

Electronically Filed
Supreme Court
SCWC-11-0000512
12-FEB-2014
09:09 AM

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

---o0o---

PATRICK LOPEZ,
Petitioner/Plaintiff-Appellant,

vs.

STATE OF HAWAI'I,
Respondent/Defendant-Appellee.

SCWC-11-0000512

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-11-0000512; CIV. NO. 09-1-1613)

FEBRUARY 12, 2014

RECKTENWALD, C.J., NAKAYAMA, AND POLLACK, JJ., AND
CIRCUIT JUDGE LEE, IN PLACE OF MCKENNA, J., RECUSED,
WITH ACOBA, J., DISSENTING SEPARATELY

OPINION OF THE COURT BY RECKTENWALD, C.J.

This appeal requires us to consider whether a lien recorded by the Child Support Enforcement Agency (CSEA) for unpaid child support has priority over an attorney's lien

established for payment of fees in an unrelated, subsequently filed action. In 1997, the CSEA recorded a statutory lien on Patrick Lopez's real and personal property for delinquent child support. More than a decade later, on June 30, 2008, Lopez entered into a contingency agreement with the law firm of Eric A. Seitz for legal representation in an unrelated civil action for personal injury. Under the agreement, Seitz's law firm was to receive one-third of any recovery obtained. Seitz's law firm filed a personal injury action on behalf of Lopez against the State, which resulted in a \$9,000 arbitration award in Lopez's favor. A dispute then arose between the State and Seitz's law firm as to whether the 1997 CSEA lien, which amounted to more than \$9,000, had priority over Seitz's attorney's lien.

Lopez requested that the circuit court order the State to, *inter alia*, "make full payment" of the arbitration award. Seitz asserted that his interest in fees was distinct from any lien on Lopez's property. In opposition, the State argued that Hawai'i Revised Statutes (HRS) § 576D-10.5, which governs CSEA liens, provides that CSEA liens have priority over all other liens except for tax liens. The State also argued that HRS § 507-81, which governs attorney's liens, provides that an attorney's lien is established after commencement of the action; thus, because Lopez's action commenced after the CSEA lien was recorded, the CSEA lien has priority. The circuit court ruled

that the CSEA's statutory lien had priority over Lopez's attorneys' lien and denied Lopez's motion.¹

Lopez appealed, arguing that the circuit court erred in denying his motion because his attorneys' lien constitutes a property interest that is independent from Lopez's interest in the judgment, and that thus, equitable and public policy considerations favor giving an attorney's lien priority over the CSEA's lien. The Intermediate Court of Appeals (ICA) affirmed the circuit court's order. Lopez v. State, No. CAAP-11-0000512, 2012 WL 5520465, at *2 (Haw. App. Nov. 13, 2012).

For the reasons set forth below, we hold that HRS § 507-81 does not provide a superior or independent right for an attorney's property interest in a judgment over a prior recorded CSEA lien. Accordingly, we affirm the ICA's December 12, 2012 judgment.

I. Background

The following factual background is taken from the record on appeal.

A. CSEA and Attorney's Liens

On August 20, 1997, the Office of Child Support Hearings of the State Department of the Attorney General filed an administrative order in the Family Court of the First Circuit stating that Lopez owed \$17,964 in child support debt. The

¹ The Honorable Patrick W. Border presided.

administrative order was filed in the state Bureau of Conveyances on September 15, 1997. Thus, a CSEA lien was placed on Lopez's real and personal property. See HRS § 576D-10.5.²

On June 30, 2008, Lopez entered into a contingency agreement with Seitz's law firm for legal representation in a civil action for personal injury. The agreement stated that Seitz's law firm would receive one-third of any recovery obtained, and provided that the firm "is given a lien for its fees, costs, and expenses upon any judgment or settlement and is

² HRS § 576D-10.5 (Supp. 1997) provided, in relevant part:

(a) Whenever any obligor through judicial or administrative process in this State or any other state has been ordered to pay an allowance for the support, maintenance, or education of a child, or for the support and maintenance of a spouse or former spouse in conjunction with child support, and the obligor becomes delinquent in those payments, a lien shall arise on the obligor's real and personal property and the obligor's real and personal property shall be subject to foreclosure, distraint, seizure and sale, or order to withhold and deliver, which shall be executed in accordance with applicable state law. No judicial notice or hearing shall be necessary prior to creation of such a lien.

. . . .

(c) The child support order or judgment filed through judicial or administrative proceedings in this State or any other state shall be recorded in the bureau of conveyances. The recordation of the order or judgment in the bureau of conveyances shall be deemed, at such time, for all purposes and without any further action, to procure a lien on land registered in the land court under chapter 501. The lien shall become effective immediately upon recordation of the child support order and shall attach to all interests in real or personal property then owned or subsequently acquired by the obligor including any interests not recorded with the bureau of conveyances or filed in the land court.

(Emphasis added).

authorized to deduct such fees, costs, and expenses therefrom and to pay the balance to [Lopez]."

On July 13, 2009, Seitz's law firm filed a complaint on behalf of Lopez against the State for injuries Lopez allegedly suffered during his incarceration at the Halawa Correctional Facility. In addition to damages, Lopez sought "reimbursement of his costs and expenses herein, including reasonable provision for his attorneys' fees[.]"

On May 18, 2010, the CSEA notified Seitz that it was asserting its 1997 lien on Lopez's property and that the lien amount was \$23,969.99 as of April 30, 2010:

In accordance with HRS § 576D-10.5, the CSEA hereby asserts its statutory lien upon all of Lopez's personal and real property including any settlement or other funds which you are now holding or will be holding in the future for Lopez, to be applied against Lopez's child support arrears.

. . . .

The CSEA has learned that Lopez may be receiving an award of funds in the captioned litigation. The CSEA requires that you pay any such funds or property due to him pursuant to CSEA's lien up to the amount owing of \$23,969.99, which may be subject to change, pursuant to HRS § 576D-10.5.

