IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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HAWAII HOME INFUSION ASSOCIATES, Plaintiff-Appellant,

vs.

NELSON B. BEFITEL, DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, STATE OF HAWAI'I; KUHIO MOTORS, INC.; ADJUSTING SERVICES OF HAWAII, INC.; and MAJESTIC INSURANCE COMPANY, Defendants-Appellees,

and

EDWARD SHEPHERD, Defendant.

K. HAMAKADO
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STATE OF HAWAI'I
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NO. 27256
APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Civ. No. 04-1-0616-04)

APRIL 16, 2007

MOON, C.J., LEVINSON, NAKAYAMA, AND DUFFY, JJ.; AND ACOBA, J., CONCURRING SEPARATELY

OPINION OF THE COURT BY LEVINSON, J.

The plaintiff-appellant Hawaii Home Infusion Associates (HHIA) appeals from the first circuit court's March 28, 2005 judgment, the Honorable Karen S. S. Ahn presiding,[1] awarding summary judgment in favor of the defendants-appellees Nelson B. Befitel, director of the State of Hawaii's Department of Labor and Industrial Relations (DLIR) [hereinafter, "the director"], Kuhio Motors, Inc. (KM), Adjusting Services of Hawaii, Inc. (ASH), and Majestic Insurance Company (MIC) [hereinafter,

[1] The Honorable Richard W. Pollack presided through August 1, 2004, including over the disposition of the motion to dismiss discussed infra.

collectively, "the Appellees"] and against HHIA and dismissing "[a]ll other claims and all other parties."

On appeal, HHIA challenges the circuit court's judgment insofar as it effectively barred its appeal from the director's decision to the Labor and Industrial Relations Appeals Board.

For the reasons discussed infra in section III.B, we hold that the first circuit court lacked subject matter jurisdiction over HHIA's declaratory action and, accordingly, vacate the judgment below and remand with instructions to dismiss HHIA's complaint.

## I. BACKGROUND

On April 2, 2004, HHIA filed a "petition"[2] for declaratory relief in the first circuit court, inter alia, challenging, on "substantive due process" and separation-of-powers grounds, the provision of Hawaiʻi Administrative Rules (HAR) § 12-15-94(d) (2001) that bars appeals from certain billing dispute resolution decisions.[3] As bases for the first circuit

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[2] "We will treat the petition as a complaint because civil actions are to be commenced by a complaint." In re Smith, 68 Haw. 466, 468, 719 P.2d 397, 399 (1986) (citing Hawaiʻi Rule of Civil Procedure 3). But see Hawaiʻi Revised Statutes § 91-7(a) (1993) (referring to the party bringing the declaratory action as "petitioner").

[3] HAR § 12-15-94(d) provides in relevant part:

> In the event a reasonable disagreement relating to specific charges cannot be resolved, the . . . provider of service may request intervention by the director . . . . The director shall send the parties a notice and the parties shall negotiate during the thirty-one calendar days following the date of the notice . . . . If the parties fail to come to an agreement during the thirty-one calendar days, then fourteen calendar days following the thirty-one day negotiating period, either party may file a request . . . to the director to review the dispute . . . . The director shall send the parties a second notice requesting the parties file position statements . . . . The director shall review the positions of both parties and render an administrative

(continued...)

court's jurisdiction, HHIA invoked Hawai'i Revised Statutes (HRS) §§ 91-7 (1993)[4] and 632-1 (1993) (concerning, inter alia, circuit courts' jurisdiction over declaratory actions). According to its complaint, HHIA's "principal offices" are located in Līhu'e, in Kaua'i County, which is coextensive with the fifth judicial circuit, see HRS § 603-1(4) (Supp. 1994). HHIA "renders medical care, medical services, and medical supplies . . . to home-bound patients on the island of Kaua[']i" and, in particular, prepared and monitored the delivery of a "specially formulated" medicinal compound to a worker's compensation claimant, the defendant Edward Shepherd. A billing dispute among HHIA, ASH, and MIC ensued, and the director "ordered the parties" into the billing dispute process described in HAR § 12-15-94(d). HHIA asserted that the director's resulting decision was adverse to it and that HAR § 12-15-94(d) unconstitutionally deprived it of the right to an appeal therefrom.

On June 21, 2004, the director moved to dismiss HHIA's complaint on the grounds that it "was filed in the wrong

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[3](...continued)
decision without hearing. . . . The decision of the director is final and not appealable.

