

NOT FOR PUBLICATION

NO. 25276

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

WILLIAM AHYOU AKAU and ANTHONY AKO ANJO,
Appellants-Appellants, v. PLANNING COMMISSION, COUNTY
OF HAWAII, PLANNING DEPARTMENT and WATKINS-SUNDERLAND
WELLNESS RETREAT, SIDNEY FUKU PLANNING CONSULTANT,
Appellees-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(Civ. No. 01-1-399)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Watanabe, and Foley, JJ.)

Petitioners-Appellants William Ahyou Akau and Anthony Ako Anjo (collectively, Appellants) appeal from the July 23, 2002 Judgment entered by the Circuit Court of the Third Circuit (the circuit court), Judge Riki May Amano presiding, dismissing their appeal from an August 14, 2001 Hawaii County Planning Commission (Commission) Decision and Order that granted a special management area permit and a special permit for a proposed "Hawaiian Permaculture and Wellness Retreat" in North Kohala. We affirm.

In dismissing the appeal, the circuit court concluded, in relevant part, that

Appellants both failed to follow the governing Commission Rule 4 regarding contested case procedures, and failed to apply for standing as parties to a contested case. Therefore, as to Appellants, there was no contested case from which they could appeal pursuant to [Hawaii] Revised Statutes Chapter 91. Appellants did not adequately participate in a contested case and cannot invoke the HRS 91-14 appeal jurisdiction of this [c]ourt.

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In light of Ka Pa'akai O Ka'aina v. Land Use Comm'n, 94 Hawai'i 31, 42, 7 P.3d 1068, 1079 (2000), Public Access Shoreline Hawaii v. Hawai'i County Planning Comm'n, 79 Hawai'i 425, 431, 903 P.2d 1246, 1252 (1995), and Simpson v. Department of Land & Natural Resources, 8 Haw. App. 16, 23, 791 P.2d 1267, 1272 (1990), we agree with the circuit court that Appellants' failure to intervene before the Commission precluded their standing to seek judicial review of the Commission's decision.

Affirmed.

DATED: Honolulu, Hawai'i, September 17, 2003.

On the briefs:

Michael J. Matsukawa for
appellants-appellants.

Lynn H. Higashi (Cades
Schutte) for appellee-
appellee Watkins-Sunderland
Wellness Retreat.

Ivan M. Torigoe, deputy
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of Hawai'i for appellees-
appellees Planning Commission
and Planning Department,
County of Hawai'i.