

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

LINDA K. HADLEY,

Complainant,

and

HAWAII GOVERNMENT EMPLOYEES  
ASSOCIATION, AFSCME, LOCAL 152,  
AFL-CIO and HAWAII YOUTH  
CORRECTIONAL FACILITY, Department  
of Human Services, State of Hawaii,

Respondents.

CASE NOS.: CU-09-261  
CE-09-651

ORDER NO. 2584

ORDER GRANTING RESPONDENT  
HAWAII GOVERNMENT EMPLOYEES  
ASSOCIATION, AFSCME, LOCAL 152,  
AFL-CIO'S MOTION TO STAY  
PROCEEDINGS, FILED ON  
JANUARY 23, 2009

**ORDER GRANTING RESPONDENT HAWAII  
GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152,  
AFL-CIO'S MOTION TO STAY PROCEEDINGS, FILED ON JANUARY 23, 2009**

On January 23, 2009, Respondent HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA or Union), by and through counsel, filed a Motion to Stay Proceedings (Motion for Stay) with the Hawaii Labor Relations Board (Board). The HGEA requested the Board stay the proceedings due to Complainant LINDA K. HADLEY's (Hadley) filing of a Notice of Appeal of the Board's Order No. 2567, Order Granting Respondent HYCF's Motion to Dismiss Complaint, dated December 22, 2008, in the First Circuit Court, State of Hawaii on January 20, 2009. The HGEA contends that Hadley's appeal divests the Board of jurisdiction over the entire action until the appeal is resolved. Alternatively, the HGEA contends that even if the Board's jurisdiction hasn't been divested by virtue of Hadley's appeal, the Board should, in its discretion, stay further proceedings in this matter in order to avoid the inefficiency and expense of piecemeal litigation or litigation in multiple forums. The HGEA argues that if Hadley's appeal is successful, it is more practical and efficient to await the appeal outcome because it would eliminate the possibility of having two Board hearings on the same subject matter. Alternatively, if Hadley's interlocutory appeal is dismissed as premature, then it would be more practical and efficient to await the dismissal of the appeal so that all of the

Board's decisions in this action can be addressed by the First Circuit Court in a single appeal, if necessary, rather than have the Court review the merits of two separate appeals.

On January 27, 2009, Complainant Hadley, by and through her counsel, filed a Memorandum in Opposition to Respondent HGEA's Motion to Stay Proceedings (Memorandum in Opposition) with the Board. Hadley argued, inter alia, that interlocutory orders may be enforced as final orders; the bifurcation was not caused by Hadley but by the Board's action in response to the State's motion to dismiss; regardless of the appeal, even where the employer is not in the case, the employee can still pursue an action against the union per Vaca v. Sipes, 386 U.S. 171, 87 S.Ct. 903 (1967); DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151, 164-165, 103 S.Ct. 2281, 2290 -2291(1983); Poe v. HLRB, 105 Haw. 97, 103, 104, 94 P.3d 652, 658-659 (2004); and Winslow v. State, 2 Haw.App. 50, 55, 625 P.2d 1046, 1050 (1981); per Winslow, supra, the exhaustion of contractual grievance remedies against the employer is not applicable to an action against the union; the Board's December 22, 2008 order dismissing the claims against the State was a final appealable decision; the Union is estopped to argue that the hearing should be stayed since the Union failed to object to the filing of the appeal at the prehearing conference; the December 22, 2008 order did not decide the merits of Hadley's claim against the employer, only that she did not exhaust her collective bargaining agreement herself; the Board held that Hadley's claims are independent of each other so there is no need to stay the proceedings against the Union for violating the law in breach of the duty of fair representation per Winslow and the statutes cited in Hadley's opposition to the State's dismissal motion; and that under DelCostello the employee may sue both the employer and the union in one action regardless of the outcome or finality of the grievance or arbitration proceeding.

On January 27, 2009, the Board convened the scheduled hearing on the merits and entertained the HGEA's motion for stay. The parties were represented by counsel who were given the opportunity to present further argument to the Board. After consideration of the record and the arguments presented, the Board granted the HGEA's motion for stay of the proceedings indicating that a written order would follow. Upon carefully reviewing the record and the arguments submitted and having given due consideration to the arguments advanced and the issues raised by the parties, the Board grants Respondent HGEA's motion to stay proceedings for the following reasons.

On December 22, 2008, the Board issued Order No. 2567, Order Granting Respondent HYCF's Motion to Dismiss Complaint. The Board, inter alia, dismissed Hadley's alleged Hawaii Revised Statutes (HRS) §§ 89-13(a)(1) and (4) violations for failure to state a claim for relief and alleged HRS § 89-13(a)(8) violations for lack of standing because Complainant failed to exhaust her contractual remedies. In Order No. 2567, the Board also noticed a Second Prehearing Conference on January 6, 2009.

On January 20, 2009, Complainant filed a Notice of Appeal from Order No. 2567 in the First Circuit Court in Civil No. 09-1-0118-01.

On January 23, 2009, Respondent HGEA filed its Motion for Stay with the Board. On January 27, 2009, Complainant filed her Memorandum in Opposition with the Board. Upon convening the hearing on the merits scheduled on January 27, 2009, the Board heard arguments on the Motion for Stay.