Lopez's civil action was placed in the Court Annexed Arbitration Program, and on August 10, 2010, an arbitrator found that Lopez was entitled to damages in the amount of \$9,000 but did not award Lopez any costs.³ On September 9, 2010, the arbitrator's award in favor of Lopez and against the State was

³ In a blank entitled "To Plaintiff" under the "Costs to Prevailing Party" section of the arbitration award document, the arbitrator filled in "\$0.00."

entered as final judgment in the case. According to Seitz, Seitz's law firm and the State then exchanged letters between September 2010 and December 2010 expressing their opposing views regarding the priority of the CSEA's lien and the attorney's lien.

B. Circuit Court Proceedings

On January 14, 2011, Lopez filed a Motion for Issuance of Writ of Execution/Mandamus pursuant to Hawai'i Rules of Civil Procedure Rule 69. The motion requested that the circuit court "command[] [the State] to make full payment of the judgment entered herein on September 9, 2010 plus interest, and award [Lopez] his attorneys fees and costs for bringing this motion, or to appear before [the] Court and show cause why [the State] has not done so."⁴

On March 9, 2011, the State filed a memorandum in opposition to Lopez's motion. The State noted that resolution of Lopez's motion turned on interpretation of HRS §§ 507-81⁵ and

⁴ Based on Seitz's affidavit attached to the motion, it appears that Lopez's motion was brought against the State in its capacity as a judgment debtor in the case rather than as a CSEA lienholder.

⁵ HRS § 507-81 (2006) provides:

- (a) An attorney has a lien upon:
- (1) Actions, suits, and proceedings after commencement of the action;
 - (2) Judgments, decrees, orders, settlements, and awards entered by the court in favor of the client; and
 - (3) Any proceeds paid in satisfaction of the judgment, decree, order, settlement, or award.

(continued...)

⁵(...continued)

(b) The lien shall be for:

- (1) The fees and compensation specifically agreed upon with the client;
- (2) The reasonable value of the services of the attorney, if there is no fee agreement;
- (3) Any costs advanced by the attorney; and
- (4) Any fees or commissions taxed or allowed by the court.

(c) Except for tax liens, prior liens of record on the real and personal property subject to the lien created by this section, and as provided in section (d), the attorney's lien is superior to all other liens.

(d) When the attorney's lien attaches to a judgment, settlement, or decree allowing or enforcing a client's lien, the attorney's lien has the same priority as the client's lien with regard to personal or real property subject to the client's lien.

(e) The attorney's lien on a judgment, decree, order, settlement, or award remains valid as long as the judgment, decree, order, settlement, or award remains valid.

(f) To be enforceable under this section, a notice of claim of attorney's lien shall be filed:

- (1) Before the complaint is dismissed by stipulation;
- (2) Before the complaint is dismissed by order of the court; or
- (3) Not later than one year after entry of final judgment is filed and disposition of any appeal thereof.

(g) Except as provided by subsections (i) and (j), the attorney's lien is not affected by a settlement between the parties to the action, suit, or proceeding before or after the judgment, decree, order, or award.

(h) Except as provided by subsections (i) and (j), a party to the action, suit, or proceeding or any other person shall not have the right to discharge or dismiss any judgment, decree, settlement, or award entered in the action, suit, or proceeding until the lien and claim of the attorney for fees based thereon is satisfied in full.

(i) A judgment debtor may pay the full amount of a judgment or decree into court, and the clerk of the court shall thereupon fully satisfy the judgment or decree on the record, and the judgment debtor shall be thereby released from any further claims thereunder.

(continued...)

576D-10.5.⁶ The State argued that a plain reading of HRS § 576D-

⁵(...continued)

(j) If more than one attorney from the same firm appears of record for a party, the satisfaction of the lien created by this section by one of the attorneys is conclusive evidence that the lien is fully satisfied.

(k) Attorneys have the same right and power over actions, suits, proceedings, judgments, decrees, orders, settlements, and awards to enforce their liens as their clients have for the amount due thereon to them.

(Emphases added).

⁶ HRS § 576D-10.5 (Supp. 1997) provided:

(a) Whenever any obligor through judicial or administrative process in this State or any other state has been ordered to pay an allowance for the support, maintenance, or education of a child, or for the support and maintenance of a spouse or former spouse in connection with child support, and the obligor becomes delinquent in those payments, a lien shall arise on the obligor's real and personal property and the obligor's real and personal property shall be subject to foreclosure, distraint, seizure and sale, or order to withhold and deliver, which shall be executed in accordance with applicable state law. No judicial notice or hearing shall be necessary prior to creation of such a lien.

(b) Whenever the dependents of the obligor receive public assistance moneys, the child support enforcement agency or its designated counsel may establish the public assistance debt through an appropriate judicial or administrative proceeding. Upon the establishment of the public assistance debt, it shall be subject to collection action, and the real and personal property of the obligor shall be subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver.

(c) The child support order or judgment filed through judicial or administrative proceedings in this State or any other state shall be recorded in the bureau of conveyances. The recordation of the order or judgment in the bureau of conveyances shall be deemed, at such time, for all purposes and without any further action, to procure a lien on land registered in the land court under chapter 501. The lien shall become effective immediately upon recordation of the child support order and shall attach to all interest in real or personal property then owned or subsequently acquired

(continued...)

10.5 mandates priority of the CSEA lien over Lopez's attorneys' lien. The State also argued that, when HRS § 576D-10.5 is read with HRS § 507-81, "there is no question that CSEA liens have priority." The State contended that Lopez's "unrecorded attorney's lien" became effective in 2009, when Lopez's action commenced, and that the CSEA lien, which was recorded in September 1997, "clearly has priority over the attorney's lien." Finally, the State argued that to interpret HRS § 507-81 to give attorney's liens priority over CSEA liens would contravene public policy that favors parents supporting their children. The State

⁶(...continued)

by the obligor including any interests not recorded with the bureau of conveyances or filed in the land court.

(d) No fee shall be charged the [CSEA] or its designated counsel for recording or filing of the liens provided for in this section or for the recording or filing of any releases requested in conjunction with the liens.

