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NO. 24052

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

CARL FOYTIK, Plaintiff-Appellant,

vs.

DEPARTMENT OF HUMAN SERVICES, State of Hawai'i,
Defendant-Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIV. NO. 00-1-2059)

SUMMARY DISPOSITION ORDER

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

The plaintiff-appellant Carl Foytik appeals from the judgment, entered on December 27, 2000, of the circuit court of the first circuit, the Honorable R. Mark Browning presiding, alleging that the circuit court erroneously entered (1) the December 27, 2000 order granting the November 13, 2000 motion of the defendant-appellee Department of Human Services, State of Hawai'i, [hereinafter, "the DHS"] to dismiss or, alternatively, for summary judgment [hereinafter, "order granting the DHS's MSJ"], and (2) the January 24, 2001 order denying Foytik's November 30, 2000 motion to strike material from the DHS's papers filed November 13, 2000 [hereinafter, "the order denying Foytik's motion to strike"].

On appeal, Foytik contends, inter alia, that, although the "DHS's affirmative defense of abandonment is not properly before this court," "[i]f it were, it would fail because exhaustion of administrative remedy is not required before judicial appeal of an agency's refusal to disclose public

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record." In addition to the foregoing argument, it is noteworthy that Foytik expressly raises, inter alia, the following points of error in his opening brief: (1) that the circuit court erred in ruling that the present matter is moot; (2) that the circuit court erred in ruling that it did not have jurisdiction over the present matter; and (3) that the circuit court erred in dismissing the case without prejudice, "even while granting summary judgment and simultaneously declining to 'reach the issues.'"

The DHS responds, inter alia: (1) that "Foytik's points of error fail to comply with Hawai'i Rules of Appellate Procedure [(HRAP)] Rule 28(b)(4) [(2000)] . . . and should be disregarded"; and (2) that "[t]he circuit court was not manifestly wrong in concluding that Foytik's complaint was moot and the judgment should be affirmed."

Foytik replies, inter alia, that "Foytik's opening brief substantially complies with [HRAP] Rule 28(b)(4)"

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold (1) that Foytik's opening brief substantially complies with the requirements of HRAP Rule 28(b)(4), (2) that Foytik has failed to provide this court with an adequate record upon which to review the order denying his motion to strike, and (3) that the circuit court erred in ruling that the present matter is moot and in failing to address all of Foytik's claims for relief.

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Inasmuch as Foytik, a pro se litigant, identified in his reply brief the portion of his opening brief that cited to "where in the record the alleged error was objected to," i.e., Foytik's January 8, 2001 motion to amend judgment, and his opening brief clearly identifies the error he is alleging and its location in the record, we hold that Foytik's opening brief substantially complies with the requirements of HRAP Rule 28(b)(4).

Although Foytik contends, inter alia, that his "motion to strike should have been granted by the circuit court . . . [b]ecause the affirmative defense of 'abandonment of request' was not raised in [the] DHS's answer . . . and [the] DHS has made no attempt to amend its answer," Foytik did not include any transcripts in the record on appeal. Moreover, the January 24, 2001 order denying Foytik's motion to strike does not explain the circuit court's reasoning. Insofar as we review an order denying a Hawai'i Rules of Civil Procedure (HRCP) Rule 12 motion to strike for abuse of discretion, we hold that Foytik has failed to provide us with an adequate record upon which to determine whether the circuit court erred in denying his motion to strike.

In light of the record on appeal, and based upon Foytik's assertions in his points of error, we hold that the circuit court abused its discretion as a matter of law in ruling that the present matter is moot and that it lacked jurisdiction.

It is established in Hawai'i that
[a] case is moot where the question to be
determined is abstract and does not rest on
existing facts or rights. Thus, the mootness
doctrine is properly invoked where "events . . .
have so affected the relations between the
parties that the two conditions for

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justiciability relevant on appeal -- adverse interest and effective remedy -- have been compromised."

CARL Corp. v. State, Dept. of Educ., 93 Hawai'i 155, 164, 997 P.2d 567, 576 (2000) [hereinafter, "CARL II"] (quoting In re Application of Thomas, 73 Haw. 223, 226, 832 P.2d 253, 254 (1992) (quoting Wong v. Board of Regents, University of Hawai'i, 62 Haw. 391, 394, 616 P.2d 201, 203-04 (1980))).

For example, in CARL II, 93 Hawai'i at 165, 997 P.2d at 577, which . . . arose from a challenge to a governmental body's award of a procurement contract, we held that the hearings officer had correctly dismissed the unsuccessful bidder's appeal as moot because the contract at issue had been terminated. Consequently, [CARL], the party challenging the award of the contract to another bidder, had received the only relief available to it pursuant to the Procurement Code (*i.e.*, termination of the contract) and, as a result, the hearings officer was no longer in a position to decide whether to terminate or affirm the contract.

