

*** NOT FOR PUBLICATION ***

NO. 25421

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

HYON SU BURPEE, Plaintiff-Appellant,
 vs.
 AL JOE GARIBAY, Defendant-Appellee,
 and

K. HAMAKAHO
 CLERK, APPELLATE COURTS
 STATE OF HAWAII

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FILED

JOHN DOES 1-10, JANE DOES 1-10, DOE PARTNERSHIPS 1-10,
 DOE NON-PROFIT ENTITIES, DOE GOVERNMENTAL AGENCIES 1-10,
 DOE CORPORATE ENTITIES 1-10, Defendants.

APPEAL FROM THE FIRST CIRCUIT COURT
 (CIV. NO. 00-1-3849)

MEMORANDUM OPINION

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Plaintiff-appellant Hyon Su Burpee appeals from the Circuit Court of the First Circuit's September 23, 2002 order¹ granting in part and denying in part defendant-appellee Al Joe Garibay's post-judgment motion. Therein, the circuit court, inter alia, granted Garibay's request to apply the covered loss deductible statute, Hawai'i Revised Statutes (HRS) § 431:10C-301.5 (Supp. 2002),² to reduce the amount of damages awarded to

¹ The Honorable Richard W. Pollack presided over this matter.

² HRS § 431:10C-301.5 provides:

Covered loss deductible. Whenever a person effects a recovery for bodily injury, whether by suit, arbitration, or settlement, and it is determined that the person is entitled
 (continued...)

Burpee in a Court Annexed Arbitration Program (CAAP or the Program) award that had been entered as a final judgment on April 2, 2002, inasmuch as neither party filed a notice of appeal and request for trial de novo.

On appeal, Burpee contends that the circuit court erred in granting Garibay's post-judgment motion because the CAAP award had been reduced to final judgment and that, therefore, the circuit court could not modify the underlying CAAP award. Burpee also maintains that, inasmuch as HRS § 431:10C-301.5 is unconstitutional, it cannot be applied to reduce the amount of damages awarded to her.

For the reasons discussed more fully infra, we hold that the circuit court erred by granting Garibay's post-judgment motion. Accordingly, we reverse the circuit court's September 23, 2002 order.

II. BACKGROUND

On April 26, 1998, Garibay and Burpee were involved in a motor vehicle accident. On December 20, 2000, Burpee filed a three-count complaint against Garibay and Doe defendants. Counts I and II asserted motor vehicle tort claims. Count III asserted a claim for declaratory relief that HRS § 431:10C-301.5

²(...continued)

to recover damages, the judgment, settlement, or award shall be reduced by \$5,000 or the amount of personal injury protection benefits incurred, whichever is greater, up to the maximum limit. The covered loss deductible shall not include benefits paid or incurred under any optional additional coverage.

(Emphasis in original.)

[hereinafter, HRS § 431:10C-301.5 or the covered loss deductible statute] is unconstitutional.

The instant case was subsequently submitted to the Program, pursuant to HRS § 601-20 (1993).³ Following an arbitration hearing, Michael L. Lam (the arbitrator) issued an arbitration award, on March 4, 2002, in favor of Burpee [hereinafter, the arbitration award or the CAAP award]. Therein, the arbitrator determined that comparative negligence was at issue and found Burpee five percent negligent. The arbitrator also indicated that, "without considering the question of reducing damages due to [Burpee's] contributory [n]egligence, and without consideration of the covered loss deductible issue, [the arbitrator] finds [Burpee's] total damages" to be \$18,378.00. (Emphases in original.)

Neither party filed a notice of appeal and request for trial de novo pursuant to Hawai'i Arbitration Rules (HAR) Rule 21

³ HRS § 601-20 provides in relevant part:

Court annexed arbitration program. (a) There is established within the judiciary a court annexed arbitration program which shall be a mandatory and nonbinding arbitration program to provide for a procedure to obtain prompt and equitable resolution of certain civil actions in tort through arbitration. . . .

(b) All civil actions in tort, having a probable jury award value, not reduced by the issue of liability, exclusive of interest and costs, of \$150,000 or less, shall be submitted to the program and be subject to determination of arbitrability and to arbitration under the rules governing the program[.]

(Emphasis in original.)

(2003).⁴ Consequently, the clerk of the circuit court entered the arbitration award as a final judgment on April 2, 2002 (the April 2, 2002 entry of final judgment).

On April 10, 2002, Garibay filed a "Motion for Application of Covered Loss Deductible and to Dismiss Count III of the Complaint for Declaratory Relief and Other Damages," pursuant to, inter alia, Hawai'i Rules of Civil Procedure (HRCP) Rule 59 (2003)⁵ (the Rule 59 motion). Therein, Garibay sought, inter alia, an order: (1) applying the covered loss deductible in the amount of \$8,378.00 to the final judgment entered in this case and adjudging and decreeing that the amount necessary to satisfy the said judgment is \$9,081.10, rather than \$18,378.00;⁶

⁴ HAR Rule 21 provides:

If, after twenty (20) days after the award is served upon the parties, no party has filed a written Notice of Appeal and Request for Trial De Novo, the clerk of the court shall, upon notification by the Arbitration Administrator, enter the arbitration award as a final judgment of the court. This period may be extended by written stipulation, filed within twenty (20) days after service of the award upon the parties, to a period no more than forty (40) days after the award is served upon the parties. Said award shall have the same force and effect as a final judgment of the court in the civil action, but may not be appealed.

