.2d at 37-38, overruling State v. Auwae, 89 Hawai'i 59, 968 P.2d 1070 (App. 1998), and State v. Mundell, 8 Haw. App. 610, 822 P.2d 23 (App. 1991); Francis, 89 Hawai'i at 236-37, 971 P.2d at 709-10, overruling Dold v. Outrigger Hotel, 54 Haw. 18, 501 P.2d 368 (1972); Espaniola v. Cawdrey Mars Joint Venture, 68 Haw. 171, 182-83, 707 P.2d 365, 373 (1985), overruling Sugue v. F. L. Smithe Machine Co., 56 Haw. 598, 546 P.2d 527 (1976).

Justice Acoba's veneration of the doctrine of stare decisis, see concurring and dissenting opinion at 4-5, is, at the very least, flexible. He authored the opinion of the court in State v. Haanio, 94 Hawai'i 405, 413-14, 16 P.3d 246, 254-55 (2001), in which this court, sua sponte, exploited its disagreement with the interpretation of the Intermediate Court of Appeals of the rule set out in State v. Kupau, 76 Hawai'i 387, 879 P.2d 492 (1994), in order to create an "opportunity to reexamine" the Kupau rule and to overrule it. Moreover, he has not hesitated, when he is in agreement, to join the majority in overruling previously binding appellate precedent. See State v. Mueller, 102 Hawai'i 391, 393, 76 P.3d 943, 945 (2003), overruling State v. Rulona, 71 Haw. 127, 785 P.2d 615 (1990); State v. Saunders, 102 Hawai'i 326, 327-28, 76 P.3d 569-570 (2003), overruling State ex rel. Marsland v. Town, 66 Haw. 516, 668 P.2d 25 (1983), and In re Dinson 58 Haw. 522, 574 P.2d 119 (1978); Bauernfiend v. AOAO Kihei Beach Condominiums, 99 Hawai'i 281, 284, 54 P.3d 452, 455 (2002), overruling Hoke v. Paul, 65 Haw. 478, 653 P.2d 1155 (1982); State v. Ah Loo, 94 Hawai'i 207, 211, 10 P.3d 728, 732 (2000), overruling State v. Blackshire, 10 Haw. App. 123, 861 P.2d 736, cert. denied, 75 Haw. 581, 863 P.2d 989 (1993).

[8] The prospectivity of our holding renders inexplicable Justice Acoba's assertions that "[t]he consequence of overruling Salavea is to raise questions with respect to the status of existing and pending claims and to wreck havoc with future claims which would have been governed by the two-year limitations period until the case at hand." Concurring and dissenting opinion at 1. Justice Acoba's lament that "[r]eviving the counties' six-month notice requirement will bar potentially meritorious claims in the future, for persons who fail to bring their claims within six months will be deprived of their day in court," concurring and dissenting opinion at 7, should be directed to the legislature. If the legislature perceives "havoc" (or bad policy, for that matter) in the current manifestation of HRS § 46-72, the legislature is perfectly free to amend the statue to provide, say, for a two-year limitations period or to repeal it altogether, in which case tort claims against the counties would be governed by HRS § 657-7.

210, 220-21, 857 P.2d 593, 598 (1993); State v. Garcia, 96 Hawai‘i 200, 211, 29 P.3d 919, 930 (2001); Lindinha v. Hilo Coast Processing Co., No. 24141, slip op. at 15-16 (Haw. Mar. 18, 2004).

B. Because *Kamau* Correctly Held That Municipalities Are Not Entitled To Sovereign Immunity, The City Is Subject To The Infancy Tolling Provisions, Set Forth In HRS § 657-13(1), Generally Applicable In Personal Injury Actions.

As discussed supra in section III.A, this court established in Kamau that, although the state is the beneficiary of common law sovereign immunity, the counties are not. 41 Haw. at 552-53. Prior to this court's ruling in Kamau, municipalities were immune from tort liability arising out of actions involving the exercise of "governmental functions" but were liable for claims alleging the exercise of "private or corporate functions," a distinction that confounded municipal tort litigation in Hawai‘i. Id. at 528; see also Mark v. City and County, 40 Haw. 338, 340 ("As to what is a governmental function and what is a corporate or ministerial act of a municipality is a question upon which there is a wide divergence of opinion. The cases are in hopeless confusion and even in the same jurisdiction often impossible to reconcile."). Kamau overruled six previous decisions that had endorsed the foregoing distinction between governmental and private functions, holding that "where [a municipality's] agents are negligent in the performance of their duties so that damage results to an individual, it is immaterial that the duty being performed is a public one from which the municipality derives no profit or that it is a duty imposed upon it by the legislature." 41 Haw. at 552.