[4] HRS § 91-7, entitled "Declaratory judgment on validity of rules," provides in relevant part:

> (a) Any interested person may obtain a judicial declaration as to the validity of an agency rule as provided in subsection (b) . . . by bringing an action against the agency in the circuit court of the county in which petitioner resides or has its principal place of business. . . .
>
> (b) The court shall declare the rule invalid it finds that it violates constitutional or statutory provisions, or exceeds the statutory authority of the agency, or was adopted without compliance with statutory rulemaking procedures.

(Emphases added.)

circuit."[5] (Quoting HRS § 91-7(a).) (Citing HRS § 603-37.5 (concerning "[c]ure or waiver of [venue] defects"); Hawai'i Rules of Civil Procedure (HRCP) Rules 7 (concerning "form of motions") and 12.[6]) See also KM's, ASH's, and MIC's Answer at 4 ("[HHIA]'s claims are barred . . . because of . . . lack of jurisdiction."). HHIA responded that the director's motion amounted to a challenge of venue rather than subject matter jurisdiction and was therefore untimely inasmuch as the director did not object to venue in his answer or in a pre-answer motion. (Quoting HRCP Rule 12(b) and (h), see supra note 5.) HHIA argued in the alternative that, were the director to claim that his motion asserted a challenge of jurisdiction rather than venue, he would

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[5] The title of the director's motion and the substance of his accompanying memorandum seem to suggest transfer to the fifth circuit as an alternative remedy.

[6] HRCP Rule 12, entitled "Defenses and objections -- when and how presented -- by pleading or motion . . . ," provides in relevant part:

> **(b) How presented.** Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue . . . . A motion making any of these defenses shall be made before pleading if a further pleading is permitted. . . .
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> . . . .
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> **(h) Waiver or preservation of certain defenses.**
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> (1) A defense of lack of jurisdiction over the person[ or] improper venue . . . is waived . . . (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.
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> . . . .
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> (3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

Inasmuch as the director cited HRCP Rule 12 generically, and based upon the substance of his motion, his asserted grounds for dismissal could be improper venue, lack of jurisdiction over the subject matter, or both. In any case, the imprecision of the director's motion cannot blind us to jurisdictional defects, which we correct, sua sponte if necessary, see infra section II.A.

be mistaken inasmuch as "venue is generally not a jurisdictional factor in Hawai[ʻ]i."[7] (Citing Life of the Land v. Land Use Comm'n, 58 Haw. 292, 294-95, 298, 568 P.2d 1189, 1191-94 (1977).) Construing its argument generously, HHIA seems to have asserted that, rather than creating a territorial limitation on subject matter jurisdiction, HRS § 91-7(a) augments HRS § 603-36(5) (1993),[8] granting the plaintiff the option to litigate in the plaintiff's own domicile notwithstanding the general venue rule to the contrary.[9]

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[7] Obviously, this merely begs the question whether the director moved for dismissal on jurisdictional or venue grounds. In any case, assuming there was a defect of subject matter jurisdiction, the circuit court was empowered to notice it and dismiss the complaint sua sponte. See, e.g., HRCP Rule 12(h)(3), supra note 5.

[8] HRS § 603-36, entitled "Actions and proceedings, where to be brought," provides in relevant part:

> Actions and proceedings of a civil nature within the jurisdiction of the circuit courts . . .
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> . . . .
>
> (5) . . . other than those specified above shall be brought[,] . . . if there is more than one defendant, . . . in the circuit in which the claim for relief arose unless a majority of the defendants are domiciled in another circuit, whereupon the action may be brought in the circuit where the majority of the defendants are domiciled.

[9] HHIA's argument reads:

> Plainly, the phrase "by bringing an action against the agency in the circuit court of the county in which [the] petitioner resides or has its principal place of business["] . . . would have no purpose if . . . agencies h[e]ld the right to waive venue as other defendant[s] do . . . . [T]he general venue provision[,] . . . [HRS §] 603-36(5) . . . establishes the circuit where the claim of relief arose or where the defendant is domiciled as the proper circuit for filing. Accordingly, [the d]irector . . . would hold the power to waive venue were it not for the venue provision in [HRS] §[ ]91-7(a). The right to file in the county in which [the p]etitioner is domiciled plainly protects [the p]etitioner's convenience. . . .
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> . . . .
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> The Legislature intended . . . HRS § 91-7 to remove barriers, not create them. The defendant[] in a[n HRS] §[ ]91-7 [complaint] is always a governmental agency. . . . If the concept of domicile is applicable to state agencies, certainly they must

(continued...)