(e) Any lien provided for by this section shall take priority over any lien subsequently acquired or recorded except tax liens.

(f) The lien shall be enforceable by the [CSEA] or its designated counsel or by the obligee by suit in the appropriate court or by bringing an action in an administrative tribunal or shall be enforceable as a claim against the estate of the obligor or by any lawful means of collection.

(g) The [CSEA], its designated counsel or the obligee, where appropriate, shall issue certificates of release upon satisfaction of the lien. Certificates of release of any real property shall be recorded in the bureau of conveyances or filed in the office of the assistant registrar of the land court. Recordation of the certificate of release shall be the responsibility of the obligor.

(Emphases added).

asked the circuit court to deny Lopez's motion and "order that the State pay all judgment proceeds in this case directly to the [CSEA] to be applied to [Lopez's] outstanding child support obligation."

On March 14, 2011, the CSEA filed a Substantive Joinder in the State's opposition, stating that as of April 30, 2010, Lopez owed \$23,969.99 in child support arrears, including \$7,225.61 to the Mother, and \$16,744.39 to the State of Washington as reimbursement for welfare payments made by the State of Washington. The CSEA argued that its lien takes priority over Lopez's attorneys' claim for attorney's fees and costs "because the child support lien was recorded twelve (12) years before Lopez commenced the instant suit, and HRS § 576D-10.5 gives a child support lien priority over any claim or any unrecorded lien whenever acquired, except tax liens previously acquired."⁷ The CSEA also discussed several circuit court orders in unrelated cases which held that CSEA recorded liens had priority over unrecorded attorney's liens. Finally, the CSEA argued that the CSEA lien should have priority over Lopez's attorney's fees as a matter of public policy.

⁷ The reference to "any unrecorded lien whenever acquired" refers to a 2001 amendment to HRS § 576D-10.5, which is discussed *infra*. See 2001 Haw. Sess. Laws Act 95, § 1 at 174-76 (emphasis added). The 1997 version of the statute provided that any CSEA lien "shall take priority over any lien subsequently acquired or recorded except tax liens." HRS § 576D-10.5(e) (Supp. 1997) (emphasis added).

In his reply, Lopez argued that the CSEA lien does not have priority over his attorneys' lien under HRS § 507-81 because the legislature intended HRS § 507-81 "to give attorneys their own property interest in a judgment for their compensation which is independent of the client's interest in the judgment[.]" Lopez also noted that HRS §§ 576D-10.5(a) and (b) provide that "a delinquency in child support payments gives rise to a lien only on the 'obligor's real and personal property.'" (Emphasis altered). Therefore, Lopez argued, the CSEA lien does not have priority over the attorney's lien, which attaches to the judgment independent from the "property" due to Lopez. Lopez also argued that until he filed the underlying action in 2009, there was no "personal property" that CSEA could have made subject to its lien when it was recorded in 1997. Accordingly, Lopez argued, the CSEA lien is not exempt from the general superiority of attorney's liens under HRS § 507-81(c), which provides, in relevant part, that "[e]xcept for . . . prior liens of record on the real and personal property subject to the lien created by this section, . . . the attorney's lien is superior to all other liens." Finally, Lopez argued that public policy favors giving attorney's liens priority over other liens "because it is often crucial for persons who may be judgment debtors to be able to retain legal counsel to obtain legal remedies to which they are entitled, and a client/debtor's ability to retain counsel may

also accrue to the benefit of the client/debtor's creditors."
(Citation omitted).

Following a hearing, the circuit court entered an order denying Lopez's motion. The order stated that "to be consistent, it will follow the prior rulings on this issue that ordered that the [CSEA's] statutory lien has priority over [Lopez's] counsel's lien for attorney's fees." The order also directed that the State hold the funds at issue pending the outcome of any appeal.

C. ICA Appeal

Lopez timely filed a notice of appeal. Lopez raised a single point of error: The Circuit Court erred in denying [Lopez's] Motion for Issuance of Writ of Execution/Mandamus and concluding that the [CSEA's] statutory lien has priority over [Lopez's] counsel's lien for attorney's fees. Lopez argued that his attorneys' property interest in the underlying arbitration award is independent from Lopez's interest in the award. Therefore, Lopez argued, "equitable and public policy considerations favor affording greater priority to contractual attorney's liens over the [CSEA's] statutory liens." Lopez also argued that there are "sufficient ambiguities" in HRS §§ 507-81 and 576D-10.5 such that the circuit court should have considered those statutes in *pari materia*.

Lopez also argued that the circuit court's application of HRS § 576D-10.5 is unconstitutional and violates the due

process rights afforded to Lopez's attorneys, as the attorney's lien represents his counsel's property. Specifically, Lopez argued, "[i]nasmuch as attorneys have a property interest in judgments awarded to their clients, then Article I, Section 5 of the Hawai'i State Constitution applies[.]" Lopez also argued that HRS § 576D-10.5 requires that enforcement of CSEA statutory liens "be subject to due process safeguards[.]" (Emphasis omitted).

Finally, Lopez argued that public policy and equitable considerations support a ruling that an attorney's lien has greater priority over the CSEA lien in this case. Lopez argued that it is "well-established public policy" that attorney's liens have priority over other judgment creditors' liens because it is "often crucial for persons who may be judgment debtors to be able to retain legal counsel to obtain legal remedies to which they are entitled." Lopez also argued that a judgment debtor's ability to retain legal representation may benefit judgment creditors such as the CSEA insofar as legal assistance may result in obtaining additional proceeds.

In a memorandum opinion, the ICA affirmed the circuit court's order denying Lopez's motion for writ of execution/mandamus. Lopez, 2012 WL 5520465, at *2. The ICA first stated that the language in HRS § 576D-10.5 governing CSEA liens is "not ambiguous, but clearly articulates the priority of

child support liens over subsequent liens, other than tax liens.” Id. at *1. The ICA noted that the CSEA recorded the child support lien in 1997, more than ten years before the attorney’s lien arose. Id. at *2. Thus, the ICA held, the plain language of HRS § 576D-10.5 affords the CSEA lien superior priority over the subsequent attorney’s lien. Id.

