

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of

LINDA LINGLE, Governor, State of Hawaii  
and MARIE LADERTA, Chief Negotiator,  
Office of Collective Bargaining, State of  
Hawaii,

Complainants,

and

HAWAII STATE TEACHERS  
ASSOCIATION and RAYMOND  
CAMACHO, Deputy Executive Director,  
Hawaii State Teachers Association,

Respondents.

CASE NO. CU-05-267

ORDER NO. 2595

ORDER STAYING PROCEEDINGS

ORDER STAYING PROCEEDINGS

On January 28, 2009, the Hawaii Labor Relations Board (Board) issued Order No. 2573, which denied Respondents' Motion to Dismiss and Denied Complainants' Motion for Summary Judgment finding, inter alia, that Complainants have standing to raise their claim before the Board; the Board of Education is not an indispensable party to this case; the Complaint is timely; Complainant stated a claim for relief; and genuine disputes exist over material facts requiring a hearing in this matter. The Board also scheduled a hearing on the merits of the Amended Complaint on March 23 - 24, 2009.

On March 4, 2009, Respondent HAWAII STATE TEACHERS ASSOCIATION (HSTA), by and through its counsel, filed a Motion to Continue Hearings Noticed for March 23-24, 2009 in Order No. 2573, with the Board. The HSTA requested a continuance of the hearing, inter alia, because Complainant failed to request a hearing to be held within 40 days of the filing of the Amended Complaint; the HSTA filed an appeal to the Circuit Court from Order No. 2573 in Civil No. 09-1-0475-02 and depending on the Court's disposition, a hearing may be unnecessary; and to permit the Board to conduct a prehearing conference in this manner.

On March 6, 2009, Complainants, by and through their counsel, filed a Memorandum in Opposition to HSTA's Motion to Continue Hearings Set for March 23-24, 2009. Complainants strenuously objected to any attempts to further delay the hearings in this case. Complainants argued that they are prepared to proceed and will be prejudiced by the further passage of time. In response to the HSTA's arguments, Complainants contend that there is no duty for Complainants to request that a hearing be held within 40 days of the filing of the Amended Complaint; that HSTA lacks grounds to request a stay pending appeal and the appeal will almost certainly be dismissed as untimely; and that a prehearing conference would serve no purpose since the case has already been extensively briefed and argued and that the parties will have a better understanding of how many additional days will be required after the hearings have commenced.

After a careful review of the arguments presented and a review of the record, the Board agrees with Complainants that there is no duty upon Complainants to request that a hearing be held within 40 days. See Hawaii Revised Statutes § 377-9(b) and Hawaii Administrative Rules § 12-42-46(b). In addition, the Board agrees with Complainants that the hearing in this matter need not be continued to permit the convening of a prehearing conference. However, due to the HSTA's appeal of the Board's Order No. 2573 and serious concern over its effect on the Board's jurisdiction to proceed, the Board, in its discretion, finds it prudent to stay these proceedings pending the Circuit Court's disposition of HSTA's appeal.

Recently, in Linda K. Hadley v. Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO, Case Nos.: CU-09-261, CE-09-651, the Board considered whether to grant the union's motion to stay further proceedings in a hybrid case because the Complainant employee appealed the Board's order dismissing the case against the employer to the Circuit Court. In Order No. 2584, dated February 2, 2009, the Board stayed the hearings before the Board pending the appeal before the circuit court. The Board stated:

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) (HRCP 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

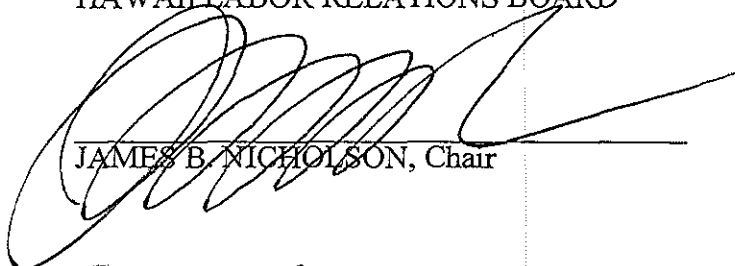
Order No. 2567 and was proceeding to resolve her breach of duty claims against the HGEA and Hadley filed her notice of appeal from the Board's order dismissing the HYCF. Hadley argues that she filed the notice of appeal in order to comply with the applicable time limitations. However, as a final decision 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.

Based upon the same reasoning, the Court's jurisdiction in the HSTA's appeal of Order No. 2573 depends on whether the Board's order is a "preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief." As in the Hadley case, the Board does not consider the hearing on the merits of the instant Complaint to be a collateral matter under the TSA case, supra. And without a ruling from the Circuit Court regarding its jurisdiction over the HSTA'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 the merits of the case and rendered a decision and the HSTA prevailed in its appeal, the Board would have wasted its resources, as well as the resources of the parties, by litigating matters which should properly have been dismissed. 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 and on its own motion, stays these proceedings pending the Circuit Court's disposition of the appeal of Order No. 2573.

LINDA LINGLE, et al. v. HAWAII STATE TEACHERS ASSOCIATION, et al.  
CASE NO. CU-05-267  
ORDER NO. 2595  
ORDER STAYING PROCEEDINGS

DATED: Honolulu, Hawaii, March 12, 2009

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

Copies sent to:

Herbert R. Takahashi, Esq.  
Richard Thomason, Deputy Attorney General