The director's July 2, 2004 reply countered "that HRS § 91-7 pertains to jurisdiction and is not a matter of venue." He cited this court's observation, in Life of the Land, that "[t]he circuit court . . . has jurisdiction to render declaratory judgments under HRS §[] 91-7," 58 Haw. at 295, 568 P.2d at 1192 (emphasis added).[10] The director further implied that, inasmuch as HRS § 91-7 is distinct from HRS ch. 603, pt. IV (1993) and § 604-7 (Supp. 2002), concerning venue in the circuit and district courts, respectively, "it should not be assumed that [HRS] § 91-7 contains a 'venue' provision." Finally, the director seems to have argued that a geographic reference in the statute under scrutiny "does not automatically" preclude its construction as a limitation on jurisdiction. (Quoting Hawaiian Tel. Co. v. Agsalud, 67 Haw. 39, 40, 675 P.2d 777, 778 (1984).)

On July 9, 2004, the circuit court conducted a hearing on the director's motion to dismiss, the transcript of which is not in the record, cf. Hawai'i Rule of Appellate Procedure 10(a) ("The record on appeal shall consist of . . . : . . . (4) the transcripts prepared for the record on appeal . . . .") (emphasis

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[9](...continued)

> . . . be domiciled . . . in the seat of government in [the City and County of] Honolulu[, hence, in the first circuit, see HRS § 603-1(1) (Supp. 1994)]. . . . The purpose underlying . . . [HRS] §[ ]91-7 thus must have been the elimination of a barrier to declaratory actions challenging the validity of agency rules. Disallowing a waiver of the venue provision would create barriers to petitioners choosing the most convenient circuit for filing their declaratory action. . . .

(Emphasis in original.) (Footnote omitted.)

[10] We decided Life of the Land on unrelated grounds, to wit, that "[i]f, as the circuit court implicitly found, . . . there [we]re indispensable parties," the circuit court should have endeavored to join such parties, if possible, before dismissing the action outright. See 58 Haw. at 298, 568 P.2d at 1194.

added). In its July 21, 2004 order, the circuit court denied the director's motion. The circuit court proceeded to the merits and, on January 3, 2005, granted the director's December 2, 2004 motion for summary judgment, and denied HHIA's October 1, 2004 motion for summary judgment. Accordingly, on March 28, 2005, after disposing of HHIA's motion for reconsideration, the circuit court entered final judgment in favor of the Appellees and against HHIA and dismissed all other claims and parties. On April 26, 2005, HHIA filed its notice of appeal.

## II. STANDARDS OF REVIEW

### A. Subject Matter Jurisdiction

> Inasmuch as we are guided by the principle that, "[i]f a court lacks jurisdiction over the subject matter of a proceeding, any judgment rendered in that proceeding is invalid [and that,] therefore, such a question is valid at any stage of the case, . . . [we . . . are] obliged to first [e]nsure that [the circuit court] ha[d subject matter] jurisdiction.["]

Tamashiro v. Dep't of Human Servs., 112 Hawaiʻi 388, 398-99, 146 P.3d 103, 113-14 (2006) (some brackets in original and some added) (quoting Bush v. Hawaiian Homes Comm'n, 76 Hawaiʻi 128, 133, 870 P.2d 1272, 1277 (1994)).

### B. Statutory Interpretation

> ["]The interpretation of a statute is a question of law reviewable de novo.["] State v. Arceo, 84 Hawaiʻi 1, 10, 928 P.2d 843, 852 (1996)[ (internal quotation signals omitted)].
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> Furthermore, our statutory construction is guided by established rules:
>
>> When construing a statute, our foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. And we must read statutory language in the context of the entire statute and construe it in a manner consistent with its purpose.

