

NO. 26974

IN THE SUPREME COURT OF THE STATE OF HAWAII

JAMES R. SMITH, Claimant/Appellant-Appellant,

vs.

MAUI COUNTY BOARD OF VARIANCE AND APPEALS,
Defendant/Appellee-Appellee.

APPEAL FROM THE SECOND CIRCUIT COURT
(CIV. NO. 03-1-0440)

SUMMARY DISPOSITION ORDER

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

Claimant/Appellant-Appellant James R. Smith ("Smith") appeals from the second circuit court's¹ (1) July 28, 2004 judgment in favor of Defendant/Appellee-Appellee Maui County Board of Variances and Appeals ("Board"), (2) January 15, 2004 order granting the Board's motion to dismiss the appeal, (3) March 5, 2004 order denying Smith's motion to reconsider the order dismissing the appeal, and (4) October 28, 2004 order denying Smith's motion for status conference, motion for reconsideration, and amended motion to reserve question.

On appeal, Smith argues that (1) the circuit court erred by dismissing Smith's appeal for, inter alia, lack of standing, when the Board had not determined that Smith lacked standing to assert this claim, and (2) the director of Department of Public Works and Waste Management illegally rescinded the

¹ The Honorable Shackley F. Raffetto presided over the hearing on the motion to dismiss the case (held on December 24, 2003) and the hearing on the motion for reconsideration (held on February 18, 2004). The Honorable Reinette W. Cooper presided over the hearing on the motion for reconsideration of the final judgment (held on September 8, 2004).

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CLERK, APPELLATE COURTS
STATE OF HAWAII

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condition that the developer obtain an amendment of the community plan designation of the proposed subdivision.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold that: (1) The Board was permitted to argue on appeal that Smith lacks standing even though the Board dismissed the case on other grounds,² and (2) Smith has not established standing to bring his claim³ inasmuch as he did not demonstrate a recognized legal

² "It is well-settled that courts must determine as a threshold matter whether they have jurisdiction to decide the issues presented. If a party is found to lack standing, the court is without subject matter jurisdiction to determine the action." Hawai'i Medical Ass'n v. Hawai'i Medical Service Ass'n, Inc., 113 Hawai'i 77, 94, 148 P.3d 1179, 1196 (2006) (citations omitted). See also Kaho'ohanohano v. State, 114 Hawai'i 302, 324, 162 P.3d 696, 718 (2007) ("[B]ecause standing is a jurisdictional issue that may be addressed at any stage of a case, an appellate court has jurisdiction to resolve questions regarding standing, even if that determination ultimately precludes jurisdiction over the merits." (brackets in original omitted) (quoting Keahole Def. Coal., Inc. v. Bd. of Land & Natural Res., 110 Hawai'i 419, 427-28, 134 P.3d 585, 593-94 (2006))).

³ To establish standing, a plaintiff must satisfy the following three elements of the traditional injury-in-fact test: "(1) has the plaintiff suffered an actual or threatened injury; (2) is the injury fairly traceable to the defendant's actions; and (3) would a favorable decision likely provide relief for plaintiff's injury." Sierra Club v. Dep't of Transp., 115 Hawai'i 299, 319, 167 P.3d 292, 312 (2007) (footnote and ellipses in original omitted). See Hawai'i Medical Ass'n, 113 Hawai'i at 95, 148 P.3d at 1197 (citations omitted) ("[A]lthough lack of standing is raised by the defendant, the plaintiff bears the burden of establishing that he or she has standing."). In Sierra Club, we also analyzed the concept of "procedural injury" as a basis for standing, and laid out a three part procedural right test:

(1) the plaintiff has been accorded a procedural right, which was violated in some way, see City of Sausalito v. O'Neill, 386 F.3d [1186,] 1197 [(9th Cir. 2004)] (requiring that "the agency violated certain procedural rules"), e.g., as here, a failure to conduct an [environmental assessment]; (2) the procedural right protects the plaintiff's concrete interests; and (3) the procedural violation threatens the plaintiff's concrete interests, thus affecting the plaintiff "personally," which may be demonstrated by showing (a) a "geographic nexus" to the site in question and (b) that the procedural violation increases the risk of harm to the plaintiff's concrete interests.

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right, such as harm to economic interests.⁴ Therefore,

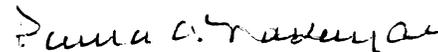
IT IS HEREBY ORDERED that the circuit court's (1) July 28, 2004 judgment in favor of the Board, (2) January 15, 2004 order granting the Board's motion to dismiss the appeal, (3) March 5, 2004 order denying Smith's motion to reconsider the order dismissing the appeal, and (4) October 28, 2004 order denying Smith's motion for status conference, motion for reconsideration, and amended motion to reserve question, are affirmed.

DATED: Honolulu, Hawai'i, May 30, 2008.

On the briefs:

James R. Smith, Claimant/
Appellant-Appellant pro se

Jane E. Lovell, Deputy
Corporation Counsel,
for Defendant/Appellee-
Appellee Maui County Board
of Variances and Appeals



Kama E. Duffy, Jr.

³(...continued)

Sierra Club, 115 Hawai'i at 329, 167 P.3d at 322.

⁴ "Injury in fact has always included harm to economic interests." (citations omitted). Akau v. Olohana Corp., 65 Haw. 383, 389, 652 P.2d 1130, 1135 (1982); see also Sierra Club, 115 Hawai'i at 330, 167 P.3d at 323 (finding that plaintiffs, including a farmer "concerned about the negative effects that alien species introductions would have on his business," and a snorkeling business owner concerned about the impact of the "introduction of alien marine species potentially caused by the Superferry" have concrete business interests in the defendant's decision to exempt the harbor improvements required for the Superferry from the environmental review process); Keпо'о v. Kane, 106 Hawai'i 270, 284, 103 P.3d 939, 955 (2005) (determining that a home owner's association had standing to challenge a proposed power plant's environmental assessment where, inter alia, the association was located two miles away from the proposed power plant and it was concerned that the power plant -- and the heavy industry it may attract -- would cause air and water pollution that would diminish its property values).