IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

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STATE OF HAWAIʻI,
Respondent/Plaintiff-Appellee,

vs.

GEOFFREY WOODHALL,
Petitioner/Defendant-Appellant.

SCWC-11-0000097

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-11-0000097; 3P7-10-00945)

MAY 31, 2013

OPINION BY RECKTENWALD, C.J., CONCURRING IN PART AND DISSENTING IN PART

I agree with the majority's conclusion that it would be absurd to construe Hawaii's Medical Use of Marijuana law to prohibit all transportation of medical marijuana in public places, because doing so would provide no mechanism for a qualifying patient to obtain medical marijuana or transport it to

his or her home.[1] Majority opinion at 22-28. However, I respectfully dissent from the majority's conclusion that the law also must be read to allow medical marijuana users to travel with or transport that supply of marijuana outside the home once it has been obtained. Majority opinion at 22-28. In this case, Geoffrey Woodhall presented no evidence that he was transporting an initial supply of medical marijuana to his home. Accordingly, I would affirm the judgment of the Intermediate Court of Appeals, which affirmed the District Court of the Third Circuit's January 20, 2011 Notice of Entry of Judgment and/or Order convicting Woodhall of the offense of Promoting a Detrimental Drug in the Third Degree.

"[T]he fundamental starting point for statutory-interpretation is the language of the statute itself." First Ins. Co. of Haw. v. A&B Props., 126 Hawaiʻi 406, 414, 271 P.3d 1165, 1173 (2012). Hawaiʻi Revised Statutes (HRS) § 329-122(a) (2010), provides the circumstances under which a qualifying patient is permitted to use medical marijuana:

> (a) Notwithstanding any law to the contrary, the medical use of marijuana by a qualifying patient shall be permitted only if:
> (1) The qualifying patient has been diagnosed by a physician as having a debilitating medical condition;
> (2) The qualifying patient's physician has certified in writing that, in the

[1] I also concur in the majority's conclusion that the "medical use" element of Woodhall's affirmative defense was met in this case. Majority opinion at 19. Specifically, the stipulation repeatedly characterized the marijuana that Woodhall possessed as "medical marijuana." Viewed in context, this reflects the parties' agreement that the marijuana was for "medical use."

> physician's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the particular qualifying patient; and
>
> (3) The amount of marijuana does not exceed an adequate supply.

(Emphasis added).

"[M]edical use" of marijuana is statutorily defined as:

> [T]he acquisition, possession, cultivation, use, distribution, or transportation of marijuana or paraphernalia relating to the administration of marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition. For the purposes of "medical use", the term distribution is limited to the transfer of marijuana and paraphernalia from the primary caregiver to the qualifying patient.

HRS § 329-121 (2010).

Thus, pursuant to HRS § 329-121 and HRS § 329-122(a), a qualifying patient can acquire, possess, cultivate, use, distribute, or transport an "adequate supply" of marijuana if the qualifying patient is diagnosed as having a debilitating medical condition and has a physician's certification. The law envisions that a qualifying patient's "adequate supply" of medical marijuana would come from plants cultivated in the home. See HRS § 329-121 (defining "adequate supply" as "an amount of marijuana jointly possessed between the qualifying patient and the primary caregiver that is not more than is reasonably necessary to assure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition; provided that an 'adequate supply' shall not exceed three mature marijuana plants, four

immature marijuana plants, and one ounce of usable marijuana per each mature plant." (emphasis added)).

However, HRS § 329-122(c)(2) limits the locations in which "medical use" of marijuana can occur:

> (c) The authorization for the medical use of marijuana in this section shall not apply to:
> . . . .
> (2) The medical use of marijuana:
> (A) In a school bus, public bus, or any moving vehicle;
> (B) In the workplace of one's employment;
> (C) On any school grounds;
> (D) At any public park, public beach, public recreation center, recreation or youth center; or
> (E) Other place open to the public[.]