(Emphases added.)

⁵ HRCP Rule 59 provides in pertinent part:

(e) Motion to alter or amend judgment. Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

⁶ Garibay states that, pursuant to a supplemental affidavit of his counsel in support of the Rule 59 motion, the total covered loss deductible amount of personal injury protection (PIP) benefits paid actually exceeded \$8,378.00 by \$53.36. However, Garibay maintains that he seeks only a reduction of \$8,378.00. According to Garibay's calculations, it appears that he reached the final amount of \$9,081.10 by first deducting the amount representing Burpee's five percent comparative negligence, \$918.90 (i.e.,
(continued...))

and (2) dismissing Count III of the complaint for failure to state a claim upon which relief can be granted.

On August 27, 2002, a hearing was held on the Rule 59 motion. The circuit court orally ruled, inter alia, that: (1) even assuming that the April 2, 2002 entry of final judgment on the arbitration award was a final judgment, the legislature intended that the covered loss deductible statute would apply in this case; (2) the covered loss deductible statute is constitutional; and (3) it is unnecessary to address Garibay's request to dismiss Count III in light of its ruling.

On September 23, 2002, the circuit court entered its written order granting in part and denying in part the Rule 59 motion (the September 23, 2002 order). The circuit court also entered the following relevant findings and conclusions:

3. Even assuming the April 2, 2002 "Entry of Final Judgment" constitutes a final judgment as that term is normally understood under [HRCF] Rule 54(b) . . . , the Court concludes that the legislature intended that the covered loss deductible statute, [HRS] [s]ection 431:10C-301.5 . . . [,] would apply the [sic] circumstances of this case to the April 2, 2002 judgment, wherein [Burpee] effected a recovery for bodily injury by means of an arbitration award.
4. The plain wording of the covered loss deductible statute, HRS § 431:10C-301.5[,], and its legislative history require a reduction of the judgment by the amount of [PIP] benefits actually paid by [Burpee's] PIP carrier, which was \$8,378.00 for the purpose of this case. Nothing in the [HAR] prohibits application

⁶(...continued)
multiplying \$18,378.00, the total damages awarded by the arbitrator, by .05, reflecting Burpee's negligence, resulting in \$918.90), from \$18,378.00, resulting in \$17,459.10. Next, it appears that he subtracted \$8,378.00 (the covered loss deductible amount) from \$17,459.10 (the "net" award, reflecting the total damages awarded to Burpee minus her five percent comparative negligence), resulting in \$9,081.10, the amount Garibay seeks to pay to satisfy the judgment against him. On appeal, Burpee does not specifically dispute the amount of the covered loss deductible (\$8,378.00) or the net amount to satisfy judgment in this case (\$9,081.10).

- of the covered loss deductible to an arbitration award that has been entered as a final judgment, and, in any event, legislative fiat would prevail over a contrary rule interpretation. See Territory v. Kauhane, 25 Haw. 307, 308-09 (1919) (per curium); Territory v. Kapiolani Estate, Ltd., 20 Haw. 548, 550-51 (1911).
5. The covered loss deductible statute is constitutional as it is rationally related to a legitimate government interest to stabilize motor vehicle insurance premium rates and to reduce small claims by impacting recoveries. . . .
 6. The covered loss deductible statute does not violate equal protection or due process under the federal or state constitutions. . . . This Court also rejects the notion that statutory modification of the collateral source rule by the legislature results in an unconstitutional statute. . . . Further, application of the covered loss deductible does not constitutionally impair the right to a jury or judge trial, as the statute is premised upon a rational state interest. See Richardson v. Sport Shinko (Waikiki Corporation), 76 Hawai'i 494, 880 P.2d 169 (1994).
 7. In light of the foregoing, the Court adjudges and decrees that the amount necessary to satisfy judgment in this case is \$9,081.10.
 8. In light of the Court's ruling herein, the Court finds it unnecessary to address [Garibay's] request to dismiss Count III of the [c]omplaint for failure to state a claim upon which relief can be granted[.]

(Footnote omitted.)

On October 22, 2002, Burpee timely appealed the September 23, 2002 order.

II. STANDARD OF REVIEW

Statutory interpretation is reviewed de novo by this court. Blair v. Inq, 95 Hawai'i 247, 253, 21 P.3d 452, 458 (2001) (citations omitted). In addition, "[t]he interpretation of a rule promulgated by the courts involves principles of statutory construction." Dorrance v. Lee, 90 Hawai'i 143, 145, 976 P.2d 904, 906 (1999) (internal quotation marks and citation omitted). Therefore, "like statutes, we interpret the [HAR] de novo." Id. (citation omitted). "Where the language of the statute is plain and unambiguous, our only duty is to give effect

to its plain and obvious meaning." Kim v. Reilly, 105 Hawai'i 93, 95, 94 P.3d 648, 650 (internal quotation marks and citation omitted), reconsideration denied, 105 Hawai'i 196, 95 P.3d 627 (2004).