The ICA further stated that granting priority to the CSEA lien pursuant to HRS § 576D-10.5 is consistent with HRS § 507-81(c). Id. The ICA determined that the plain language of HRS § 507-81(c) gives a prior recorded lien such as the CSEA lien priority over a subsequent attorney’s lien. Id. Finally, the ICA noted that contrary to Lopez’s assertion that HRS § 507-81 creates a property interest for the attorney independent from the client, HRS § 507-81(k) provides that “[a]ttorneys have the same right and power over . . . judgments . . . and awards to enforce their liens as the clients have for the amount due thereon to them.” Id. Therefore, the ICA held, HRS § 507-81 “does not provide a superior or separate right for an attorney, but grants the attorney the same right to the judgment as the client.” Id. The ICA, thus, affirmed the circuit court’s judgment. Id. The ICA subsequently entered its judgment on appeal on December 12, 2012.

Lopez timely filed an application for writ of certiorari, in which he raises the following questions:

1. Did the ICA gravely err in failing to apply the proper and well-established rules of statutory interpretation as enunciated in Haole v. State, 111 Hawai'i 144[, 140 P.3d 377] (2006)?
2. Did the ICA gravely err in concluding that the language in HRS § 576D-10.5 is not ambiguous?
3. Did the ICA gravely err in concluding that HRS § 507-81 does not provide a superior or separate right for an attorney's property interest in a judgment over a prior recorded lien?

The State timely filed its response.

II. Standard of Review

"Statutory interpretation is a question of law reviewable de novo." Kaleikini v. Yoshioka, 128 Hawai'i 53, 67, 283 P.3d 60, 74 (2012) (quoting First Ins. Co. of Hawai'i v. A&B Props., Inc., 126 Hawai'i 406, 414, 271 P.3d 1165, 1173 (2012)). It is well-established that the "fundamental starting point for statutory interpretation is the language of the statute itself." First Ins. Co. of Hawai'i, 126 Hawai'i at 414, 271 P.3d at 1173 (quoting State v. Wheeler, 121 Hawai'i 383, 390, 219 P.3d 1170, 1177 (2009)). "[W]here the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning." *Id.* Moreover, "implicit in the task of statutory construction is our foremost obligation to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself." *Id.* "[W]hen there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists." *Id.*

III. Discussion

A. The CSEA lien takes priority over Lopez's attorney's lien

Lopez argues that the language in HRS § 576D-10.5 is ambiguous; specifically, he argues that subsections (a), (b), and (f) of the statute create an ambiguity as to what portions of a judgment are the property of the obligor, and as to what other "applicable state law[s]" govern the execution of CSEA's statutory liens. Lopez contends that because the statute is ambiguous, it must be construed in pari materia with HRS § 507-81, which, according to Lopez, gives attorneys a vested property interest in judgments. Therefore, Lopez argues, his attorneys' lien on the judgment is an interest separate from the judgment proceeds due to Lopez, the latter of which is subject to the CSEA lien. In other words, according to Lopez, the amount of the judgment due to the attorneys was never Lopez's property, and is thus not subject to a prior recorded lien.

Lopez's arguments lack merit. As an initial matter, HRS § 576D-10.5 is not ambiguous. When the CSEA established its lien against Lopez's property in 1997, HRS § 576D-10.5 (Supp. 1997) provided, in relevant part:

(a) Whenever any obligor through judicial or administrative process in this State or any other state has been ordered to pay an allowance for the support, maintenance, or education of a child, or for the support and maintenance of a spouse or former spouse in conjunction with child support, and the obligor becomes delinquent in those payments, a lien shall arise on the obligor's real and personal property and the obligor's real and personal property shall be subject to foreclosure, distraint, seizure

and sale, or order to withhold and deliver, which shall be executed in accordance with applicable state law. No judicial notice or hearing shall be necessary prior to creation of such a lien.

.

(c) The child support order or judgment filed through judicial or administrative proceedings in this State or any other state shall be recorded in the bureau of conveyances. The recordation of the order or judgment in the bureau of conveyances shall be deemed, at such time, for all purposes and without any further action, to procure a lien on land registered in the land court under chapter 501. The lien shall become effective immediately upon recordation of the child support order and shall attach to all interest in real or personal property then owned or subsequently acquired by the obligor including any interests not recorded with the bureau of conveyances or filed in the land court.

.

(e) Any lien provided for by this section shall take priority over any lien subsequently acquired or recorded except tax liens.

(f) The lien shall be enforceable by the [CSEA] or its designated counsel or by the obligee by suit in the appropriate court or by bringing an action in an administrative tribunal or shall be enforceable as a claim against the estate of the obligor or by any lawful means of collection.

(Emphases added).

The statute was subsequently amended so that when the CSEA sought to enforce its lien on Lopez's judgment in 2010, sections (e) and (f) provided, in relevant part:

(e) A recorded order or judgment regarding child support or public assistance debt becomes effective and takes priority from the time it is recorded or the time the child support obligation described therein becomes delinquent, whichever is later. A statutory lien that is provided for by and becomes effective under this section shall take priority over any unrecorded lien whenever acquired, except tax liens previously acquired.

(f) A lien shall be enforceable by the child support enforcement agency or its designated counsel, [or] by the obligee . . . in the following manner:

- (1) By suit in the appropriate court;

- (2) By bringing an action in an administrative tribunal;
- (3) By filing and serving a notice of child support lien; or
- (4) By any lawful means of collection.

. . . .
Upon service of a notice of child support lien, the individual or entity served shall withhold the amount of the lien from the proceeds of any estate, judgment, settlement, compromise, vacation or holiday pay, or other benefits due the obligor and deliver the funds to the [CSEA]. . . . A notice of child support lien shall remain in effect until satisfied, extinguished, or released.

HRS § 576D-10.5 (e) & (f) (2006 & Supp. 2010) (emphases added).