Respondent HGEA contends that Hadley's appeal divested the Board of jurisdiction over the entire action until such time as the appeal is resolved. In TSA Intern. Ltd. v. Shimizu Corp., 92 Haw. 243, 265, 990 P.2d 713, 735 (1999), the Court held that notwithstanding the general effect of the filing of a notice of appeal, which generally transfers jurisdiction to the appellate court, the trial court retains jurisdiction to determine matters collateral or incidental to the judgment, and may act in aid of the appeal. Thus, the Court found that the circuit court had jurisdiction to expunge plaintiff's lis pendens, although plaintiff had filed a notice of appeal, where the circuit court had granted summary judgment to defendant, so there was no claim supporting the lis pendens. The Court discussed the general rule of divestiture of jurisdiction where a notice of appeal is filed and stated:

This court has long held that jurisdiction is "the base requirement for any court resolving a dispute because without jurisdiction, the court has no authority to consider the case." *Housing Finance & Dev. Corp. v. Castle*, 79 Hawai'i 64, 76, 898 P.2d 576, 588 (1995). With regard to appeals, "[t]he remedy by appeal is not a common law right and exists only by virtue of statutory or constitutional provision." *In re Sprinkle & Chow Liquor License*, 40 Haw. 485, 491 (1954). Therefore, "the right of appeal is limited as provided by the legislature and compliance with the methods and procedure prescribed by it is obligatory." *In re Tax Appeal of Lower Mapunapuna Tenants' Ass'n*, 73 Haw. 63, 69, 828 P.2d 263, 266 (1992).

In civil cases, HRS § 641-1(c) (1993) provides that appeals are to be taken in the manner and within the time specified by the rules of court. Specifically, Rule 3(a) of the Hawai'i Rules of Appellate Procedure (HRAP) (1996) provides that "[a]n appeal permitted by law ... shall be taken by filing a notice of appeal with the clerk of the court or agency." The effect of HRAP Rule 3(a) is to make the filing of a notice of

appeal with the clerk of the circuit or district court the exclusive method of taking an appeal in all civil cases.

Generally, the filing of a notice of appeal divests the trial court of jurisdiction over the appealed case. *State v. Ontiveros*, 82 Hawai'i 446, 448-49, 923 P.2d 388, 390-91 (1996); *Richardson v. Sport Shinko (Waikiki Corp.)*, 76 Hawai'i 494, 500, 880 P.2d 169, 175 (1994) (quoting *Territory v. Damon*, 44 Haw. 557, 561, 356 P.2d 386, 389 (1960)). Jurisdiction over the appealed case is transferred from the trial court to the supreme court at the time the notice of appeal is filed. *MDG Supply v. Diversified Investments, Inc.*, 51 Haw. 375, 381, 463 P.2d 525, 529 (1969), *cert. denied*, 400 U.S. 868, 91 S.Ct. 99, 27 L.Ed.2d 108 (1970). The principle governing the transfer of jurisdiction from the trial court to the appellate court is designed to avoid the confusion and inefficiency that might flow from placing the same issue before two courts at the same time. 9 J. Moore, *Moore's Federal Practice* ¶ 203.11 at 5-50 (2d ed.1996).

Notwithstanding the general effect of the filing of a notice of appeal, the trial court retains jurisdiction to determine matters collateral or incidental to the judgment, and may act in aid of the appeal. *See, e.g., Foggy v. Ralph F. Clark & Assoc., Inc.*, 192 Cal.App.3d 1204, 238 Cal.Rptr. 130 (1987); *In re Estate of Rice*, 130 Ill.App.3d 416, 85 Ill.Dec. 577, 473 N.E.2d 1382 (1985). For example, because the mere filing of a notice of appeal does not affect the validity of a judgment, the circuit court retains jurisdiction to enforce the judgment. *See MDG Supply*, 51 Haw. at 381, 463 P.2d at 529; *see also Life of the Land v. Ariyoshi*, 57 Haw. 249, 252, 553 P.2d 464, 466 (1976) (HRCF Rule 60(b) motion for correction, modification, or relief from judgment); HRAP Rule 10(e) (1996) (providing for correction or modification of the record on appeal).

In this case, the HRS § 91-14 provides for the judicial review of contested cases and provides, in part:

(a) Any person aggrieved by a final decision and order in a contested case or by a preliminary ruling of the nature that deferral of review pending entry of a subsequent final

decision would deprive appellant of adequate relief is entitled to judicial review thereof under this chapter; ...

At this juncture of the proceedings, the Board has dismissed the prohibited practice charges against the HYCF in Order No. 2567 and was proceeding to resolve her breach of duty claims against the HGEA and Hadley filed her notice of appeal from the Board's order dismissing the HYCF. Hadley argues that she filed the notice of appeal in order to comply with the applicable time limitations. However, as a final decision and order in this case has not been rendered, pursuant to HRS § 92-14, the jurisdiction of the circuit court would depend on whether Board Order No. 2567 is found to be a "preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief." The Board does not consider the resolution of the breach of duty of fair representation claims against the Union to be collateral matters under the TSA case, supra, in order to proceed to hearing on those issues. Thus, without a ruling from the Circuit Court regarding its jurisdiction over Hadley's appeal, the Board cannot definitively determine whether its jurisdiction has been divested because of the filing of the instant notice of appeal. If the Board were to hear Hadley's claims against the HGEA and rendered a decision regarding the Union and Hadley prevailed in her appeal against the employer, the case against the employer would likely be remanded to the Board possibly to relitigate matters issues raised in the case against the Union. Thus, in the interests of judicial economy, to avoid confusion by proceeding in multiple forums with the possibility of conflicting decisions, and to conserve resources, the Board, in its discretion, grants a stay of these proceedings pending the appeal of Order No. 2567.

DATED: Honolulu, Hawaii, February 2, 2009.

HAWAII LABOR RELATIONS BOARD

  
EMORY J. SPRINGER, Member

  
SARAH R. HIRAKAMI, Member

Copies sent to:

Charles A. Price,  
R. Steven Geshell, Esq.  
Jeffrey A. Keating, Deputy Attorney General