III. DISCUSSION

A. Whether the April 2, 2002 Entry of Final Judgment was a Final Judgment

Burpee contends that the circuit court erred in applying the covered loss deductible, resulting in a reduction of the CAAP award, because Garibay's Rule 59 motion was made after the arbitration award was entered as a final judgment and, therefore, constituted an untimely challenge to the CAAP award. In response, Garibay contends that the April 2, 2002 entry of final judgment was "interlocutory" rather than final and, therefore, was subject to revision at any time before the entry of a "final" judgment. We, therefore, examine the issue regarding the finality of the CAAP award.

In Darcy v. Lolohea, 77 Hawai'i 422, 886 P.2d 759 (App.), cert. denied, 77 Hawai'i 489, 886 P.2d 759 (1994), a lawsuit alleging bodily injury arising from a motor vehicle accident was submitted to the Program. The arbitrator issued an award in favor of the plaintiffs and, because none of the parties appealed the arbitrator's decision, the arbitration award was entered as a final judgment, pursuant to HAR Rule 21. Id. at 425, 886 P.2d at 762. On appeal, the Intermediate Court of Appeals (ICA) held that "an arbitration award which has become a

final judgment pursuant to HAR Rule 21[] may not be vacated or modified by the circuit court, or appealed to an appellate court[.]" Id. at 424, 886 P.2d at 761 (emphases added). The ICA also held that "an arbitrator's award which has become final under the Program is not subject to circuit court review under HRCP Rule 59 and/or Rule 60." Id. at 426, 886 P.2d at 763 (emphasis added). The ICA reasoned that,

allowing the circuit court to reopen and reexamine a final arbitration judgment would defeat the legislature's avowed intent of providing a procedure for the "prompt" resolution of cases. HRS § 601-20. Consideration of such challenges would complicate, delay, and perhaps preclude the implementation and finality of an award. Inevitably, the parties would be exposed to costly and time-consuming litigation, and conceivably . . . to appeals from orders determining such challenges.

Obviously, then, the HAR do not evince any intent that arbitration awards, once final, may be reopened by the circuit court. The finality of an arbitration award after the appeal period, coupled with its non-appealability, leads inescapably to the conclusion that entry of final judgment is, indeed, meant to end the controversy. So, once metamorphosed into final judgments, arbitration awards may not be attacked in the circuit court by way of such motions [i.e., HRCP Rule 59 and/or HRCP Rule 60 motions].

Id. at 426-27, 886 P.2d at 763-64 (emphasis added).

In the instant case, the arbitrator issued an award in favor of Burpee and, because none of the parties appealed and requested a trial de novo, the arbitration award became a final, non-appealable judgment on April 2, 2002, when it was entered by the clerk pursuant to HAR Rule 21. Id. at 425, 886 P.2d at 762. Nevertheless, Garibay contends that, inasmuch as Count III (relating to the request for declaratory relief as to the constitutionality of HRS § 431:10C-301.5) was not resolved by the arbitrator, the resulting entry of final judgment was

interlocutory and, thus, not final. As previously stated, HRS § 431:10C-301.5 mandates that a judgment, settlement, or award shall be reduced by "\$5,000 or the amount of [PIP] benefits incurred, whichever is greater, up to the maximum limit." The arbitrator, however, awarded Burpee her total damages without subtracting any allowable deductions. Had Garibay timely challenged the arbitrator's decision via an appeal and request for trial de novo in order to invoke the covered loss deductible, presumably Burpee would have pursued her challenge as to the constitutionality of HRS § 431:10C-301.5. However, as a result of Garibay's inaction, the arbitration award became a final, non-appealable judgment. Consequently, Garibay's argument that the April 2, 2002 entry of the CAAP award as a final judgment was "interlocutory" is without merit. Accordingly, as did the ICA in Darcy, we hold that, once the arbitration award "metamorphosed into [a] final judgment[]," it could not be subject to circuit court review under HRCP Rule 59. See Darcy, 77 Hawai'i at 427, 886 P.2d at 764.

B. Burpee's Remaining Contention

Lastly, Burpee challenges the constitutionality of the covered loss deductible statute by arguing that it

- (1) "unconstitutionally revokes and rescinds the collateral source doctrine,"
- (2) authorizes an unlawful taking of her personal property, and
- (3) impairs her right to a jury trial.

In light of our holding that the covered loss deductible statute

cannot be applied in this case because the CAAP award had been entered as a final, non-appealable judgment, we need not address Burpee's remaining contentions regarding her constitutional challenge.

IV. CONCLUSION

Based on the foregoing, we reverse the circuit court's September 23, 2002 order.

DATED: Honolulu, Hawai'i, February 23, 2006.

On the briefs:

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plaintiff-appellant

Randall Y. S. Chung and
Ward F. N. Fujimoto (of
Matsui Chung Sumida &
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