

NO. 26834

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

OLLIE FULKS, Plaintiff

vs.

ALAN KONISHI, in his official capacity as County
Clerk for the County of Hawai'i, County of Hawai'i,
JAMES ARAKAKI and DWAYNE D. YOSHINA, in his official
capacity as Chief Elections Officer for the State of Hawai'i,
Defendants

ORIGINAL PROCEEDING

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

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

Upon consideration of: (1) Plaintiff's complaint contesting the results of an election; (2) Defendant Dwayne Yoshina's answer to the complaint; (3) Defendants Alan Konishi and County of Hawaii's answer and motion to dismiss complaint, or alternatively for summary judgment; (4) Defendant James Arakaki's answer and motion to dismiss or alternatively for summary judgment, and (5) Plaintiff's opposition to the motions to dismiss or alternatively for summary judgment, it appears HRS § 11-173.5 (b) (Supp. 2003) requires the court to issue findings of fact and law and judgment. Oral argument being unnecessary, this matter has been heard on the pleadings and exhibits submitted by the parties. Accordingly, we set forth the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Plaintiff Ollie Fulks and Defendant James Arakaki were the candidates running for the office of Hawaii County Council member from District 3 of the Hawaii County Council in the September 18, 2004 nonpartisan county election.

2. Prior to the election, Plaintiff challenged Defendant Arakaki's qualification to be a candidate for office pursuant to HRS § 12-8.

3. On August 26, 2004, Defendant Konishi, the Hawaii County Clerk, issued preliminary findings and a decision rejecting Plaintiff's objection to Defendant Arakaki's qualifications.

4. On July 27, 2004, Plaintiff and two other voters filed a complaint for declaratory judgment and other relief in the Circuit Court of the Third Circuit challenging Defendant Arakaki's candidacy. Clark v. Arakaki, Civil No. 04-1-0225.

5. The election results for the September 18, 2004 election for District 3 of the Hawaii County Council were: 3,104 votes for James Arakaki, 796 votes for Ollie Fulks; and 560 blank votes.

6. On September 24, 2004, Plaintiff filed a complaint in the supreme court challenging the results of the election.

7. Plaintiff seeks a ruling that Defendant Arakaki is disqualified from being a candidate for the District 3 election

because he has exceeded the term limit set forth in the Hawai'i County Charter and asks the court to: (1) reverse, correct, or change the decision of election officials and declare Plaintiff duly and legally elected to the office of the Hawaii County Council representing District 3; (2) declare that Plaintiff's term of office shall commence immediately pursuant to the express terms of HRS § 12-42(a); (3) declare that the last sentence of Article XV § 15-3 of the Hawaii County Charter that provide amendments are effective on the date provided in the amendment invalid and meaningless; and (4) award attorney's fees and costs.

8. Defendant Yoshina seeks dismissal as to the State and award of attorney's fees and costs.

9. Defendants Konishi and the County of Hawai'i contend the complaint fails to state a claim upon which relief can be granted and seeks attorney's fees and costs

10. Defendant Arakaki contends the complaint fails to satisfy the necessary requirements of an election contest and seeks attorney's fees and costs.

CONCLUSIONS OF LAW

1. HRS § 11-172 governs complaints challenging the result of elections.

2. When reviewing a motion to dismiss for failure to state a claim for which relief can be granted, the court must accept as true the non-moving party's allegations and view them

in the light most favorable to the moving party. Dunlea v. Dappen, 83 Hawai'i 28, 924 P.2d 196 (1996).

3. Even if this court accepts all of the allegations as true, this court cannot grant the relief requested in this election contest.

4. HRS chapter 12 sets forth the mechanism for challenging the qualifications of a candidate for office and this court has no jurisdiction pursuant to an election contest filed pursuant to HRS chapter 11 to determine the qualifications of a candidate to run for office.

5. This court has no jurisdiction to declare Plaintiff the winner and order his term of office begins in accordance with HRS § 12-42, because Plaintiff was not unopposed.

6. This court has no jurisdiction in this election contest to declare a provision in the Hawai'i County Charter invalid and meaningless.

JUDGMENT

Based upon the foregoing findings of fact and conclusions of law, it is ordered that it is the judgment of the court that the complaint should be and hereby is dismissed. The clerk of the supreme court shall forthwith serve a certified copy of the findings of fact, conclusions of law and judgment of

dismissal on the Chief Election Office and the Hawai'i County Clerk in accordance with HRS § 11-173.5(b).

IT IS FURTHER ORDERED that the requests for fees and costs are denied.

DATED: Honolulu, Hawai'i, October 8, 2004.

David Kimo Frankel
and Robert D.S. Kim
for plaintiff

Joseph K. Kamelamela and
Katherine A. Garson,
Deputies Corporation Counsel,
for defendants Alan Konishi,
in his official capacity as
County Clerk for the County
of Hawai'i, and County of
Hawai'i

Brian J. De Lima
for defendant James Y.
Arakaki

Aaron H. Schulaner
and Holly T. Shikada,
Deputy Attorneys General,
for defendant Dwayne D.
Yoshina