

139 Hawai'i 545  
Unpublished Disposition  
Unpublished disposition. See HI R RAP Rule 35  
before citing.  
Supreme Court of Hawai'i.

[RESEARCH INSTITUTE FOR HAWAII.USA](#) and  
Christopher Damon Haig as an individual,  
Plaintiffs-Appellants-Cross-Appellees,

v.

Kay Lorraine BATE; Linda Hamilton Krieger,  
Raymund Liongson, Kim Coco Iwamoto, Wallace  
Fukunaga, Artemio Baxa, in their official  
capacities as Commissioners of the Hawai'i Civil  
Rights Commission, Department of Labor &  
Industrial Relations, State of Hawai'i; William D.  
Hoshijo, in his official capacity as Executive  
Director of the Hawai'i Civil Rights Commission,  
Department of Labor & Industrial Relations, State  
of Hawai'i; Hawai'i Civil Rights Commission,  
Department of Labor & Industrial Relations, State  
of Hawai'i,  
Defendants-Appellees-Cross-Appellants.

SCAP-15-0000783

DATED: Honolulu, Hawai'i, May 10, 2017.

APPEAL FROM THE CIRCUIT COURT OF THE  
FIRST CIRCUIT (CAAP-15-0000783; CIV. NO.  
14-1-2014)

#### Attorneys and Law Firms

[Bruce D. Voss](#), [Leinaala L. Ley](#) and [William F. Sink](#), for  
Plaintiffs-Appellants-Cross-Appellees.

[Margery S. Bronster](#), [Rex Y. Fujichaku](#), and [Derek S.  
Nakamura](#), for Defendants-Appellees-Cross-Appellants.

(By: [Recktenwald, C.J.](#), [Nakayama](#), [McKenna](#), [Pollack](#),  
and [Wilson, JJ.](#))

#### SUMMARY DISPOSITION ORDER

\*1 Plaintiffs-Appellants-Cross-Appellees Research  
Institute for Hawaii.USA (RIHI) and Christopher Damon  
Haig, as an individual (Haig) (collectively "Appellants")

appeal, and Defendants-Appellees-Cross-Appellants Kay  
Lorraine Bate (Bate), Linda Hamilton Krieger, Raymund  
Liongson, Kim Coco Iwamoto, Wallace Fukunaga, and  
Artemio Baxa, in their official capacities as  
Commissioners of the Hawai'i Civil Rights Commission  
(HCRC), and William D. Hoshijo, in his official capacity  
as Executive Director of the HCRC (collectively  
"Cross-Appellants") cross-appeal the Circuit Court of the  
First Circuit's (circuit court): (1) October 8, 2015 Order  
Granting Plaintiff-Appellant Research Institute for  
Hawaii.USA's Motion for Order Compelling (a)  
Independent Medical Examination of Kay Lorraine Bate  
and (b) Production of Dr. Robert Marvit's Expert File  
("IME Order"), and (2) October 15, 2015 Case  
Management Order ("Case Management Order").

On August 26, 2014, following a nine-day contested case  
hearing, the HCRC issued a final decision and order  
which found that Appellants had illegally discriminated  
against Bate on the basis of her religion and her gender,  
and awarded Bate both legal and equitable relief. On  
September 24, 2014, Appellants filed, in the circuit court,  
a petition for appeal and a demand for a jury trial *de novo*  
on all of the claims upon which Cross-Appellants sought  
relief, citing [SCI Management Corp. v. Sims](#), 101 Hawai'i  
438, 71 P.3d 389 (2003), in support of their entitlement  
thereto.

On June 10, 2015, Appellants filed a pre-trial motion for  
an order compelling Bate to undergo an independent  
medical examination and to produce the expert file of Dr.  
Robert Marvit (Dr. Marvit) ("Motion for IME"). At the  
HCRC contested case hearing, Dr. Marvit testified about  
the emotional injuries Bate had suffered as a result of  
Appellants' discriminatory acts. Appellants argued that  
the Motion for IME should be granted because Bate had  
placed her emotional state in controversy by stating she  
had suffered emotional and mental distress, Bate did not  
disclose Dr. Marvit as an expert whom she intended to  
call until shortly before the originally scheduled contested  
case hearing date, and Bate did not comply with their  
request to produce the medical records that supported her  
emotional distress claims during discovery in preparation  
for the contested case hearing.