Similarly, in Wong, 62 Haw. at 396, 616 P.2d at 205, we held that Wong's appeal was moot because "there [was] nothing left to grant [the] appellant." Wong, a University of Hawai'i student at the time he instituted his lawsuit, sought (1) to enjoin a disciplinary hearing against him and (2) a declaratory judgment that the university's statement and procedures regulating student conduct were invalid, on the basis that they did not comply with the Hawai'i Administrative Procedure Act (HAPA). Id. at 391, 616 P.2d at 202. The circuit court granted summary judgment in favor of the university and Wong appealed to this court. During the pendency of Wong's appeal, however, the university (1) agreed to terminate its disciplinary proceedings against Wong and (2) complied with HAPA. Id. at 394, 616 P.2d at 203. In addition, Wong graduated from the university. Id. at 396, 616 P.2d at 205. Accordingly, there was no longer either an adverse interest or an effective remedy available in the lawsuit.

In re Doe Children, 105 Hawai'i 38, 56, 93 P.3d 1145, 1163 (2004) (quoting Okada Trucking Co., Ltd. v. Board of Water Supply, 99 Hawai'i 191, 195-96, 53 P.3d 799, 803-04 (2002) (some brackets added and some in original)).

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Foytik's complaint prays for, inter alia, the following relief:

1. Declare that all records listed in HRS § 92F-12(a) -- with the sole exception of the proviso of [HRS] § 92F-12(a)(3) -- must be disclosed in their entirety.
2. In the alternative, declare that only names and other identifiers of welfare recipients or applicants may be redacted from the hearing decisions -- not the names of doctors, and not the names of DHS workers or units.
3. Declare that the hearing decisions must be available for review upon request, that is[,] within two business days.
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5. Declare that the hearing decisions must be prepared, used, and made available for public review by [the] DHS without personal identifiers of welfare recipients or applicants included.

By contrast, the circuit court's December 27, 2000 order granting the DHS's MSJ ruled, inter alia, as follows:

- IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that:
-
 2. Viewing the evidence and inferences reasonably drawn therefrom in the light most favorable to [Foytik], there are no genuine issues of material fact;
 3. Based upon Territory of Hawaii v. Aldridge, 35 Haw. 565 ([Terr.] 1940), Wong v. Board of Regents, University of Hawaii, 62 Haw. 391, 616 P.2d 201 (1980), and Trustees of Office of Hawaiian Affairs v. Yamasaki, 69 Haw. 154, 737 P.2d 446 (1987), the continued vitality of this action is questionable. Therefore, this case is moot and [the circuit court lacks jurisdiction over this action;
 4. The [MSJ] is hereby granted;
 5. The Complaint filed June 30, 2000 is dismissed without prejudice;
 6. The [circuit court does not reach the issues of whether [Foytik] has a right to review the information redacted from the hearing decisions and whether [he] abandoned his request

(Emphasis added.)

On the face of the complaint and of the order granting the DHS's MSJ, therefore, "the two conditions for justiciability relevant on appeal -- adverse interest and effective remedy -- have been [not been] compromised," In re Doe Children, 105 Hawai'i at 56, 93 P.3d at 1163 (internal citations and quotation

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signals omitted), insofar as the circuit court expressly failed to address Foytik's prayer for declaratory relief as to his right to review the information redacted from the hearing decisions and whether he abandoned his request. Notwithstanding the DHS's contentions (1) that Foytik's complaint was moot "because the [h]earing [d]ecisions were available for review" and (2) that, pursuant to HRS § 92F-15 (1993), "[u]nless and until Foytik had completed his review of the [h]earing [d]ecisions and determined whether he was 'aggrieved' by the redaction, Foytik's action was moot," the fact remains that, in spite of the hearings decisions provided to Foytik after he filed his complaint, all of which were redacted in precisely the manner he challenges in his complaint, the redaction of the hearings decisions Foytik received prior to the filing of his complaint necessarily constituted a "a denial of access to a government record," see HRS § 92F-15, or at least a portion thereof. In other words, by contrast to Wong, supra, the order granting the DHS's MSJ did not resolve all of the legal issues raised by Foytik's complaint.

Based on the foregoing, the circuit court erred in ruling that the present matter is moot, such that the circuit court erred in entering (1) the order granting the DHS's MSJ, and (2) the judgment. Therefore,

IT IS HEREBY ORDERED (1) that the January 24, 2001 order denying Foytik's motion to strike is affirmed, (2) that (a) the December 27, 2000 order granting the DHS's MSJ, and (b) the December 27, 2000 judgment are vacated, and (3) that this matter is remanded to the circuit court for further proceedings

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consistent with this summary disposition order.

DATED: Honolulu, Hawai'i, February 15, 2005.

On the briefs:

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pro se

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