

NOT FOR PUBLICATION

NOS. 26039 & 26294

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

NO. 26039

DEMIAN WOOD, Appellant-Appellee/Cross-Appellant, v.
SUSAN CHANDLER, STATE OF HAWAII, DEPARTMENT OF HUMAN SERVICES,
Appellee-Appellant/Cross-Appellee
(CIVIL NO. 02-1-184K)

AND

NO. 26294

DEMIAN WOOD, Appellant-Appellee, v.
PATRICIA MURAKAMI, DEPARTMENT OF HUMAN SERVICES, STATE OF HAWAII,
Appellee-Appellant
(CIVIL NO. 02-1-235K)

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Lim and Fujise, JJ.)

In a secondary agency appeal (No. 26039), Susan Chandler, Director of the Department of Human Services, State of Hawai'i (the DHS), appeals the July 28, 2003 final judgment that the Circuit Court of the Third Circuit (circuit court)¹ entered in Civil No. 02-1-0184K in favor of Demian Wood (Wood) and against the DHS. Wood cross-appeals the circuit court's September 18, 2003 order that denied her August 11, 2003 motion for attorney's fees and costs.

In a related secondary agency appeal (No. 26294), Patricia Murakami, Director of the DHS, appeals the September 16,

¹ The Honorable Ronald Ibarra presided.

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2003 final judgment that the circuit court entered in Civil No. 02-1-0235K in favor of Wood and against the DHS.

We consolidate Nos. 26039 and 26294 for purposes of disposition. Hawai'i Rules of Appellate Procedure (HRAP) Rule 3(b) (2005).

After a meticulous review of the records and the briefs submitted by the parties, and giving careful consideration to the arguments advanced and the issues raised by the parties, we resolve the points of error raised in the appeals and cross-appeal as follows:

No. 26039 (Civil No. 02-1-0184K)

1. The appeal is dismissed as moot because the DHS afforded Wood a fair hearing on her claim for additional difficulty-of-care (DOC) payments. Wong v. Bd. of Regents, Univ. of Hawaii, 62 Haw. 391, 394-95, 616 P.2d 201, 203-04 (1980).

2. The cross-appeal is dismissed because the circuit court lacked jurisdiction over Wood's motion for attorney's fees and costs. HRAP Rule 4(a)(3) (2004); Richardson v. Sport Shinko, 76 Hawai'i 494, 500, 880 P.2d 169, 175 (1994).

No. 26294 (Civil No. 02-1-0235K)

1. The circuit court erred because, on a cold record, it determined anew the weight of the evidence and the credibility of the witnesses that were presented before the hearings officers in Nos. 26039 and 26294. In agency appeals, however,

courts decline to consider the weight of the evidence to ascertain

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whether it weighs in favor of the administrative findings, or to review the agency's findings of fact by passing upon the credibility of witnesses or conflict in testimony, especially the findings of an expert agency dealing with a specialized field.

In re Application of Hawaiian Electric Co., Inc., 81 Hawai'i 459, 465, 918 P.2d 561, 567 (1996) (citation omitted).

2. In a secondary agency appeal,

this court must determine whether the circuit court was right or wrong in its decision, applying the standards set forth in [Hawaii Revised Statutes (HRS)] § 91-14(g) [(1993)] to the agency's decision. This court's review is further qualified by the principle that the agency's decision carries a presumption of validity and appellant has the heavy burden of making a convincing showing that the decision is invalid because it is unjust and unreasonable in its consequences.

Sussel v. Civil Serv. Comm'n, 74 Haw. 599, 608, 851 P.2d 311, 316 (1993) (original brackets, citations and internal block quote format omitted). We conclude the circuit court was wrong in its decision to grant Wood additional DOC payments. There was "substantial evidence" to support the hearings officer's conclusion to the contrary, and as to that conclusion, we are not "left with a definite and firm conviction that a mistake has been made." Keanini v. Akiba, 84 Hawai'i 407, 410, 935 P.2d 122, 125 (App. 1997) (citation and internal quotation marks omitted).

Therefore,

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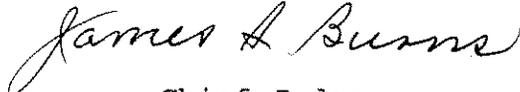
IT IS HEREBY ORDERED that the appeal in 26039 is dismissed as moot and the cross-appeal is dismissed for lack of jurisdiction. The July 28, 2003 final judgment in No. 26039 and the September 16, 2003 final judgment in No. 26294 are reversed.

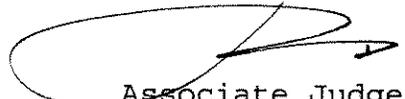
DATED: Honolulu, Hawai'i, June 8, 2006

On the briefs:

Candace J. Park,
Deputy Attorney General,
State of Hawai'i,
for Appellee-Appellant.

Elizabeth B. Croom,
for Appellant-Appellee.


Chief Judge


Associate Judge


Associate Judge