

NO. 25599

IN THE SUPREME COURT OF THE STATE OF HAWAII

STEVE TATAII, Plaintiff,

vs.

DWAYNE D. YOSHINA, in his capacity as Hawaii's
Chief Election Officer State of Hawaii, Defendant.

ORIGINAL PROCEEDING

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

(By: Moon, C.J., Levinson, Nakayama and Acoba, JJ.,
and Circuit Judge Perkins, assigned by reason of vacancy)

Upon consideration of: (1) Plaintiff Steve Tataii's election complaint; (2) Defendant Dwayne Yoshina's motion to dismiss Plaintiff's election complaint; (3) Plaintiff's March 3, 2003 preliminary and partial memorandum in opposition to Defendant's motion to dismiss election complaint; and (4) Plaintiff's March 31, 2003 memorandum in opposition to Defendant's motion to dismiss Plaintiff's election complaint, and having heard the matter without oral argument and in accordance with Hawaii Revised Statutes (HRS) § 11-174.5(b) (Supp. 2002), which requires the court to reduce the evidence to writing and give judgment, stating all findings of fact and of law, we set forth the following findings of fact and conclusions of law and judgment.

FINDINGS OF FACT

1. Plaintiff Steve Tataii was one of two candidates in the September 21, 2002 primary election to pick the Democratic

party's nominee for Hawai'i's second congressional district.

2. The incumbent Patsy Takemoto Mink received 67,246 votes and Plaintiff Tataii received 14,178 votes.

3. On September 27, 2002, Plaintiff Tataii filed an election contest, which was docketed as S.Ct. No. 25353, and the court takes judicial notice of the papers filed in that case. See Roxas v. Marcos, 89 Hawai'i 91, 110 n.9, 969 P.2d 1209, 1229 (1998) (citations omitted) (the court can take judicial notice of its own files and of proceedings that have a direct relation to the matter at issue).

4. In the primary election contest, Plaintiff Tataii contended, in part, that Defendant Dwayne Yoshina, chief election officer of the State of Hawaii, should have disqualified Patsy Mink due to illness, and thus, Plaintiff Tataii, as the only other candidate, should be declared the Democratic nominee for the second congressional district and his name should appear on the November 5, 2002 ballot as the Democratic nominee for the second congressional district.

5. On October 3, 2002, this court issued findings of fact, conclusions of law, and a judgment declaring that Patsy Mink was elected as the Democratic party nominee for Hawaii's second congressional district in the September 21, 2003 primary election.

6. On December 31, 2002, Plaintiff Tataii filed a petition for a writ of certiorari in the United States Supreme Court seeking review of the October 3, 2002 judgment.

7. On March 3, 2003, the United States Supreme Court entered an order denying the petition for a writ of certiorari.

8. Patsy Mink passed away prior to the November 5, 2002 general election, and pursuant to law, Defendant Yoshina issued a proclamation informing the public as to the manner in which the votes for the seat would be counted and that if Patsy Mink was elected, a vacancy would exist in the office and the vacancy would then be filled in the manner provided by law.

9. No election contest was filed after Patsy Mink won the November 5, 2003 election.

10. On November 30, 2002, the State conducted a special election in accordance with HRS §17-2 to determine who would fill the remaining six weeks of Patsy Mink's term.

11. Plaintiff Tataii was a candidate and received 28 votes; Ed Case, who received 23,576 votes, was declared the winner.

12. No one contested the November 30, 2002 special election.

13. On January 4, 2003, the State conducted a special election in accordance with HRS § 17-2 to fill the vacancy in the office of U.S. Representative for Hawaii's second congressional district for the 108th Congress.

14. Plaintiff Tataii was one of forty-four candidates in the January 4, 2003 special election, and according to the special election final report, Candidate Ed Case received 33,002 votes, and Plaintiff Tataii received nine votes.

15. On January 24, 2003, Plaintiff Tataii filed a complaint contesting the January 4, 2003 election results.

16. Plaintiff Tataii contends that: (a) the January 4, 2003 special election was invalid from its inception because Defendant Yoshina allowed Patsy Mink to take part as a qualified

candidate in the September 21, 2002 primary election: (b) Plaintiff Tataii's name should have appeared on the November 5, 2002 ballot as the democratic nominee; and (c) another special general election must be held with only the following candidates on the ballot: (1) Plaintiff Steve Tataii as the nominee of the Democratic Party; (2) Bob McDermott as the nominee of the Republican Party; (3) Jeff Mallan as the nominee for the Libertarian Party; and (4) Nicholas Bedworth as the nominee for the Natural Law Party.

17. Defendant Yoshina filed a motion to dismiss the complaint, or in the alternative, for summary judgment on the ground that Plaintiff Tataii fails to state a claim upon which relief can be granted and the law does not authorize the relief requested.

CONCLUSIONS OF LAW

1. When reviewing a motion to dismiss for failure to state a claim upon which relief can be granted, the court must accept the non-movant allegations and view them in the light most favorable to the non-movant. Dunlea v. Dappen, 83 Hawai'i 28, 924 P.2d 196 (1996). Even under this standard, a complaint must be dismissed when it appears beyond doubt that the plaintiff can prove no set of facts entitling the plaintiff to relief. Bertlemann v. Tass Associates, 69 Haw. 95, 99, 735 P.2d 930, 933 (1987).

2. The court's consideration of matters outside the pleadings converts a motion to dismiss into one for summary judgment. Summary judgment is appropriate only where the court concludes that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter

of law. Estate of Doe v. Paul Revere Ins. Group, 86 Hawai'i 262, 269-270, 948 P.2d 1103, 1110-1111 (1997).

3. HRS § 11-174.5 governs contests for cause in special general elections and provides that the court "may invalidate the special general election [being challenged] on the grounds that a correct result cannot be ascertained because of a mistake or fraud on the part of the precinct officials or decide that a certain candidate . . . received a majority or plurality of votes and [was] elected."

4. HRS § 11-174.5 does not grant this court the authority to invalidate the November 5, 2002 election, which was never challenged in accordance with law.

5. HRS § 11-174.5 does not grant this court the authority to invalidate the September 21, 2002 primary election and declare Plaintiff Tataii the democratic nominee over Patsy Mink.

6. This court decided the issue of Patsy Mink's primary election win in Plaintiff Tataii's primary election contest, and the judgment declaring Candidate Mink the candidate nominated in the primary election is conclusive and final in accordance with HRS § 11-173.5 and is not subject to further review.

7. There is no genuine issue of material fact related to the instant election contest.

JUDGMENT

Based upon the foregoing findings of fact and conclusions of law, this court adjudges that the election contest challenging the results of January 4, 2003 election for the United State Representative for the 2nd District of the State of

Hawaii for the 108th Congress raises no genuine issue of material fact and judgment is entered in favor of Defendant Dwayne Yoshina, Chief Elections Officer for the State of Hawai'i. The clerk of the supreme court shall forthwith serve a certified copy of this judgment on the chief election officer in accordance with HRS § 11-174.5(b).

DATED: Honolulu, Hawai'i, May 22, 2003.

Aaron H. Schulaner
Holly T. Shikada for
defendant on the motion

Steve Tataii,
plaintiff pro se on
the opposition