> > > When there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists . . . .
> > >
> > > In construing an ambiguous statute, "[t]he meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning." HRS § 1-15(1) [(1993)]. Moreover, the courts may resort to extrinsic aids in determining legislative intent. One avenue is the use of legislative history as an interpretive tool.
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> > Gray [v. Admin. Dir. of the Court], 84 Hawaiʻi [138,] 148, 931 P.2d [580,] 590 [(1997)] (quoting State v. Toyomura, 80 Hawaiʻi 8, 18-19, 904 P.2d 893, 903-04 (1995)) (brackets and ellipsis points in original) (footnote omitted). This court may also consider "[t]he reason and spirit of the law, and the cause which induced the legislature to enact it . . . to discover its true meaning." HRS § 1-15(2) . . . . "Laws in pari materia, or upon the same subject matter, shall be construed with reference to each other. What is clear in one statute may be called upon in aid to explain what is doubtful in another." HRS § 1-16 (1993).
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> State v. Koch, 107 Hawaiʻi 215, 220, 112 P.3d 69, 74 (2005) [(some brackets added and some in original) (one ellipsis added and some in original)] (quoting State v. Kaua, 102 Hawaiʻi 1, 7-8, 72 P.3d 473, 479-480 (2003)). Absent an absurd or unjust result, see State v. Haugen, 104 Hawaiʻi 71, 77, 85 P.3d 178, 184 (2004), this court is bound to give effect to the plain meaning of unambiguous statutory language; we may only resort to the use of legislative history when interpreting an ambiguous statute. State v. Valdivia, 95 Hawaiʻi 465, 472, 24 P.3d 661, 668 (2001).

Courbat v. Dahana Ranch, Inc., 111 Hawaiʻi 254, 260-61, 141 P.3d 427, 433-34 (2006) (emphasis omitted) (some brackets and ellipses added and some in original).

## III. DISCUSSION

### A. Introduction

The dispositive issue before us is whether HRS § 91-7(a), see supra note 3 -- under which HHIA "may" challenge an administrative rule through a declaratory action "in the circuit court of the county in which [HHIA] . . . has its

principal place of business," i.e., the fifth circuit court [hereinafter, "the county rule"] -- (1) endows the fifth circuit court and only the fifth circuit court with subject matter jurisdiction over HHIA's action, or (2) merely expands the general venue rule set forth in HRS § 602-36(5), see supra note 7. If the latter is true, the director's motion was untimely and, accordingly, any venue defect was waived. If, on the other hand, the county rule is a restriction on subject matter jurisdiction, we must notice the first circuit court's lack of subject matter jurisdiction sua sponte and vacate its decision.

The uncertainty of the meaning of the county rule springs from (1) its use of the word "may" rather than "shall" and (2) its silence with respect to whether the petitioner's domicile controls venue or jurisdiction. HHIA might argue that HRS § 632-1 confers jurisdiction that is not conditioned upon any geographic factor: "In cases of actual controversy, courts of record, within the scope of their respective jurisdictions, shall have power to make binding adjudications of right . . . . Relief by declaratory judgment may be granted in civil cases . . . ." However, the phrase "within the scope of [the courts'] respective jurisdictions" simply begs the question of whether, in the case of HRS § 97-1(a), a given circuit court's jurisdiction is contingent upon the plaintiff's domicile in the corresponding county.

Illustrative authority from Hawai'i sources is succinct at best, but, in light of (1) the redundancy of the county rule if interpreted as a venue provision, (2) our interpretation of a

similar statute in Hawaiian Tel. Co., and (3) the fact that the county rule accounts for only the convenience of the plaintiff, contrary to the usual purpose of a venue statute, we hold that, for purposes of declaratory actions brought pursuant to HRS § 91-7(a), the circuit court of the plaintiff's domicile is the only circuit court that may exercise jurisdiction over the subject matter.

B. Analysis

Admittedly, the legislature could have drafted the county rule using the word "shall" rather than "may," so as to make its mandatory jurisdictional effect clearer. Nevertheless, we believe that "may," in the context of the county rule, implies that bringing a declaratory action in the plaintiff's home forum is an alternative to (1) seeking injunctive or monetary relief or foregoing litigation altogether, not (2) seeking declaratory judgment, but in another venue.

When it drafted the county rule, the House Judiciary Committee took as its point of departure the Model State Administrative Procedure Act of 1961, § 7 (superseded 1981), 15 U.L.A. 262 (2000 & Supp. 2006), which provided that "[t]he validity or applicability of a rule may be determined in an action for declaratory judgment in the [District Court of . . . County]" (emphasis added) (some brackets added and some in original) (ellipsis in original), 15 U.L.A. 262. See Hse. Stand. Comm. Rep. No. 8, in 1961 House Journal, at 654-55, 658; Hse. Stand. Comm. Rep. No. 83, in 1959 House Journal, 1st Spec. Sess., at 224-26, 229. The committee report, which is itself ambiguous with respect to the significance of "may" and whether the

designated county is an optional venue or a mandatory situs of jurisdiction, reads in relevant part:

> [S]ection 7[] of the . . . Model [APA] has been amended to provide that an interested person may obtain a declaratory judgment where the rule is invalid on the grounds [now set forth in HRS § 91-7(b)]. As to where a proceeding can be instituted, an interested person may bring an action where he resides, or in the case of a corporation where its principal place of business is located.

