

NO. 29938

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

HAWAII GOVERNMENT EMPLOYEES ASSOCIATION,
AFSCME, LOCAL 152, AFL-CIO, Union-Appellee,

and

ERIK D. BARNES, Grievant-Appellant,

v.

HONOLULU EMERGENCY SERVICES DEPARTMENT,
CITY AND COUNTY OF HONOLULU, Employer-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P. NO. 09-1-0032)

ORDER DISMISSING APPEAL

(By: Nakamura, Chief Judge, Watanabe and Leonard, JJ.)

Upon review of the record on appeal, it appears that we must dismiss Appellant Erik D. Barnes's (Appellant Barnes) appeal from the Honorable Karl K. Sakamoto's June 12, 2009 order denying Union-Appellee Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO's (Appellee HGEA), motion to vacate, modify, correct, and/or clarify an arbitration decision because Appellant Barnes lacks standing to assert this appeal. Appellant Barnes was not a party in the circuit court case of S.P. No. 09-1-0032. The Supreme Court of Hawaii has stated that

[g]enerally, the requirements of standing to appeal are: (1) the person must first have been a party to the action; (2) the person seeking modification of the order or judgment must have had standing to oppose it in the trial court; and (3) such person must be aggrieved by the ruling, i.e., the person must be one who is affected or prejudiced by the appealable order.

Abaya v. Mantell, 112 Hawai'i 176, 181, 145 P.3d 719, 724 (2006)

(citation and internal quotation marks omitted; emphasis in original). "In other words, non-parties, who did not or could not intervene, are ordinarily denied standing to appeal." Id. (citation and internal quotation marks omitted; emphasis in original). Thus, where an employer asserted an appeal from a case in which the employer had never formally intervened pursuant to Rule 24 of the Hawai'i Rules of Civil Procedure (HRCPP), the Supreme Court of Hawai'i held that, "because Appellant was not made a party to the instant case, it lacks standing to appeal[,] and the Supreme Court of Hawai'i "dismiss[ed] Appellant's appeal." Id. at 184, 145 P.3d at 727. Similarly in the instant case, Appellant Barnes never obtained the circuit court's permission pursuant to HRCPP Rule 24 to intervene in S.P. No. 09-1-0032, as HRCPP Rule 24 requires. Therefore, Appellant Barnes lacks standing to assert his appeal in appellate court case number 29938.

Accordingly, IT IS HEREBY ORDERED that Appeal No. 29938 is dismissed.

DATED: Honolulu, Hawai'i, November 23, 2009.

Chief Judge

Associate Judge

Associate Judge