

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 26463

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

STEPHANIE C. STUCKY, Plaintiff-Appellant, v. PAUL R. BROWN
IN HIS OFFICIAL CAPACITY AS INTERIM DISTRICT
SUPERINTENDENT, DEPARTMENT OF EDUCATION, STATE OF
HAWAI'I; DEPARTMENT OF EDUCATION, STATE OF HAWAI'I;
ELIZABETH AYSON, INDIVIDUALLY AND IN HER OFFICIAL
CAPACITY AS PRINCIPAL, IAO INTERMEDIATE SCHOOL; NOEL
KURAYA IN HIS OFFICIAL CAPACITY AS AN EMPLOYEE OF THE
DEPARTMENT OF EDUCATION, STATE OF HAWAI'I, Defendants-
Appellees, JOHN DOES 1-10; JANE DOES 1-10; DOE
CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; DOE
GOVERNMENTAL AGENCIES 1-10; DOE BUSINESS ENTITIES 1-10;
Defendants

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(Civ. No. 99-0068(3))

SUMMARY DISPOSITION ORDER

(By: Lim, Presiding Judge, Foley and Fujise, JJ.)

Plaintiff-Appellant Stephanie Stucky (Stucky) appeals from the final judgment entered on March 8, 2004 by the Circuit Court of the Second Circuit (circuit court).¹ After a careful review of the issues raised, the arguments made and authority cited by the parties, and the record below, we resolve Stucky's points on appeal as follows and affirm.

1. The circuit court did not err in ruling Stucky failed in her burden of proving age discrimination. Shoppe v. Gucci America, Inc., 94 Hawai'i 368, 377-79, 14 P.3d 1049, 1058-60 (2000) quoting Texas Dep't. of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981) ("ultimate burden of persuading the trier of fact that the employer intentionally discriminated against the

¹ The Honorable Joseph E. Cardoza presided.

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plaintiff remains at all times with the plaintiff.") (internal quotations marks omitted). As the arbitrator did not consider whether Defendants-Appellees Department of Education, Paul Brown, Dr. Elizabeth Ayson, Noel Kuraya, and Clarice Kaneshiro (collectively, Appellees) acted with a discriminatory motive, the circuit court was not bound by the arbitration decision and was free to make its own determination regarding Appellees' motive. Keahole Def. Coalition, Inc. v. Bd. of Land & Natural Res., 110 Hawai'i 419, 429, 134 P.3d 585, 595 (2006).

The circuit court's finding that differing views and approaches to teaching were taken by the individual Appellees and that these differences led to conflicts between them and motivated the personnel actions taken, notwithstanding the temporal proximity between the personnel actions and Stucky's actions in litigating her claims, is supported by the evidence presented in the record.

2. The circuit court did not clearly err in concluding Stucky had not proved her claim of intentional infliction of emotional distress. There is nothing in the record, or incumbent upon the actions themselves, to indicate that the circuit court was clearly erroneous in finding them not outrageous. Dunlea v. Dappen, 83 Hawai'i 28, 38, 924 P.2d 196, 206 (1996) (relying on definition of "outrageous" in Restatement (Second) of Torts § 46, cmt. d).

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Therefore,

The Circuit Court of the Second Circuit's March 8, 2004
final judgment is affirmed.

DATED: Honolulu, Hawai'i, November 13, 2006.

On the briefs:

Mary Blaine Johnston,
for Plaintiff-Appellant.



Presiding Judge

Dorothy Sellers, and
Kimberly Tsumoto,
Deputy Attorneys General,
for Defendants-Appellees.



Associate Judge



Associate Judge