DISSENTING OPINION BY ACOBA, J.

I respectfully dissent because the judgment granted as to Third-Party Defendant the County of Kauai (the County) has become final. See discussion supra. Because the judgment has become final, it is legally established that the height of the hedge which is the basis of liability alleged by Plaintiffs-Appellants Benjamin Querubin and Carolyn Taketa, as Special Administrator of the Estate of Juanita Querubin, deceased (Plaintiffs) against Defendant-Appellee Olaf Thronas (Thronas) was not a contributing factor in the subject accident. This fact was established by events described as follows.

On December 7, 1999, the County moved for summary judgment on the ground that the "hedge was not a contributing factor in the accident." As the County noted, Plaintiffs' complaint alleged at paragraph 8 that "Thronas negligently maintained a hedge at the corner closest to said intersection which far exceeded the three feet height limitation imposed by law and thereby obstructed the vision of motorists and caused a traffic hazard." (Capitalization omitted.) Thronas subsequently filed a third-party complaint against the County and Doe third-party defendants alleging, inter alia, as follows:

> 6. County and/or Doe Third-Party Defendants had a duty to maintain that portion of the hedge that is closest to intersection, and if any part of the hedge contributed to the damages incurred by Plaintiffs, or any of them, it was the portion of the hedge located in County's and/or Doe Third-Party Defendants' property that did so, and County and/or Doe Third-Party Defendants[] breached its/their duty to maintain that portion of the hedge;
>
> 7. If Plaintiffs, or any of them, incurred damages as

> alleged in their Complaint, each of their damages were the result of the negligence or fault of County and/or Doe Third-Party Defendants, and Thronas was not at fault in any way[.]

(Emphases added.) (Capitalization omitted.)

On December 10, 1999, Thronas filed a joinder in the County's motion for summary judgment alleging the same ground, to the effect that "the presence or maintenance of the hedge at the site of the traffic accident from which Plaintiff(s) incurred his/her/their injuries was not a contributing factor in said traffic accident." Plaintiffs were served with the County's motion. Plaintiffs were also served with Thronas's joinder.

On January 7, 2000, Plaintiffs filed a statement of no position, stating "they have no position as to Third-Party Defendant County of Kauai's Motion for Summary Judgment, which was filed on December 7, 1999, and is scheduled for hearing . . . on January 11, 2000." (Capitalization omitted.) Plaintiffs did not file any response to Thronas's joinder.

On January 28, 2000, the court granted the County's motion for summary judgment and filed an order noting, inter alia, that "Plaintiffs[] hav[e] filed a statement of no position to the County's motion, and Defendant and Third-Party Plaintiff Olaf Thronas[] hav[e] filed a joinder in the County's motion[.]" In apparent consonance with that order, on February 25, 2000, the court filed an "Order Granting Olaf Thronas's Motion for Summary Judgment *via* Joinder in Third-Party Defendant County of Kauai's

Motion for Summary Judgment," reciting as part of the order, as follows:

> The hearing on Third-Party Defendant's the County of Kauai's Motion for Summary Judgment on the ground that the presence or maintenance of the hedge at the site of the traffic accident from which Plaintiff(s) incurred his/her/their injuries was not a contributing factor in said traffic accident, and the joinder in said Motion by Defendant, Olaf Thronas, came on to be heard on the date, at the time and by the Judge as indicated above. Present at said hearing was . . . legal counsel for Plaintiffs.

(Emphases added.) Thus, Plaintiffs were represented but apparently did not object to summary judgment granted Thronas by reason of his joinder.

On March 6, 2000, Plaintiffs filed a motion to set aside the order granting Thronas's motion for summary judgment via joinder. In their memorandum in support, Plaintiffs argued that the "order must be set aside for a very simple reason: Defendant Olaf Thronas never filed a Motion for Summary Judgment against Plaintiffs herein and thus, obviously, Defendant Thronas could not possibly be granted [s]ummary [j]udgment against Plaintiffs." (Boldfaced font omitted.) Nevertheless, the court entered "judgment" on March 16, 2000 in favor of the County "as to all claims" raised by all other parties in the action.

On May 22, 2000, Thronas filed a memorandum in opposition to Plaintiffs' February 25, 2000 motion. He noted that

> soon after December 8, 1999, when Thronas served Plaintiffs with his joinder, they were specifically put on notice that Thronas was asking this [c]ourt to treat him in a like manner as County on the issue of the hedge. It wasn't until almost a month later, on January 7, 2000[,] that Plaintiffs filed a statement of no position on County's [m]otion, and filed nothing on Thronas's joinder. If that wasn't bad

> enough, when County's [m]otion came on for hearing, Plaintiffs did not even appear.

