

**Electronically Filed
Intermediate Court of Appeals
CAAP-12-0000080
20-MAR-2013
08:05 AM**

NO. CAAP-12-0000080

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

MARK C. KELLBERG,
Appellant-Appellant,

v.

COUNTY OF HAWAII; HAWAII COUNTY BOARD OF APPEALS;
HAWAII COUNTY DEPARTMENT OF PUBLIC WORKS;
WARREN H.W. LEE in his official capacity as Director,
County of Hawaii Department of Public Works,
Appellees-Appellees,

and

DOE INDIVIDUALS 1-10; DOE GOVERNMENT ENTITIES 1-10,
Appellees

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 11-1-185)

SUMMARY DISPOSITION ORDER

(By: Foley, Presiding J., Reifurth and Ginoza, JJ.)

Pro Se Appellant-Appellant Mark C. Kellberg (Kellberg) appeals from the Final Judgment entered January 9, 2012 by the Circuit Court of the Third Circuit¹ (circuit court). Pursuant to Hawaii Revised Statutes (HRS) § 641-1(a), this court may review the (1) October 6, 2011 "Order Denying Appellant's Motion For Recusal, Filed on July 12, 2011"; (2) November 29, 2011 "Order Granting Appellees County of Hawaii, Hawaii County Department of

¹ The Honorable Glenn S. Hara presided.

Public Works, and Warren H.W. Lee's Motion To Dismiss Notice of Appeal Filed June 2, 2011, Filed on June 15, 2011"; and (3) November 29, 2011 "Order Granting Appellee Hawai'i County Board of Appeals Motion to Dismiss Notice of Appeal Filed June 2, 2011, Filed on July 1, 2011" all entered in the circuit court. Judgment was entered in favor of Appellees-Appellees County of Hawai'i, Hawai'i County Board of Appeals, Hawai'i County Department of Public Works, and Warren Lee, (collectively, Appellees). This is a secondary appeal from a June 2, 2011 Final Decision of the Hawai'i County Board of Appeals in the Matter of Petition for Appeal Number 10-000102.

Kellberg raises several points of error on appeal, summarized as follows:

(1) the circuit court erred in denying Kellberg's motion for recusal inasmuch as the affidavit in support of the motion was legally sufficient; and

(2) the circuit court erred in granting Appellees' motion for dismissal on the grounds that the issue on appeal was moot.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, as well as the relevant statutory and case law, we conclude Kellberg's appeal is without merit. Kellberg did not put forth any grounds warranting recusal. Arquette v. State, 128 Hawai'i 423, 447, 290 P.3d 493, 517 (2012). Kellberg's agency appeal was properly dismissed as moot. Hamilton ex rel. Lethem v. Lethem, 119 Hawai'i 1, 5, 193 P.3d 839, 843.

Therefore,

IT IS HEREBY ORDERED that the (1) October 6, 2011 "Order Denying Appellant's Motion For Recusal, Filed on July 12, 2011"; (2) November 29, 2011 "Order Granting Appellees County of Hawai'i, Hawai'i County Department of Public Works, and Warren H. W. Lee's Motion To Dismiss Notice of Appeal Filed June 2, 2011,

Filed on June 15, 2011"; (3) November 29, 2011 "Order Granting Appellee Hawai'i County Board of Appeals Motion to Dismiss Notice of Appeal Filed June 2, 2011, Filed on July 1, 2011"; and the Final Judgment entered January 9, 2012 by the Circuit Court of the Third Circuit are all affirmed.

DATED: Honolulu, Hawai'i, March 20, 2013.

On the briefs:

Mark C. Kellberg
Appellant-Appellant, pro se.

Michael J. Udovic
Deputy Corporation Counsel,
County of Hawai'i
for Appellees-Appellees
County of Hawai'i, Hawai'i County
Department of Public Works and
Warren H.W. Lee.

Renee N.C. Schoen
Deputy Corporation Counsel,
County of Hawai'i
for Appellee-Appellee
Hawai'i County Board of Appeals.


Presiding Judge


Associate Judge


Associate Judge