HRS § 576D-10.5 clearly provides that a CSEA lien becomes effective when it is recorded, and that it attaches to all real and personal property then owned or subsequently acquired. The statute also unequivocally states that CSEA liens take priority over any subsequent liens, except for tax liens.

Nevertheless, Lopez argues that HRS § 576D-10.5 is ambiguous because of language in, inter alia, subsection (f), which provides in part that “[u]pon service of a notice of child support lien, the individual or entity served shall withhold the amount of the lien from the proceeds of any . . . judgment . . . due the obligor and deliver the funds to the [CSEA].”

(Emphasis added). Lopez suggests there is an ambiguity because “proceeds of any . . . judgment . . . due the obligor” could be interpreted to mean only proceeds of the judgment that the obligor is entitled to, to the exclusion of counsel’s lien amount.

Lopez further contends that HRS § 576D-10.5 should be construed in pari materia with HRS § 507-81, which, Lopez suggests, provides his attorneys "a vested property interest in the judgment," and that therefore, the "attorney's lien attaches to the judgment, independently of the proceeds (i.e., the 'personal property') due to Mr. Lopez[.]" Thus, according to Lopez, his attorneys' interest in the judgment is not considered Lopez's "personal property" that is subject to the CSEA lien.

HRS § 507-81, however, does not contain language creating a property interest for the attorney separate from that of the client.⁸ Lopez points to HRS § 507-81(a)(2), which

⁸ HRS § 507-81 provides:

(a) An attorney has a lien upon:

(1) Actions, suits, and proceedings after commencement of the action;

(2) Judgments, decrees, orders, settlements, and awards entered by the court in favor of the client; and

(3) Any proceeds paid in satisfaction of the judgment, decree, order, settlement, or award.

(b) The lien shall be for:

(1) The fees and compensation specifically agreed upon with the client;

(2) The reasonable value of the services of the attorney, if there is no fee agreement;

(3) Any costs advanced by the attorney; and

(4) Any fees or commissions taxed or allowed by the court.

(c) Except for tax liens, prior liens of record on the real and personal property subject to the lien created by this section, and as provided in section (d), the attorney's lien is superior to all other liens.

(d) When the attorney's lien attaches to a judgment, settlement, or decree allowing or enforcing a client's lien, the attorney's lien has the same priority as the client's lien with regard to personal or real property

(continued...)

provides that an attorney has a lien upon "[j]udgments . . . and awards entered by the court in favor of the client[,]" and HRS § 507-81(b) (1), which provides that the attorney's lien shall be

⁸(...continued)

subject to the client's lien.

(e) The attorney's lien on a judgment, decree, order, settlement, or award remains valid as long as the judgment, decree, order, settlement, or award remains valid.

(f) To be enforceable under this section, a notice of claim of attorney's lien shall be filed:

(1) Before the complaint is dismissed by stipulation;

(2) Before the complaint is dismissed by order of the court; or

(3) Not later than one year after entry of final judgment is filed and disposition of any appeal thereof.

(g) Except as provided by subsections (i) and (j), the attorney's lien is not affected by a settlement between the parties to the action, suit, or proceeding before or after the judgment, decree, order, or award.

(h) Except as provided by subsections (i) and (j), a party to the action, suit, or proceeding or any other person shall not have the right to discharge or dismiss any judgment, decree, settlement, or award entered in the action, suit, or proceeding until the lien and claim of the attorney for fees based thereon is satisfied in full.

(i) A judgment debtor may pay the full amount of a judgment or decree into court, and the clerk of the court shall thereupon fully satisfy the judgment or decree on the record, and the judgment debtor shall be thereby released from any further claims thereunder.

(j) If more than one attorney from the same firm appears of record for a party, the satisfaction of the lien created by this section by one of the attorneys is conclusive evidence that the lien is fully satisfied.

(k) Attorneys have the same right and power over actions, suits, proceedings, judgments, decrees, orders, settlements, and awards to enforce their liens as their clients have for the amount due thereon to them.

(Emphases added).

for "fees and compensation specifically agreed upon with the client[.]" Neither subsection grants attorneys a property interest independent from that of the client such that the attorney's share is secure from prior liens. Moreover, HRS § 507-81(c) is directly contrary to Lopez's theory. HRS § 507-81(c) provides that an attorney's lien is superior to all other liens "[e]xcept for[,]" inter alia, "prior liens of record on the real and personal property subject to" the attorney's lien. Thus, the attorney's lien statute expressly provides that property attached by the attorney's lien is also subject to prior recorded liens. In other words, contrary to Lopez's contention, property that is subject to an attorney's lien does not become immune from other liens.

Moreover, HRS § 507-81 expressly provides for an attorney to have a "lien" - not an outright award - upon, inter alia, judgments, and proceeds paid in satisfaction of the judgment. See HRS §§ 507-81(a)(2)-(3). A "lien" is a "legal right or interest that a creditor has in another's property[.]" Black's Law Dictionary 1006 (9th ed. 2009) (emphasis added); see also id. (defining "attorney's lien" as "[t]he right of an attorney to hold or retain a client's money or property . . . until the attorney's fees have been properly determined and paid" (emphasis added)). Accordingly, a lien merely creates a

right to another's property; it does not divide the property into distinct, independently-owned properties.

This conclusion is further supported by the provision in the attorney's lien statute that "[a]ttorneys have the same right and power over actions, suits, proceedings, judgments, decrees, orders, settlements, and awards to enforce their liens as their clients have for the amount due thereon to them." HRS § 507-81(k) (emphases added). Under the express terms of this provision, attorneys merely have a right to enforce their liens upon their clients' judgments and awards. Therefore, HRS § 507-81 does not create a superior or independent right for an attorney, but provides the attorney the same right to the judgment as the client. In sum, HRS § 507-81 does not grant attorneys a superior or separate right to their clients' property over a prior recorded lien.⁹

Simply stated, if the legislature intended to preclude attorney's liens on client judgments from becoming subject to CSEA liens, it could have expressly included such language in HRS

⁹ Lopez's citation to *Rockwood Water District v. Steve Smith Contracting, Inc.*, 720 P.2d 1332 (Or. Ct. App. 1986), is inapplicable. *Rockwood* turned on specific statutory language that led the Oregon court to interpret "personal property" to exclude money judgments, so that a third party's lien on a money judgment was subordinate to the attorney's lien. 720 P.2d at 1333-34. Here, Lopez does not point to, nor do there appear to be, any related statutes that define or otherwise lead to the conclusion that the term "personal property" referenced in HRS §§ 576D-10.5 or 507-81 excludes money judgments. To the contrary, HRS § 576D-10.5(f) specifically includes proceeds of any judgment or settlement, and HRS § 507-81 does not contain language differentiating between money judgments, real property, or personal property.

