

NO. 28491

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

PAULETTE KA'ANOHIOKALANI KALEIKINI, Appellant-Appellant,  
LAURA H. THIELEN,<sup>1</sup> in her official capacity as  
Chairperson of the Board of Land and Natural Resources;  
BOARD OF LAND AND NATURAL RESOURCES; and DEPARTMENT OF  
LAND AND NATURAL RESOURCES, Appellees-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(Civ. No. 07-1-0068)

ORDER DISMISSING APPEAL FOR MOOTNESS

(By: Watanabe, Acting C.J., Nakamura, and Fujise, JJ.)

In this secondary appeal, Appellant-Appellant Paulette Ka'anohiokalani Kaleikini (Kaleikini) challenges (1) the Final Judgment entered by the Circuit Court of the First Circuit (circuit court)<sup>2</sup> on April 4, 2007 in favor of Appellees-Appellees Peter T. Young (Young),<sup>3</sup> in his official capacity as then-Chairperson of the Board of Land and Natural Resources; the Board of Land and Natural Resources; and the Department of Land and Natural Resources (collectively, Appellees); and (2) the "Order Dismissing [Kaleikini's] Notice of Appeal to Circuit Court Filed January 10, 2007, and [Kaleikini's] Motion for Stay Filed February 21, 2007, for Lack of Subject Matter Jurisdiction[,] entered by the circuit court<sup>4</sup> on March 16, 2007.

The genesis of this appeal is a September 13, 2006 decision of the O'ahu Island Burial Council (Council) authorizing the disinterment and relocation of historic human skeletal remains discovered on a commercial construction project site in urban Honolulu. Kaleikini sought to challenge the Council's decision by requesting a contested-case hearing before an appeals

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<sup>1</sup> Laura H. Thielen (Thielen) succeeded Appellee-Appellee Peter T. Young as Chairperson of the Board of Land and Natural Resources of the State of Hawaii during the pendency of this action. Pursuant to Hawaii Rules of Appellate Procedure Rule 43(c)(1), Thielen has been substituted automatically for Young in the instant case.

<sup>2</sup> The Honorable Eden Elizabeth Hifo (Judge Hifo) presided.

<sup>3</sup> See footnote 1.

<sup>4</sup> Judge Hifo entered the order.

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panel established pursuant to Hawaii Revised Statutes (HRS) § 6E-43(c) (1993).<sup>5</sup> When her request was denied, she filed the underlying appeal to the circuit court (Case 1).

The circuit court dismissed Case 1, reasoning that it lacked jurisdiction to hear Kaleikini's appeal pursuant to HRS § 91-14 (1993 & Supp. 2008)<sup>6</sup> because "the administrative agency did not hold a contested case hearing[.]" Kaleikini appealed and now challenges the circuit court's order dismissing Case 1 for lack of jurisdiction.

Based on our review of the record in this appeal, this court's "Order Requesting Supplemental Memoranda" filed on June 2, 2009, Kaleikini's supplemental memorandum filed on June 12, 2009, and the Appellees' supplemental memorandum filed on June 15, 2009, it appears that in a parallel civil action, Civil No. 07-1-0067 (Case 2), Kaleikini filed a complaint for declaratory judgment and injunctive relief which, among other claims, challenged (1) the denial of her request for a contested-case hearing, and (2) the Council's approval for disinterment and relocation of the historic remains. In Case 2,

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<sup>5</sup> HRS § 6E-43(c) provides:

Prehistoric and historic burial sites. . . .

. . . .

(c) Council determinations may be administratively appealed to a panel composed of three council chairpersons and three members from the board of land and natural resources as a contested case pursuant to chapter 91. In addition to the six members, the chairperson of the board of land and natural resources shall preside over the contested case and vote only in the event of a tie.

<sup>6</sup> HRS § 91-14 states, in relevant part:

**Judicial review of contested cases.** (a) Any person aggrieved by a final decision and order in a contested case or by a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief is entitled to judicial review thereof under this chapter; but nothing in this section shall be deemed to prevent resort to other means of review, redress, relief, or trial de novo, including the right of trial by jury, provided by law. Notwithstanding any other provision of this chapter to the contrary, for the purposes of this section, the term "person aggrieved" shall include an agency that is a party to a contested case proceeding before that agency or another agency.

the circuit court<sup>7</sup> dismissed Kaleikini's claim for wrongful denial of her request for a contested-case hearing via summary judgment. Her remaining claims were dismissed by summary judgment or stipulation of the parties. Subsequently, the parties entered into a settlement agreement, general release, and waiver of claims (settlement agreement). Pursuant to the settlement agreement, the parties agreed to a revised burial plan that addressed the inadvertently discovered and future discoveries of historic remains. The revised burial plan has been implemented.

Inasmuch as the remedy sought by Kaleikini--a determination that the circuit court had jurisdiction to review the denial of Kaleikini's request for a contested-case hearing--is no longer necessary, this appeal is moot. See Carl Corp. v. State, Dep't of Educ., 93 Hawai'i 155, 164, 997 P.2d 567, 576 (2000) (holding that invocation of the mootness doctrine is proper "where 'events have so affected the relations between the parties that the two conditions of justiciability relevant on appeal--adverse interest and effective remedy--have been compromised'"). (Ellipsis omitted.) Accordingly,

IT IS HEREBY ORDERED that this appeal is dismissed as moot.

DATED: Honolulu, Hawai'i, July 9, 2009.

On the briefs:

Moses K. N. Haia, III,  
and David Kimo Frankel  
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Appellant-Appellant.

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*Corinne K. Watanabe*

*Craig H. Nakamura*

*Auna Olu Frijia*

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<sup>7</sup> The Honorable Glenn J. Kim presided.