(Emphases added.) (Capitalization omitted.)

On August 14, 2000, the court denied Plaintiffs' motion to set aside. On February 7, 2001, the court entered "final judgment." As to "third party claims," the judgment stated that

> [j]udgment is entered in favor of Third-Party Defendant County of Kauai against Defendant Thronas with respect to Defendant Thronas'[s] third-party claims pursuant to the Order Granting Third-Party Defendant [C]ounty of Kauai's Motion for Summary Judgment entered herein on January 28, 2000 and the Judgment entered herein on March 16, 2000.

(Capitalization omitted.) As to Plaintiffs' claims against Thronas, the judgment stated that

> [j]udgment is entered in favor of Defendant Olaf Thronas ("Defendant Thronas") against Plaintiffs Benjamin Querubin and Carolyn Taketa, as Special Administrator of the Estate of Juanita Querubin, deceased[,] pursuant to the Order Granting Defendant's, Olaf Thronas's Motion [f]or Summary Judgment . . . entered herein on February 25, 2000.

(Capitalization omitted.) Plaintiffs appealed only from that part of the February 7, 2001 judgment regarding Plaintiffs' claim against Thronas and did not appeal from any other part of that judgment.

Consequently and additionally, the discussion by the majority regarding the admissibility of the evidence that was submitted by the County in support of its motion for summary judgment, see majority opinion at 21-22 note 5, is not germane. That matter is moot because the order granting summary judgment to the County was not appealed and the thirty-day time for appeal has run. See HRS § 641-1(c) (1993) (stating that "[a]n appeal shall be taken in the manner and within the time provided by the

rules of court") and Hawai'i Rules of Appellate Procedure Rule 4(a)(1) (2001) (stating that "[w]hen a civil appeal is permitted by law, the notice of appeal shall be filed within 30 days after entry of the judgment or appealable order").

The proposition that the hedge was not a contributing factor of the subject accident is now legally established inasmuch as the February 7, 2001 final judgment entered with respect to the court's order granting the County's motion for summary judgment and the judgment entered on March 16, 2000, have not been appealed.[1] This proposition is dispositive of the appeal, for it may not be reexamined. See, e.g., Taylor-Rice v. State, 105 Hawai'i 104, 111, 94 P.3d 659, 666 (2004) ("It is elementary that where a party to a suit does not appeal from the decree entered therein, he or she must be held to acquiesce in it." (Quotation marks, brackets, and citation omitted.)).

As the foregoing indicates, Plaintiffs had notice of Thronas's joinder in the County's motion for summary judgment because they had been served with the joinder. The ground for dismissing the County from the case was based on a negation of the fact which had been pled by Plaintiffs as the basis for Thronas's liability and upon which Thronas had filed a third-

[1] As noted supra, before the February 7, 2001 final judgment, the court entered a separate judgment on March 16, 2000, in favor of the County as "against all parties" and their claims asserted against County. Arguably, the March 16, 2000 judgment was a final judgment as to the County, but none of the parties raise this as an issue. As discussed supra, Plaintiffs' notice of appeal as to the February 7, 2001 judgment only challenged the court's decision as to Plaintiffs' claims against Thronas, thereby rendering the February 7, 2001 judgment in favor of the County legally conclusive.

party complaint against the County. Plaintiffs did not file anything in opposition. Plaintiffs apparently appeared at the February 25, 2000 hearing at which the court granted Thronas's motion for summary judgment via its joinder in the County's motion. Hence, as Thronas argues on appeal, Plaintiffs waived any objections to summary judgment entered on behalf of Thronas and on the facts recounted above, Rule 60(a) would not afford relief.

Because the March 16, 2000 judgment and the February 7, 2001 judgment as to the County's motion for summary judgment are final, it would be inconsistent, as the majority does, to remand and to hold that the circuit court may in effect reconsider a proposition of fact embodied in the February 25, 2000 summary judgment order that has become legally unassailable by virtue of the finality of the March 16, 2000 and the February 7, 2001 judgments. Consequently, it would be unfairly prejudicial to Thronas to allow the circuit court to treat that fact, as binding between the Plaintiffs and the County, but on remand allow the same fact to be re-examined in the same case as it pertains to the Plaintiffs and Thronas.