§ 576D-10.5 and HRS § 507-81. However, neither statute contains any such language. Instead, as stated above, HRS § 576D-10.5 provides that a CSEA statutory lien takes priority over any unrecorded lien except for tax liens, and HRS § 507-81(c) provides that property attached by the attorney's lien is subject to prior recorded liens. Because the CSEA recorded its lien in 1997, before Lopez's unrecorded attorney's lien arose, the CSEA lien takes priority over the attorney's lien.

Despite the plain language of the foregoing statutes, Lopez nonetheless argues that the legislative history of HRS § 507-81 dictates a contrary result. Lopez contends that the legislative history demonstrates that lawmakers "clearly recognized attorneys' property interests in judgments as compensation for their services which is separate and independent from the client's or obligor's personal property interest in the judgment." Specifically, Lopez points to a 2004 House Judiciary Committee report that stated, *inter alia*, that the attorney's lien statute "clarifies that attorneys' liens on settlements and judgments vest attorneys with clear property interests, and those amounts should not be taxed to the client." H. Stand. Comm. Rep. No. 1016-04, in 2004 House Journal, at 1814.

By way of background, the purpose of the 2004 act was to "ensure that Hawai'i residents who receive nonphysical injury settlements or awards are not subject to double federal

taxation." 2004 Haw. Sess. Laws Act 48, § 1 at 241 (emphasis added). Some federal courts had taken the position that the alternative minimum tax required that such awards be taxed in full to the injured party, without deducting any amounts recovered by their attorneys. Id. However, in Banaitis v. Commissioner of Internal Revenue, 340 F.3d 1074 (9th Cir. 2003), the Ninth Circuit Court of Appeals, relying on an Oregon attorney's lien statute, ruled that "under Oregon law, court-ordered or contingent attorney fees are considered property of the attorney and not subject to double taxation." 2004 Haw. Sess. Laws Act 48, § 1 at 241. Accordingly, the Hawai'i legislature enacted Act 48, which was modeled on the Oregon attorneys' lien provisions that the Ninth Circuit relied on in Banaitis. Id.

In Banaitis, the Ninth Circuit noted that an attorney's lien in Oregon is "superior to all other liens" except "tax liens" and "vests attorneys with property interests that cannot be extinguished or discharged by the parties to the action except by payment to the attorney[.]"¹⁰ 340 F.3d at 1082-83. Because

¹⁰ In stating that Oregon law provides attorneys generous property interests in judgments, the Banaitis court quoted Oregon law as providing that: (1) an attorney's lien is "superior to all other liens" except "tax liens[.]" (2) "a party to the action, suit or proceeding, or any other person, does not have the right to satisfy the lien . . . or any judgment, decree, order or award entered in the action, suit or proceeding until the lien, and claim of the attorney for fees based thereon, is satisfied in full[.]" and (3) attorneys shall have "the same right and power over actions, suits, proceedings, judgments, decrees, orders and awards to enforce their liens as their clients have for the amount of judgment due thereon to them." 340 F.3d

(continued...)

the law "affords attorneys generous property interests in judgments and settlements[,]” the Ninth Circuit held that fees paid directly to attorneys out of the judgment were not considered gross income by the client.¹¹ Id. at 1082-83.

Lopez’s reliance on the legislative history of Hawaii’s attorney’s lien statute is unpersuasive. The statement in the House committee report that “attorneys’ liens on settlements and judgments vest attorneys with clear property interests” for federal income tax purposes does not mean that the attorney has an exclusive property interest that is therefore not subject to

¹⁰(...continued)
at 1082 (citations omitted).

Notably, HRS § 507-81 appears to differ in part from the Ninth Circuit’s recitation of Oregon law because HRS § 507-81(c) provides that attorneys’ liens are not superior to “prior liens of record on the real and personal property subject to” the attorneys’ lien.

¹¹ The United States Supreme Court subsequently reversed Banaitis for this very proposition. Comm’r of Internal Revenue v. Banks, 543 U.S. 426, 430 (2005). The Supreme Court’s reasoning is instructive insofar as it clarified that the entire recovery in a lawsuit is considered income to the client. The Supreme Court reasoned in part that “[t]he attorney is an agent who is dutybound to act only in the interests of the principal [the client], and so it is appropriate to treat the full amount of the recovery as income to the principal.” 543 U.S. at 436. The Supreme Court further explained:

The contingent-fee lawyer is not a joint owner of his client’s claim in the legal sense any more than the commission salesman is a joint owner of his employer’s accounts receivable. In both cases a principal relies on an agent to realize an economic gain, and the gain realized by the agent’s efforts is income to the principal. The portion paid to the agent may be deductible, but absent some other provision of law it is not excludable from the principal’s gross income.

This rule applies whether or not the attorney-client contract or state law confers any special rights or protections on the attorney, so long as these protections do not alter the fundamental principal-agent character of the relationship.

Id. at 436-37 (quotation marks, citations, and brackets omitted).

any prior recorded liens. Again, the purpose of the attorney's liens legislation was to prevent the amount of attorney's fees paid out of a judgment from being taxed twice. H. Stand. Comm. Rep. No. 1016-04, in 2004 House Journal, at 1814. There is no language in HRS § 507-81 that supports Lopez's theory that attorneys' liens upon their clients' judgments may never be subject or subordinate to a prior lien. To the contrary, as stated above, the statute expressly provides for that result. See HRS § 507-81(c). Moreover, the legislature's use of the term "lien" in the statute and legislative committee reports implies its understanding that an attorney's property interest is a security interest that attaches to the client's property, rather than the literal transfer of ownership to the lienholder.