Cross-Appellants responded on July 21, 2015, arguing  
that the Motion for IME should not be granted because  
the circuit court did not have the authority to permit  
additional discovery because the jury trial was an  
administrative appeal under [Hawai'i Revised Statutes §  
368-16](#), Appellants already had the opportunity to conduct  
full discovery in the contested case proceedings, and  
Cross-Appellants agreed to release Bate's medical records

on the condition that Appellants acquiesced to a protective order covering the private information therein. Appellants did not reply to Cross-Appellants' response.

The dispute concerning the Motion for IME revealed that the parties fundamentally disagreed on the nature and scope of the jury trial. After the parties briefed their positions on these matters and submitted proposed case management orders, the circuit court filed the IME Order on October 8, 2015, and the Case Management Order on October 15, 2015.

\*2 In the IME Order, the circuit court acknowledged that in the HCRC contested case proceedings, Bate belatedly identified Dr. Marvit as an expert witness, and that Appellants may have been prejudiced by their inability to obtain a rebuttal expert. Accordingly, the circuit court granted Appellants' Motion for IME. However, the circuit court specifically stated that its ruling was limited to Appellants' singular discovery request.

In the Case Management Order, the circuit court ruled, in pertinent part: (1) the jury trial was to be de novo as to all claims for which legal relief was granted; (2) there would be no further discovery; (3) the evidence to be presented at trial, including witness testimony, was to be limited to the evidence that was presented at the contested case proceeding, and; (4) the parties were only entitled to limited discovery concerning Bate's emotional injuries, and the experts whom they sought to testify thereon, in light of the unique problems that arose out of discovery in the HCRC proceedings.

The parties jointly obtained leave from the circuit court to file interlocutory appeals from the IME Order and the Case Management Order. Appellants and Cross-Appellants filed their appeal and cross-appeal, respectively, in the Intermediate Court of Appeals. The case was thereafter transferred to this court.

On appeal, Appellants argue that the circuit court erred by: (1) finding that Appellants are entitled to a jury trial only on the claims for which legal relief was granted; (2) finding that the parties, in the jury trial, could only present witnesses who had previously testified during the HCRC contested case hearing, and that the testimony of such witnesses shall be limited to the testimony that was given in the HCRC proceedings; (3) finding that the parties may

not conduct any further discovery in preparation for the jury trial, and not allowing the parties to introduce evidence beyond that which was contained in the HCRC record; (4) finding that Haig remains a defendant in the jury trial, and; (5) finding that Haig was not permitted to introduce witness testimony and other evidence to rebut the HCRC and Bate's contentions as to Haig's net worth at the time of the jury trial on the issue of punitive damages. On cross-appeal, Cross-Appellants contend that the circuit court erred in allowing discovery beyond the administrative record from the contested case proceedings.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we conclude that the circuit court did not abuse its discretion in the IME Order or the Case Management Order. Accordingly, we affirm both Orders.

Additionally, Appellants' fourth point of error concerns an issue that exceeds the scope of the present interlocutory appeal. The circuit court did not rule on whether Haig should remain a defendant in the jury trial in either the Case Management Order or the IME Order. Accordingly, because the issue of Haig's individual liability was not resolved in the orders from which the parties filed their interlocutory appeals, we lack subject matter jurisdiction to consider the issue at this time. See Sec. Pac. Mortg. Corp. v. Miller, 71 Haw. 65, 71, 783 P.2d 855, 858 (1989); Riethbrock v. Lange, 128 Hawai'i 1, 17-18, 282 P.3d 543, 559-560 (2012). Therefore,

IT IS HEREBY ORDERED that the circuit court's October 8, 2015 Order Granting Plaintiff-Appellant Research Institute for Hawaii.USA's Motion for Order Compelling (a) Independent Medical Examination of Kay Lorraine Bate and (b) Production of Dr. Robert Marvit's Expert File, and October 15, 2015 Case Management Order are affirmed.

#### All Citations

139 Hawai'i 545, 394 P.3d 775 (Table), 2017 WL 1927747