Thus, HRS §§ 329-121 and -122(c)(2) prohibit the "acquisition, possession, cultivation, use, distribution, or transportation of marijuana" in specified locations, such as in moving vehicles, school grounds, public parks, and other places open to the public. As the majority notes, the prohibition against the transportation of medical marijuana in places open to the public provides no realistic means for a qualifying patient to obtain his or her initial supply of marijuana for cultivation. See Majority opinion at 22-23. Accordingly, construing the chapter to prohibit transportation through public places for the purpose of obtaining an initial supply of medical marijuana would render the statute meaningless. Therefore, I agree with the majority that the statutes cannot be interpreted to criminalize the transportation of medical marijuana in places open to the public for this purpose. Majority opinion at 22-28.

Respectfully, however, nothing in the statute or legislative history supports the majority's extension of this analysis to transportation of medical marijuana in other places open to the public for any other purpose. HRS § 329-122(c)(2)(E) expressly prohibits "medical use," which includes "transportation" of medical marijuana, through "[o]ther place[s] open to the public." Unlike a prohibition that would prevent a qualifying patient from obtaining an initial supply of marijuana, there is no absurdity in construing this provision as prohibiting transportation for other purposes.

Moreover, the legislative history indicates that the legislature intended to restrict the smoking of medical marijuana to within a qualifying patient's home. The legislature stated:

> [T]he purpose of this Act is to ensure that seriously ill people are not penalized by the State for the use of marijuana for strictly medical purposes when the patient's treating physician provides a professional opinion that the benefits of medical use of marijuana would likely outweigh the health risks for the qualifying patient.

2000 Haw. Sess. Laws Act 228, § 1 at 596 (emphasis added).

However, at least one legislator recognized that the law would prohibit medical marijuana use by at least some "seriously ill" patients. Specifically, Representative Lee pointed out, "[T]his bill has inadvertently left out access to marijuana for the sickest and most needy terminal patients. Many terminally ill patients spend their last days in hospice or receiving hospital care. Marijuana would not be allowed in

public places such as these." 2000 House Journal, at 581 (Statement of Rep. Lee) (emphases added). Senator Chun Oakland, who introduced the measure, also recognized the limitations on the locations for medical use, stating

> This measure is narrowly drawn and would only permit patients who meet very specific medical criteria to use marijuana. A physician must provide the patient with written certification, and the doctor must have a bona fide relationship with the patient. All other laws against cannabis remain in place. Any diversion would be punished and smoking outside of one's home would not be permitted.

2000 Senate Journal, at 553 (Statement of Sen. Chun Oakland) (emphasis added).

These statements reflect that, although the legislature intended to allow "seriously ill" individuals to legally use medical marijuana, it also intended to impose substantial restrictions on that use. Thus, it is not absurd for the legislature to generally prohibit the transportation of medical marijuana in places open to the public.

The legislative history also reflects that, at the time of its passage, this was a controversial proposal that represented a first step toward legalizing some use of marijuana. See 2000 Senate Journal, at 557 (Statement of Senator Chumbly) ("The legalization of medical marijuana is a divisive topic. People of equal intelligence and equal thoughtfulness can have difficulty seeing eye to eye on this issue. The opinions that people have on this issue often seem to be irreconcilable."). Although the proposal passed the legislature in 2000 by a vote of

15 ayes and 10 noes in the State Senate and a vote of 30 ayes and 20 noes in the State House, numerous legislators expressed reservations about the proposal. 2000 Senate Journal, at 561; 2000 House Journal, at 581. For example, Senator Inouye expressed concern with the way in which a qualifying patient would obtain their "adequate supply" of marijuana: "[W]here are the provisions for cultivating, for growing? Where are the plants to come from? Perhaps considering using the airlines to send the plants over from the Big Island or from Kauai or wherever. That's a great concern." 2000 Senate Journal, at 559 (Statement of Sen. Inouye).