Accordingly, CSEA's lien takes priority over Lopez's attorneys' lien.

B. Lopez's due process and policy arguments are unavailing

Lopez argued before the ICA that the circuit court's application of HRS § 576D-10.5 violated his attorneys' due process rights. Lopez also argued before the ICA and this court that the due process protections provided in HRS § 576D-10.5 as well as the language of HRS § 507-81 "suggest[] broadly that the [CSEA] lien might be subordinate to other claims and that questions of priority ought to be decided by reference to general principles of equity." (Quoting Nicoletti v. Lizzoli, 124 Cal.

App. 3d 361, 368 (1981)).¹² It appears that Lopez argues, in other words, that constitutional and equitable considerations support an interpretation that an attorney's lien has priority over the CSEA's lien.

Lopez's constitutional arguments fail. Lopez articulates such "constitutional considerations" as follows:

In crafting the statutory scheme that authorizes the CSEA to create and enforce its statutory liens under HRS § 576D-10.5, the Legislature recognized the constitutional property interests of attorneys in judgments and ensured that the collection procedures authorized by HRS § 576D-10.5 would be governed by due process safeguards. HRS § 576D-10.5(g)^[13] requires

¹² To the extent that Lopez relies on Nicoletti for the proposition that issues of priority should be decided under equity principles, such reliance is misplaced. Reading the language that Lopez quotes from Nicoletti in context demonstrates that it is inapplicable. Indeed, the full sentence from which Lopez quotes in part is:

Code of Civil Procedure section 688.1 [a lien statute] contains no language explicitly regulating priority, but the provisions that the judge 'may, in his discretion, order that the judgment creditor be granted a lien' suggests broadly that the lien might be subordinate to other claims and that questions of priority ought to be decided by reference to general principles of equity.

Nicoletti, 124 Cal. App. 3d at 368.

In the instant case, neither the CSEA lien statute nor the attorney's lien statute provides for a judge's discretion, and, as stated above, both statutes expressly regulate priority of liens. See HRS § 576D-10.5; HRS § 507-81.

¹³ HRS § 576D-10.5 does not make any reference to attorneys' liens, although HRS § 576D-10.5(g) provides, in relevant part:

A lien shall be enforceable by the [CSEA] . . . without the necessity of obtaining a court order in the following manner:

(1) By intercepting or seizing periodic or lump-sum payments from:

(A) A state or local agency, including
(continued...)

that enforcement of CSEA's statutory liens "be subject to due process safeguards" including consideration by "an independent administrative or judicial tribunal."

(Emphasis omitted).

Lopez's contention lacks merit. First, the procedural "due process" safeguards that Lopez points to in HRS § 576D-10.5 serve to protect the due process rights of the CSEA's debtor. The statute does not indicate that the CSEA statute is intended to protect the rights of other lienholders such as attorneys. Moreover, as discussed supra, the attorney's lien statute does not grant an attorney ownership of a portion of the client's property.

Second, even assuming that the due process provisions apply to other lienholders, the record shows that Lopez and his

¹³(...continued)

unemployment compensation, and other benefits; and

(B) Judgments, settlements, and lotteries;

. . . .

(2) By attaching and seizing assets of the obligor held in financial institutions;

(3) By attaching public and private retirement funds; and

(4) By imposing liens in accordance with this section and, in appropriate cases, to force the sale of property and distribution of proceeds.

These procedures shall be subject to due process safeguards, including, as appropriate, requirements for notice, opportunity to contest the action, and opportunity for an appeal on the record to an independent administrative or judicial tribunal.

(Emphases added).

attorneys were provided the procedural due process protections set forth in HRS § 576D-10.5(g). Lopez's attorneys had constructive notice of the CSEA lien insofar as the administrative order regarding Lopez's child support debt was filed in the Bureau of Conveyances before the attorneys entered into a contingency agreement with Lopez. The CSEA also notified Lopez's attorney that it was asserting a lien on Lopez's property. Lopez, through his attorneys, contested the action by filing the Motion for Issuance of Writ of Execution/Mandamus, and appealed the circuit court's decision regarding that motion on the record. Lopez and his attorneys clearly had notice and an opportunity to be heard.

Any "as applied" substantive due process claim would also lack merit.¹⁵ "To establish an 'as applied' violation of substantive due process, an aggrieved person must prove that the government's action was clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare." In re Applications of Herrick, 82 Hawai'i 329, 349, 922 P.2d 942, 962 (1996). There is no evidence that the State's action was arbitrary or unreasonable. As established above, Lopez's counsel's interest is limited to a lien on the judgment; however, counsel never had a distinct and

¹⁵ In his Reply brief before the ICA, Lopez clarified that he was "asserting both substantive and procedural due process rights of his attorneys in his challenge to HRS Section 576D-10.5 as applied by the State in this case."

exclusive statutory interest in that judgment. With regard to the lien, as stated above, HRS § 507-81(c) clearly sets forth that attorney's liens are subordinate to, inter alia, prior recorded liens. HRS § 576D-10.5(e) also provides that a CSEA lien takes priority from the time it is recorded. Lopez's attorneys' lien arose more than a decade after the CSEA recorded its lien against Lopez's real and personal property, and is thus subordinate to the CSEA's lien. Lopez has not shown, nor does he even appear to allege, that the State's action has no relation to the public welfare. The State did not apply HRS § 576D-10.5 in a manner that was arbitrary and unreasonable, or in a manner that had no substantial relation to the public health, safety, morals, or general welfare. The challenged State action - the circuit court's application of the statutes - furthers the State's legitimate interest in obtaining money for child support because Lopez's arbitration award will go to CSEA to pay part of his outstanding child support obligations. Such an application is thus not "arbitrary."