See Hse. Stand. Comm. Rep. No. 8, in 1961 House Journal, at 654-55, 658. We do not believe that the legislature, which retained the word "may" as used in the Model APA, intended to bestow an extra benefit upon HRS § 91-7 plaintiffs that they "may" ignore if they prefer to sue outside of their own domiciles.

Nevertheless, whether the county rule is "mandatory" or not, in and of itself, does not settle the question whether the plaintiff's failure to file in the prescribed county is a fatal jurisdictional defect or a venue defect capable of being waived.

We agree with the director's implicit position that subject matter jurisdiction, not just venue, may be partitioned along county lines. In Hawaiian Tel. Co., we construed similar "[plaintiff] may file X in the county in which Y" syntax as mandatory and jurisdictional. In that case, we considered the first sentence of HRS § 383-38 (Supp. 1977), which provided that an unemployment benefits claimant "may file an appeal from [a] determination or redetermination at the office of the department of labor and industrial relations in the county in which the claimant resides or in the county in which the claimant was last employed" (emphases added), and expressly held that filing a notice of appeal in the wrong circuit was a defect of jurisdiction and not venue. See 67 Haw. at 40, 675 P.2d at 778.

Accordingly, we upheld the circuit court's dismissal of the appellant's appeals from decisions of the Department of Labor and Industrial Relations. Id.

We likewise agree with HHIA that HRS § 603-36(5) delineates permissible venues and is not a geographic limitation on jurisdiction, which befits its codification in HRS ch. 603, pt. IV, concerning "venue" in the "circuit courts." Kaui v. County of Kauai, 47 Haw. 271, 386 P.2d 880 (1963), illustrates the distinction between HRS §§ 91-7(a), see supra note 3, and 603-36(5), see supra note 7. Kaui concerned 1957 Haw. Sess. L. Act 194, 47 Haw. at 272, 386 P.2d at 882, which was a forerunner of HRS § 603-36(5).[11] We construed Act 194 as a venue statute and, accordingly, remanded for determination of the factual question of whether the defendant county had waived its venue objection. See id. at 274, 276, 386 P.2d at 882-83. We opined that Act 194 "could not have been intended to go to jurisdiction over the subject matter as it permits an action to be brought where the defendant is domiciled without regard to the place where the cause of action arose." Id. at 276, 386 P.2d at 883 (emphasis added). The inverse is true of HRS § 91-7(a): that the appropriate forum for litigation under HRS § 91-7(a) is predicated solely upon the plaintiff's residence and without

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[11] Act 194 provided in substantive part:

> All civil actions other than those specified [earlier in Revised Laws of Hawaiʻi § 215-21] shall be brought in the circuit where the cause of action arose or where the defendant is domiciled; provided, however, if there be more than one defendant, then such action shall be brought in the circuit in which the cause of action arose unless a majority of such defendants are domiciled in another circuit, whereupon such action may be brought in the circuit where such majority of defendants are domiciled.

1957 Haw. Sess. L. at 226 (emphasis omitted).

regard to either the agency's convenience or the nature or location of the parties' interaction strongly suggests that the county rule is one of jurisdiction and not venue. Cf. id. at 276, 386 P.2d at 884 ("Considering the sweeping nature of [Act 194,] no policy other than protection of defendants from harassment can be discerned. . . . [W]hat is for the protection of a defendant may be waived by him."), followed by Alamida v. Wilson, 53 Haw. 398, 400-01, 495 P.2d 585, 588 (1972).

IV. CONCLUSION

In light of the foregoing analysis, we hold that a plaintiff seeking "a judicial declaration as to the validity of an agency rule," pursuant to HRS § 91-7, must "reside[] or ha[ve] its principal place of business" in the county in which the adjudicating circuit court sits; initiating an HRS § 91-7 action in the wrong circuit is a defect of jurisdiction mandating dismissal. Accordingly, we vacate the first circuit court's judgment and remand with instructions to dismiss HHIA's declaratory action.

On the briefs:

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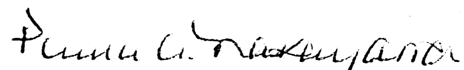

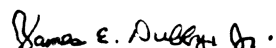

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