

NO. 27477

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

CRAIG GOMES, Appellant-Appellant,  
v.

HAWAII LABOR RELATIONS BOARD; HAWAIIAN ELECTRIC CO., INC.;  
and DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS,  
Appellees-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIVIL NO. 04-1-0393)

SUMMARY DISPOSITION ORDER

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

In this secondary administrative appeal, Appellant-Appellant Craig Gomes (Gomes) appeals, pro se, from the June 21, 2005 "Judgment; Order" and the August 2, 2005 "Order Denying Appellant, Pro Se, Craig Gomes' Motion for Reconsideration of Order Filed June 21, 2005, Affirming HLRB's Dismissal with Prejudice and Denying Appeal," both filed in the Circuit Court of the First Circuit (circuit court).<sup>1</sup>

On appeal, Gomes asserts the following points of error:

(1) The circuit court erred in ruling that findings of fact by the Hawai'i Labor Relations Board (HLRB), documents stipulated into evidence, and other evidence brought up by Gomes during the May 18, 2005 hearing were not part of the record.

(2) The circuit court erred in allowing the HLRB to file an untimely joinder in the answering brief of Hawaiian Electric Company (HECO).

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<sup>1</sup> The Honorable Eden Elizabeth Hifo presided.

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STATE OF HAWAII

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(3) The circuit court erred in not applying case law listed under the standard of review, specifically case law as it applies to intentional delay.

(4) The circuit court abused its discretion in affirming the HLRB dismissal with prejudice.

(5) The circuit court abused its discretion in not considering the HLRB's failure to sanction HECO for filing on May 22, 2003 an allegedly frivolous motion to dismiss for lack of jurisdiction.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, as well as the relevant statutory and case law, we resolve Gomes' points of error as follows:

(1) The circuit court did not exclude evidence from the record and did not err in holding that evidence on the merits of Gomes' underlying claim was not relevant as to Gomes' agency appeal. The circuit court informed Gomes of the scope of the circuit court's review and what type of evidence was relevant. The circuit court did not err in limiting its review to the holding in the January 29, 2004 "Order Granting Respondent Hawaiian Electric Company, Inc.'s Motion to Dismiss with Prejudice" (Dismissal Order) that Gomes failed to prosecute his case.

(2) The circuit court did not err in allowing the HLRB to join in HECO's answering brief before the circuit court. The circuit court explained that in joining the HECO brief, the HLRB would not be allowed to introduce any argument or evidence not contained in the HECO brief. Assuming, arguendo, that it was error to allow the HLRB to join in HECO's answering brief, such error was harmless.

(3) The circuit court did not err in its application of case law. Gomes argues that the circuit court applied the wrong case law in determining that the HLRB abused its discretion in finding that there was inexcusable delay by Gomes. The circuit court correctly relied on HRS § 91-14(g) in its decision affirming the HLRB Dismissal Order, holding that Gomes had not met the burden the law placed on him. In reaching its decision, the circuit court held that there was "reliable[,] substantive, and probative evidence in the record to support the findings that there was no error of law nor any other violation of the requirements of [HRS §] 91-14(g) that would be the basis for the court to reverse."

(4) The circuit court did not err in affirming the Dismissal Order. There was substantial evidence in the record that supported the Dismissal Order. At the November 19, 2003 hearing before the HLRB, Gomes acknowledged that he understood his obligation to proceed with his case as it had been explained to him by the HLRB at the previous hearing. Gomes also acknowledged that he understood the HLRB's ruling at the previous hearing that he would not be allowed any further continuances. Despite this express understanding of his responsibility to proceed and the consequences of failure to proceed, Gomes chose not to proceed.

(5) Whether HECO's motion to dismiss for lack of jurisdiction, which was granted in part and denied in part by the HLRB, was frivolous and warranted sanctions is not germane to the issue of the circuit court's affirmation of the HLRB Dismissal Order. This point on appeal lacks merit.

Therefore,

The June 21, 2005 "Judgment; Order" and the August 2, 2005 "Order Denying Appellant, Pro Se, Craig Gomes' Motion for Reconsideration of Order Filed June 21, 2005, Affirming HLRB's

Dismissal with Prejudice and Denying Appeal," both filed in the Circuit Court of the First Circuit, are affirmed.

DATED: Honolulu, Hawai'i, June 4, 2008.

On the briefs:

Craig Gomes,  
Appellant-Appellant pro se.

James H. Hershey,  
Fukunaga Matayoshi Hershey & Ching  
(Lani Narikiyo and Lisa S.  
Hirahara, Watanabe Ing &  
Komeiji, on the brief)  
for Appellee-Appellee  
Hawaiian Electric Co., Inc.

Valri Lei Kunimoto  
for Appellee-Appellee  
Hawai'i Labor Relations Board.

Frances E.H. Lum and  
Leo B. Young,  
Deputy Attorneys General,  
for Appellee-Appellee  
Director, Department of Labor  
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Presiding Judge

  
Associate Judge

  
Associate Judge