

**Electronically Filed  
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NO. CAAP-11-0000353

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

KILAKILA 'O HALEAKALA,  
Appellant-Appellant,

v.

BOARD OF LAND AND NATURAL RESOURCES,  
the DEPARTMENT OF LAND AND NATURAL RESOURCES,  
and WILLIAM AILA, in his official capacity as  
Interim Chairperson of the Board of Land and  
Natural Resources, UNIVERSITY OF HAWAII,  
and VIRGINIA HINSHAW, in her official capacity as  
chancellor of the University of Hawai'i at Manoa,  
Appellees-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIVIL NO. 10-1-2651)

MEMORANDUM OPINION

(By: Foley, Presiding J., Reifurth, J. and  
Circuit Judge Ahn in place of Nakamura, C.J.,  
Fujise, Leonard, and Ginoza, JJ., all recused)

In this secondary appeal, Appellant-Appellant Kilakila 'O Haleakala (KOH) appeals from the Final Judgment filed March 29, 2011 in the Circuit Court of the First Circuit<sup>1</sup> (circuit court). Final Judgment was entered in favor of Appellees-Appellees Board of Land and Natural Resources (BLNR); Department of Land and Natural Resources (DLNR); William Aila (Aila) in his official capacity as Interim Chairperson of BLNR; University of

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<sup>1</sup> The Honorable Rhonda A. Nishimura presided.

Hawai'i (UH); and Virginia Hinshaw (Hinshaw), in her official capacity as chancellor of the University of Hawai'i at Manoa (collectively, Appellees) and against KOH. Judgment was entered pursuant to the "Order Granting Appellees [UH] and [Hinshaw's] Motion to Dismiss [KOH's] Notice of Appeal to Circuit Court [Filed December 13, 2010] [Filed January 4, 2011]," filed March 15, 2011. BLNR, DLNR, and Aila joined in UH and Hinshaw's motion to dismiss. Circuit court granted Appellees' motion to dismiss on the grounds it lacked jurisdiction under Hawaii Revised Statutes (HRS) chapter 91.

On appeal, KOH contends circuit court erred when it determined it lacked jurisdiction to hear the case and thereby granted Appellees' motion to dismiss.

I.

On March 10, 2010, UH submitted a Conservation District Use Application (Application) to DLNR for a Conservation District Use Permit (Permit) for the proposed Advanced Technology Solar Telescope project (ATST project). The ATST project involved the construction, installation, and operation of a solar telescope at the Haleakala High Altitude Observatories Site on Pu'u Kolekole, Makawao, Maui.

On August 26, 2010, BLNR held a public hearing on the Application. On November 22, 2010, at a regular meeting, the BLNR considered the Application but postponed decision making. At its next regularly scheduled meeting on December 1, 2010, BLNR again considered the Application. At the meeting, KOH orally requested a contested case hearing. BLNR members voted to grant the Permit for the ATST project. On December 2, 2010, KOH filed a petition for a contested case hearing (Petition).

On December 13, 2010, prior to receiving a response to its Petition, KOH filed an administrative agency appeal to circuit court. In its prayer for relief, KOH asked circuit court

to, among other things, remand the case to BLNR and DLNR for a contested case hearing.

On January 4, 2011, UH and Hinshaw filed a motion to dismiss the appeal for lack of jurisdiction. On January 11, 2011, BLNR, DLNR, and Aila filed a joinder to UH and Hinshaw's motion to dismiss.

On February 11, 2011, BLNR authorized the appointment of a hearing officer to conduct a hearing on KOH's standing to participate in a contested case hearing, and if standing was found, to conduct a contested case hearing regarding the Permit.

On February 18, 2011, in light of the contested case hearing proceedings, circuit court orally granted Appellees' motion to dismiss KOH's appeal. On March 15, 2011, circuit court entered its order dismissing the case and, on March 29, 2011, entered Final Judgment.

On April 21, 2011, KOH filed its notice of appeal from Final Judgment.

## II.

"The right to appeal is purely statutory and exists only when jurisdiction is given by some constitutional or statutory provision." Lingle v. Hawaii Gov't Employees Ass'n, AFSCME, Local 152, AFL-CIO, 107 Hawai'i 178, 184, 111 P.3d 587, 593 (2005). As a threshold matter, "every court must . . . determine . . . whether it has jurisdiction to decide the issue[s] presented." Pele Defense Fund v. Puna Geothermal Venture, 77 Hawai'i 64, 67, 881 P.2d 1210, 1213 (1994). Here, the question is whether the circuit court had subject matter jurisdiction to hear this case pursuant to HRS § 91-14 (1993 & Supp. 2009).

HRS § 91-14(a) provides that "any person aggrieved by a final decision and order in a contested case" is entitled to judicial review under HRS chapter 91. To invoke the circuit

court's jurisdiction under HRS § 91-14, the appellant must meet four requirements:

**first**, the proceeding that resulted in the unfavorable agency action must have been a "contested case" hearing -- i.e., a hearing that was (1) required by law and (2) determined the "rights, duties, and privileges of specific parties"; **second**, the agency's action must represent "a final decision and order," or "a preliminary ruling" such that deferral of review would deprive the claimant of adequate relief; **third**, the claimant must have followed the applicable agency rules and, therefore, have been involved "in" the contested case; and **finally**, the claimant's legal interests must have been injured -- i.e., the claimant must have standing to appeal.

[*Public Access Shoreline Hawai'i v. Hawai'i County Planning Comm'n (PASH)*], 79 Hawai'i [425,] 431, 903 P.2d [1246,] 1252 [(1995)] (bold emphases added).

Kaleikini v. Thielen, 124 Hawai'i 1, 16-17, 237 P.3d 1067, 1082-83 (2010) (brackets omitted). Because KOH does not meet the first criteria--that the agency action stemmed from a contested case hearing--we look no further and conclude circuit court did not err when it dismissed the case for lack of jurisdiction.

When KOH filed its Petition on December 2, 2010, the contested case hearing process began. On February 11, 2011, at a regularly scheduled BLNR board meeting, BLNR authorized the appointment of a hearings officer to determine if KOH had standing to request a contested case hearing and if so, to conduct a contested case hearing. On April 4, 2011, the hearings officer held a pre-hearing conference with the parties and scheduled a contested case hearing for July 18-22, 2011. After the hearing, the hearings officer would submit proposed Findings of Fact, Conclusions of Law, and a Decision and Order to the BLNR.

On February 18, 2011, when circuit court heard Appellees' motion to dismiss, it was clear there had not yet been a contested case hearing. Because circuit court does not have jurisdiction under HRS § 91-14 unless there has been a contested case hearing, it did not err when it dismissed KOH's appeal for lack of jurisdiction.

III.

The Final Judgment filed March 29, 2011 in the Circuit Court of the First Circuit is affirmed.

DATED: Honolulu, Hawai'i, June 28, 2012.

On the briefs:

David Kimo Frankel  
Sharla Ann Manley  
Camile Kaimalie Kalama  
(Native Hawaiian Legal Corporation)  
for Appellant.

  
Presiding Judge

  
Associate Judge

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for Appellees-Appellees Board  
of Land and Natural Resources,  
Department of Land and Natural  
Resources, and William Aila,  
in his official capacity as  
Interim Chairperson of the Board  
of Land and Natural Resources.

  
Acting Associate Judge

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and

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for Appellees-Appellees University  
of Hawai'i and Virginia Hinshaw in  
her official capacity as chancellor  
of the University of Hawai'i at  
Manoa.