

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28896

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

THOMAS H. H. BRANDT,  
Claimant Petitioner-Appellee,

v.

STATE OF HAWAI'I, DEPARTMENT OF  
BUSINESS AND ECONOMIC DEVELOPMENT,  
Employer Respondent-Appellant.

KHAMAKADO  
CLERK, APPELLATE COURTS  
STATE OF HAWAI'I

2008 APR 15 PM 2:34

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CASE NO. S.P. 07-1-0191)

ORDER DISMISSING APPEAL FOR  
LACK OF APPELLATE JURISDICTION

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

Upon consideration of the Statement of Jurisdiction filed by Employer-Respondent/Appellant State of Hawai'i, Department of Business, Economic Development and Tourism (DBEDT) and the record on appeal, it appears that we lack jurisdiction over DBEDT appeal from the January 16, 2008 (Order) of the First Circuit (circuit court) denying DBEDT's renewed motion for stay of enforcement of the Decision of the State of Hawai'i Department of Labor and Industrial Relations Disability Compensation Division (DLIR) supplemental to an award of workers' compensation benefits "dated 1/30/2006", entered on August 28, 2006 (DLIR Decision) because there is no appeal authorized from the Order<sup>1</sup>.

The underlying action commenced when Claimant-Petitioner/Appellee Thomas H.H. Brandt (Brandt) filed a petition in the circuit court pursuant to Hawaii Revised Statutes

---

<sup>1</sup> The State filed three notices of appeal. All challenged the circuit court's denial of DBEDT's renewed motion to stay enforcement of the DLIR Decision.

(HRS) §386-91 (1993)<sup>2</sup>, to enforce by judgment DLIR's Decision. DBEDT responded by filing a motion for stay of enforcement of the DLIR Decision. The circuit court subsequently entered a Judgment in favor of Brandt that enforced the DLIR Decision and awarded Brandt the principal sum of \$60,320.00 plus one percent penalty.

---

<sup>2</sup> HRS §386-91 provides, in relevant part, as follows:

§ 386-91 Enforcement of decisions awarding compensation; judgment rendered thereon.

(a) Any party in interest or the director may file in the circuit court in the jurisdiction in which the injury occurred, a certified copy of:

(1) A decision of the director assessing penalties, or awarding compensation or other relief, including attorneys fees, from which no appeal has been taken within the time allowed therefor;

(2) A decision of the director assessing penalties, or awarding compensation or other relief, including attorneys fees, from which decision an appeal has been taken but as to which no order has been made by the director or the appellate board or the court that the appeal therefrom shall operate as a supersedeas or stay;

(3) A decision of the appellate board assessing penalties, or awarding compensation or other relief, including attorneys fees, from which no appeal has been taken within the time allowed therefor; or

(4) A decision of the appellate board assessing penalties, or awarding compensation or other relief, including attorneys fees, from which an appeal has been taken but as to which no order has been made by the appellate board or the court that the appeal therefrom shall operate as a supersedeas or stay.

The court shall render a judgment in accordance with the decision and notify the parties thereof. The judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though the judgment had been rendered in an action duly heard and determined by the court, except that there shall be no appeal therefrom.

(b) In all cases where an appeal from the decision concerned has been taken within the time provided therefor, but where no order has been made by the director or the appellate board or the court that the appeal shall operate as a supersedeas or stay, the decree or judgment of the circuit court shall provide that the decree or judgment shall become void if the decision or award of the director or appellate board, as the case may be, is finally set aside.

The circuit court also entered the order that denied the State's motion to stay enforcement of the DLIR Decision.

DBEDT filed a notice of appeal from the Order. In its statement of jurisdiction, DBEDT contends that its appeal is made pursuant to HRS § 641-1, Hawai'i Rules of Appellate Procedure (HRAP) Rules 4, 8, and 27, Hawai'i Rules of Civil Procedure (HRCPC) Rules 56, 62 and 81, and Koolau Radiology, Inc. v. Queen's Medical Center, 73 Haw. 433, 442, 834 P.2d 1294, 1299 (1992).

The right to appeal is purely statutory and exists only when given by some constitutional or statutory provision. Burke v. County of Maui, 95 Hawai'i 288, 289, 22 P.3d 84, 85, Chambers v. Leavy, 60 Haw. 52, 57, 587 P.2d 807, 810 (1978). HRS §641-1 (Supp. 2007) allows appeals in circuit court civil matters from "all final judgments, orders, or decrees, subject to [HRS] chapter 602."<sup>3</sup>

In this case, Claimant filed a civil action in the circuit court pursuant to HRS § 386-91(a), which allows any party in interest to seek circuit court enforcement of the Director's decision by filing a certified copy of the decision with the circuit court in the jurisdiction in which the injury occurred. Section 386-91(a) further provides that:

The court shall render a judgment in accordance with the decision and notify the parties thereof. The judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though the judgment had been rendered in an action duly heard and determined by the court, except that there shall be no appeal therefrom.

(Emphasis added). With regard to a matter where an appeal to the Labor and Industrial Relations Appeal Board (LIRAB) is pending, as in this case, HRS § 386-91(b) provides as follows:

In all cases where an appeal from the decision concerned has been taken within the time provided therefor, but where no order has been made by the [DLIR] director or [LIRBA] or the court that the

---

<sup>3</sup> HRS chapter 602 relates to the courts of appeal.

appeal shall operate as a supersedeas or stay, the decree or judgment of the circuit court shall provide that the decree or judgment shall become void if the decision or award of the director or appellate board, as the case may be, is finally set aside.

The statutes are clear. There is no appeal from the circuit court's Judgment and "all proceedings in relation thereto," including the Order.

DBEDT further contends that this appeal is authorized pursuant to HRAP Rules 4, 8, and 27 and HRCF Rules 56, 62, and 81. None of the cited rules confer appellate jurisdiction over this appeal.

Finally, DBEDT contends that this court has jurisdiction pursuant to Koolau Radiology, Inc. V. Queen's Medical Center, 73 Haw. 433, 442, 834 P.2d 1294, 1299 (1992). In Koolau Radiology, the appellant filed an appeal from an order denying a motion for stay of proceedings and to compel arbitration and denying a motion for appointment of an arbitrator. The holding of Koolau Radiology is inapplicable to this appeal.

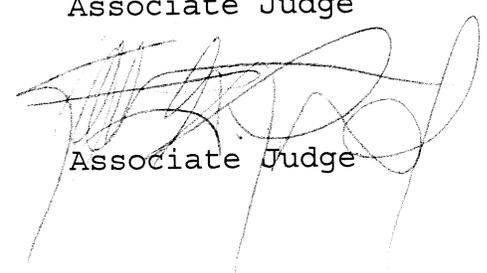
Based on the foregoing discussion, this court lacks jurisdiction over DBEDT's appeal. Therefore,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, April 15, 2008.

  
Presiding Judge

  
Associate Judge

  
Associate Judge