Kamau, furthermore, incorporated into its analysis the principle set forth by Justice Holmes in Kawananakoa v. Polybank, 205 U.S. 349, 353 (1907), that "[a] sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends." Kamau, 41 Haw. at 538 (internal quotation signals omitted). Nevertheless, the Kamau court observed that "the immunity of the sovereign State rests on the doctrine that the State which makes the laws is immune to suit, but no such reasoning can be indulged in on behalf of a municipal corporation." Id. at 542. Thus, because the City is neither the sovereign nor the surrogate or alter ego of the sovereign,[9] it is not entitled to sovereign immunity.

As such, the City is subject to the state's tort laws in the same manner as any other private tortfeasor. See Kaczmarczyk v. City and County of Honolulu, 65 Haw. 612, 614-17, 656 P.2d 89, 91-94 (1982) (per curiam) (determining that the plaintiff could bring a wrongful death action against the City, notwithstanding the circuit court's dismissal of the same claim against the state); see also Wong v. Hawaiian Scenic Tours, Ltd., 64 Haw. 401, 403-06, 642 P.2d 930, 931-33 (1982) (per curiam) (permitting recovery in a tort action against the City); Littleton v. State, 66 Haw. 55, 67-68, 656 P.2d 1336, 1344-46 (1982) (applying traditional tort analysis to a claim against the City). Inasmuch as HRS § 657-13 governs classes of "personal"

[9] According to the Revised Charter of Honolulu § 1-101 (2000), "[t]he people of the City and County of Honolulu shall be and continue as a body politic and corporate by the name of 'City and County of Honolulu.'"

tort actions, such as "[d]amage to persons or property," see HRS § 657-7, the infancy tolling provision of HRS § 657-13(1) applies directly to personal injury actions against the City.

As discussed supra in section III.A, the Plaintiffs' claims against the City are subject to the statute of limitations set forth in HRS § 46-72. The Plaintiffs' claims for relief are among those described by HRS § 657-7 ("[d]amage to persons or property"), which are therefore "specified" in part I of chapter 657. Inasmuch as Brandzie was "[w]ithin the age of eighteen years" at the time that the present matter arose, the infancy tolling provision of HRS § 657-13(1) allowed her the "liberty to bring such actions . . . at any time while the disability exists." Rachael, as Brandzie's next friend, having filed claims for relief on Brandzie's behalf while she was still a minor, ensured that HRS § 46-72 would not act as a bar to those claims against the City.

However, in their individual capacities, Francis and Rachael suffered no disability with regard to their claims, and, by its plain language, HRS § 657-13(1) nowhere provides for the tolling of derivative actions. In this connection, we note that other jurisdictions have refused to extend the scope of infancy tolling provisions to derivative claims. See Emerson v. Southern Ry. Co., 404 So. 2d 576, 580 (Ala. 1981) (noting that "the derivative claim for loss of consortium of a spouse or parent is not subject to the tolling statute of the infant"); Smith v. Long Beach City Sch. Dist., 715 N.Y.S.2d 707, 785 (App. Div. 2000) (observing that "the infancy toll is personal to the infant and does not extend to the parents' derivative claims"). Thus, because Francis and Rachael did not timely comply with HRS § 46-

72 with respect to their individual claims, those claims against the City are time-barred.

IV. CONCLUSION

Based on the foregoing analysis, we (1) vacate the circuit court's (a) September 29, 2000 order granting the City's motion for summary judgment as to Rachael's claims in her capacity as Brandzie's next friend and (b) November 9, 2000 judgment in favor of the City and against Rachael as Brandzie's next friend, (2) affirm the circuit court's (a) September 29, 2000 order granting the City's motion for summary judgment against Francis, generally, and Rachael, in her individual capacity, and (b) November 9, 2000 judgment against Francis, generally, and Rachael, in her individual capacity, and (3) remand this matter to the circuit court for further proceedings consistent with this opinion.

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