Supporters of the proposal indicated that the proposal would provide qualifying patients with an option to alleviate their illness. See 2000 Senate Journal, at 555 (Statement of Sen. Slom) ("Those of us that have lived with, in our families, that pain and suffering, know all too well that we're not talking about simple nausea or backache or headache or upset stomachs or anything else. . . . What it does, however, is to allow the use in those certain medical circumstances where everything else including morphine has been tried and does not relieve the pain and suffering."). Other legislators argued that the proposal would ensure legal protection only for those individuals that were eligible under the law. See, e.g., 2000 Senate Journal, at 560 (Statement of Sen. Matsunaga) ("I also heard the concern that individuals who are caught growing marijuana for recreational use

will now try to use this bill as an excuse. Let me assure my colleagues that this bill has a number of safeguards to insure that it will not be misused in this manner.").

This history indicates that the legislature balanced conflicting policy considerations in passing the Medical Use of Marijuana law. Respectfully, in re-weighing these considerations and determining that transportation of medical marijuana should be allowed outside the home other than for initial acquisition, the majority engages in policy judgments reserved for the legislature. This court has stated:

> We cannot change the language of the statute, supply a want, or enlarge upon it in order to make it suit a certain state of facts. We do not legislate or make laws. Even when the court is convinced in its own mind that the [l]egislature really meant and intended something not expressed by the phraseology of the [a]ct, it has no authority to depart from the plain meaning of the language used.

State v. Klie, 116 Hawaiʻi 519, 525, 174 P.3d 358, 364 (2007) (citing State v. Sakamoto, 101 Hawaiʻi 409, 413, 70 P.3d 635, 639 (2003)).

This court's power to construe statutes so as to avoid absurd results is limited in nature. That the legislature failed to adequately provide a mechanism by which a qualifying patient could receive their initial supply of marijuana is an absurdity that this court can address, since failing to do so would completely frustrate the legislature's purpose in enacting the statute. See Morgan v. Planning Dep't, 104 Hawaiʻi 173, 185, 86 P.3d 982, 994 (2004) ("[A] departure from a literal construction

of a statute is justified when such construction would produce an absurd result and . . . is clearly inconsistent with the purposes and policies of the act[.]" (citation omitted)). However, determining that a qualifying patient can freely travel and possess marijuana in "[o]ther place[s] open to the public" is contrary to the express statutory mandate, and is not necessary to avoid the frustration of the legislature's purpose. See id. ("[T]his court may not reject generally unambiguous language if construction can be legitimately found which will give force to and preserve all the words of the statute.").

Respectfully, the majority makes policy choices regarding which of the provisions of HRS § 329-122(c)(2) to enforce. Again, HRS § 329-121 allows the "acquisition, possession, cultivation, use, distribution, or transportation of marijuana . . . to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition." The majority would allow "transportation" and "possession" of medical marijuana in public places, but would appear to preclude the "acquisition, [] cultivation, use, [or] distribution" of marijuana in "[o]ther place[s] open to the public[,]" even though those are also "medical use[s]." See Majority Opinion at 28 (holding that a defendant proves his or her affirmative defense of medical use if, inter alia, "the marijuana was not being used, ingested or carried in open view at the time it was discovered").

In addition, the majority finds an absurdity in the

prohibition against the transportation of marijuana in "[o]ther place[s] open to the public[,]" but would appear to uphold the prohibition against the "medical use" of marijuana in other locations prohibited by HRS § 329-122(c)(2), such as school buses, youth centers, and moving vehicles. Majority Opinion at 28 (holding that a defendant proves his or her affirmative defense of medical use if, inter alia, "the marijuana was found in an 'other place open to the public,' where transportation for medical use might legitimately occur" (emphasis added)). This interpretation of the statute yields arbitrary and inconsistent results. For example, under the majority's interpretation of the statutes, a qualifying patient would be allowed to transport their medical marijuana through an airport, but would appear to be prohibited from then transporting their marijuana in a moving vehicle, such as an airplane. Again, in my view, decisions such as these involve policy considerations best resolved through the legislative process. Here, the legislature balanced these considerations by prohibiting the transportation of medical marijuana in public places, and our sole duty is to give effect to that intent. See First Insurance, 126 Hawaiʻi at 414, 271 P.3d at 1173.

Accordingly, I respectfully dissent.

/s/ Mark E. Recktenwald