Lopez's policy arguments are also unavailing. First, because neither the language nor the legislative history of HRS § 576D-10.5 or HRS § 507-81 supports Lopez's theory that his attorneys' lien is superior to or otherwise exempt from the CSEA's lien, it would be improper for this court to rely on policy principles to reach a contrary interpretation. Indeed,

[w]e 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 Hawai'i 519, 525, 174 P.3d 358, 364 (2007) (quoting State v. Sakamoto, 101 Hawai'i 409, 413, 70 P.3d 635, 639 (2003)); see also Ross v. Stouffer Hotel Co. Ltd., Inc., 76 Hawai'i 454, 467, 879 P.2d 1037, 1050 (1994) (Klein, J., concurring and dissenting) ("[W]e are not at liberty to interpret a statutory provision to further a policy that is not articulated in either the language of the statute or the relevant legislative history, even if we believe that such an interpretation would produce a more beneficent result, for '[t]he Court's function in the application and interpretation of such laws must be carefully limited to avoid encroaching on the power of [the legislature] to determine policies and make laws to carry them out.'" (citation omitted)); State v. Harada, 98 Hawai'i 18, 50, 41 P.3d 174, 206 (2002) (Acoba, J., concurring and dissenting) ("[N]either the courts nor the administrative agencies are empowered to rewrite statutes to suit their notions of sound public policy when the legislature has clearly and unambiguously spoken." (quoting 1 N. Singer, Sutherland Statutory Construction § 3.06, at 55 (5th ed. 1992-94))).

Moreover, the cases that Lopez cites to support his policy and equitable considerations are distinguishable from the instant case. Several of the cases do not even concern competing lienholders, but rather involve whether an attorney who represented a parent in a child support action may recover fees from proceeds of the litigation. See In re Marriage of Wageman, 968 P.2d 1114, 1115-18 (Kan. Ct. App. 1998) (holding, in a dispute between an attorney and his client, that in an action for recovery of unpaid child support, "the attorney for the claimant is entitled to an attorney's lien against the amount of settlement or judgment for fees incurred in obtaining the settlement or judgment"); Eastmond v. Earl, 912 P.2d 994, 995-96 (Utah Ct. App. 1996) (holding that an attorney who represented a mother in a child support action under an agreement that the attorney was to receive a portion of collected delinquent child support was entitled to pursue the attorney's lien against the father); Landry v. Roebuck, 484 N.W.2d 402, 402-03 (Mich. Ct. App. 1992) (resolving a dispute between attorneys and their client by holding that the attorneys who obtained increased child support for their client properly asserted a retaining lien on the proceeds of a check payable to the client for unpaid child support).

Lopez also cites cases where the attorney's lien was established before the judgment lien was created. See All Points

Capital Corp. v. Architectural Metal Products, Inc., No. C 08-04394 VRW, 2010 WL 1610013, at *3 (N.D. Cal. April 20, 2010) (finding that the attorney's lien was created nearly seven months before the plaintiff's judgment lien and thus had priority); Cetenko v. United Calif. Bank, 638 P.2d 1299, 1303 (Cal. 1982) (holding that the attorney's lien had priority because it was created several years before a third party was granted a lien). However, in the instant case, the CSEA lien was established before the attorney's lien arose, and Hawai'i statutes provide priority to the CSEA lien.¹⁶

Finally, Lopez cites Pangborn Plumbing Corp. v. Carruthers & Skiffington, 97 Cal. App. 4th 1039, 119 Cal. Rptr. 2d 416 (2002), for the proposition that "statutes governing determination of priority among liens 'simply reflect the equitable principle[s] that those whose labor, skills, and materials resulted in the creation of a fund should be entitled to priority in the payment of their claims from such source.'" The Pangborn court stated that an attorney's contractual lien over proceeds from litigation had priority over a creditor's judgment lien because a "contractual lien for attorney's fees, entered into before the client has succeeded in recovering any proceeds by way of litigation, is 'first in time' as to such

¹⁶ Although the dissent states that Lopez's counsel had a property interest in his fees, see dissenting opinion at 17-18, counsel's statutory property interest in any portion of the judgment would be subject to other liens under HRS § 576D-10.5 and HRS § 507-81.

potential proceeds" and "liens of other creditors . . . reach only the debtor's interest in property, and are subject to prior equities against the debtor." Id. at 425. However, the court appeared to rely on a statutory scheme different from that outlined in HRS §§ 576D-10.5 and 507-81, and noted that the creditor did not file notice of its lien before the attorney's lien arose. Id. at 426. Here, as stated above, the CSEA filed notice of its lien, which statutorily attaches to any property then owned or subsequently acquired, years before Lopez entered into a fee agreement with his attorneys. See HRS § 576D-10.5(c) (Supp. 1997).

In sum, the cases Lopez cites to support his argument that equitable considerations justify granting priority to his attorneys' lien are distinguishable from the instant case. In any event, Lopez's "equitable considerations" do not warrant interpreting the statutory scheme in a manner contrary to its plain language. Lopez argues, for example, that granting priority to attorneys' contractual liens ensures that judgment debtors will be able to retain counsel to obtain legal remedies to which they are entitled. Lopez also argues that a judgment debtor's ability to retain counsel benefits judgment creditors, because "counsel provide their labor and skills to create additional proceeds from which the judgment creditors' liens can be satisfied."

However, as the State notes, recognizing Lopez's equitable arguments could open the door to other potential lienholders making similar arguments. Such questions of policy are properly left to the legislature, particularly in the face of clear statutory language. Above all, while we are not unsympathetic to Lopez's concerns - which would only arise in cases where the CSEA lien amount exceeds the recovery - we are also bound to apply the statutory language established by the legislature, which has clearly spoken on this issue. See Klie, 116 Hawai'i at 525, 174 P.3d at 364 ("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." (citation omitted)).

IV. Conclusion

For the reasons set forth in this opinion, we affirm the ICA's judgment on appeal, which affirmed the circuit court's June 15, 2011 order.

Eric A. Seitz
for petitioner

Kimberly Tsumoto Guidry
for respondent

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Richard W. Pollack

/s/ Randal K.O. Lee

