

NO. CAAP-15-0000463

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

DAVID GARNER, PATRICIA SMITH, ANDREA CHRISTIE,
ALLEN KLITERNICK, KAREN SOUZA, JO JENNIFER GOLDSMITH,
and DAVID HUDSON on behalf of themselves and all others
similarly situated, Plaintiffs-Appellees,
v.
STATE OF HAWAII, DEPARTMENT OF EDUCATION, Defendants-Appellants,
and
JOHN DOES 1-5, JOHN DOE CORPORATIONS 1-5, ROE NON-PROFIT
CORPORATIONS 1-5, and ROE GOVERNMENTAL AGENCIES 1-5, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 03-1-000305)

ALLAN KLITERNICK, DAVID GARNER, JO JENNIFER GOLDSMITH,
and DAVID HUDSON, individually and on behalf of all others
similarly situated, Plaintiffs-Appellees,
v.
KATHRYN S. MATAYOSHI, in her official capacity
as Superintendent of Schools, DONALD G. HORNER,
BRIAN J. DELIMA, WESLEY P. LO, KEITH AMEMIYA, CHERYL KA'UHANE
LUPENI, KIMBERLY GENNAULA HAGI, NANCY JO YAMAKAWA BUDD, JIM D.
WILLIAMS, CHARLENE CUARESMA, and ANGELICA WAI SAM LAO, in their
official capacity as members of the STATE OF HAWAII BOARD OF
EDUCATION, DEPARTMENT OF EDUCATION, STATE OF HAWAII,
Defendants-Appellants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 05-1-00031)

ORDER GRANTING APRIL 25, 2016 MOTION FOR RECONSIDERATION
OF THE MARCH 9, 2016 ORDER DISMISSING APPELLATE COURT CASE
NUMBER CAAP-15-0000463 FOR LACK OF APPELLATE JURISDICTION
(By: Foley, Presiding Judge, Leonard and Reifurth, JJ.)

Upon review of (1) the March 9, 2016 order dismissing appellate court case number CAAP-15-0000463 for lack of appellate jurisdiction, record, (2) Plaintiffs-Appellees David Garner, Patricia Smith, Andrea Christie, Allan Kliternick, Karen Souza, Jo Jennifer Goldsmith, David Hudson and Allan Kliternick's (the Appellees) March 21, 2016 motion for an extension of time to file a motion for reconsideration of the March 9, 2016 dismissal order pursuant to Rule 40(a) of the Hawai'i Rules of Appellate Procedure (HRAP), and (3) the March 22, 2016 order granting the Appellees' March 21, 2016 motion for an extension of time to file an HRAP Rule 40 motion reconsideration of the March 9, 2016 dismissal order and extending such deadline until March 31, 2016, (4) the expiration of the extended March 31, 2016 deadline for filing any HRAP Rule 40 motion for reconsideration of the March 9, 2016 dismissal order, (5) the Appellees' and Defendants-Appellants State of Hawai'i Department of Education, Katheryn S. Matayoshi, Donald G. Horner, Brian J. Delima, Wesley P. Lo, Keith Amemiya, Cheryl Ka 'Uhane Lupeni, Kimberly Gennaula Hagi, Nancy Jo Yamakawa Budd, Jim D. Williams, Charlene Cuaresma, and Angelica Wai Sam Lao State of Hawaii's (the State Appellants) subsequent April 5, 2016 joint second motion for an extension of time to file an HRAP Rule 40 motion for reconsideration of the March 9, 2016 dismissal order, (6) the April 8, 2016 order granting the Appellees' and the State Appellants' April 5, 2016 joint second motion for an extension of time to file an HRAP Rule 40 motion for reconsideration of the March 9, 2016 dismissal

order, and extending the time period until April 29, 2016, (7) the Appellees' and the State Appellants' April 25, 2016 HRAP Rule 40 motion for reconsideration of the March 9, 2016 dismissal order, (8) the April 26, 2016 order suspending the time requirement of HRAP Rule 40(d) pursuant to HRAP Rule 2 and extending the time period to adjudicate the Appellees' and the State Appellants' April 25, 2016 HRAP Rule 40 motion for reconsideration until May 17, 2016, and (9) the record, it appears that, although we did not overlook or misapprehend any points of law or fact when we entered the March 9, 2016 dismissal order, the circuit court subsequently entered an April 5, 2016 amended judgment that satisfies the requirements for an appealable final judgment under Hawaii Revised Statutes (HRS) 641-1(a) (1993 & Supp. 2015), Rule 58 of the Hawai'i Rules of Civil Procedure (HRCPP) and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

Therefore, IT IS HEREBY ORDERED that the Appellees' and the State Appellants' April 25, 2016 joint HRAP Rule 40 motion for reconsideration of the March 9, 2016 dismissal order is granted, appellate court case number CAAP-15-0000463 is reinstated pursuant to HRAP Rule 40, and the appellate court clerk shall make ready appellate court case number CAAP-15-0000463 for review by a merit panel of the Hawai'i Intermediate Court of Appeals.

IT IS FURTHER HEREBY ORDERED that, pursuant to HRAP Rule 10(e)(2)(C), the circuit court clerk shall, within ten days after entry of this order, supplement the record on appeal for appellate court case number CAAP-15-0000463 with the April 25, 2016 amended judgment in the consolidated case of Civil No. 03-1-000305 (KKS) and Civil No. 05-1-0031.

DATED: Honolulu, Hawai'i, May 18, 2016.

Presiding Judge

Associate Judge

Associate Judge