

**Electronically Filed
Intermediate Court of Appeals
CAAP-22-0000406
29-JUN-2023
09:44 AM
Dkt. 170 OGDMR**

NO. CAAP-22-0000406

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

JEFFREY SCOTT GOOLD, Plaintiff-Appellant, v.
HAWAIIAN ELECTRIC COMPANY, INC.; HAWAIIAN ELECTRIC INDUSTRIES,
INC.; ELIZABETH DEER; SHANA M. BUCO, Defendants-Appellees, and
JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10;
DOE PARTNERSHIPS 1-10; DOE ENTITIES 1-10; and
DOE GOVERNMENTAL ENTITIES 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 1CCV-21-0000216)

ORDER GRANTING IN PART AND DENYING IN PART
MOTION FOR RECONSIDERATION

(By: Wadsworth, Presiding Judge, Nakasone and Guidry, JJ.)

Upon consideration of self-represented Plaintiff-Appellant Jeffrey Scott Goold's (Goold) June 5, 2023 Motion for Reconsideration, the papers in support, and the record, it appears that:

(1) On May 10, 2023, the court denied without prejudice Goold's May 5, 2023 motion, amended May 6, 2023, for a fifth extension of time for the opening brief (May 10, 2023 Order). Goold requested to stay the opening brief deadline indefinitely and temporarily remand the case for Goold to file in the underlying case, 1CCV-21-0000216, and the circuit court to decide, a motion for relief from judgment, under Hawai'i Rules of Civil Procedure (HRCPP) Rule 60(b). The court denied the request for a temporary remand without prejudice to a motion or stipulation demonstrating compliance with Life of the Land v.

Ariyoshi, 57 Haw. 249, 251, 553 P.2d 464, 466 (1976) (per curiam), and, because the requested extension was based entirely upon the temporary remand, the court denied the request for extension of time for the opening brief without prejudice to a motion demonstrating good cause for an extension;

(2) On May 15, 2023, Goold filed a Motion for Reconsideration and again requested a fifth extension of time for the opening brief, this time to July 24, 2023, because Goold filed an HRCF Rule 60(b) motion in the underlying case, the circuit court scheduled the motion for hearing on July 12, 2023, and a decision on the HRCF Rule 60(b) motion will clarify material facts relied upon by the circuit court. Goold attached to the May 15, 2023 Motion for Reconsideration a "true and complete" opening brief¹ to demonstrate "good cause" for the requested relief, but Goold did not file the opening brief or ask the court to accept it, and instead argued Goold would be prejudiced to proceed in the appeal "without the question of material fact being resolved in certainty" by the circuit court. Alternatively, Goold unambiguously stated that if the court declined his requested extension, then he requested the court to approve his proposed stipulation to dismiss the appeal, attached as Appendix C to the May 15, 2023 Motion for Reconsideration;

(3) On May 24, 2023, the court construed Goold's May 15, 2023 Motion for Reconsideration as seeking reconsideration of the May 10, 2023 Order, denied reconsideration because Goold failed to demonstrate that the court overlooked or misapprehended any point of law or fact, and dismissed the appeal consistent with Goold's alternative proposed disposition in the May 15, 2023 Motion for Reconsideration (May 24, 2023 Order).² Because neither Goold nor counsel for any other party in the appeal signed Goold's proposed stipulation to dismiss the appeal, the court construed it as Goold's motion to dismiss the appeal, under

¹ The statement of points of error in the opening brief attached to the May 15, 2023 Motion for Reconsideration does not comply with Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(4).

² Chan, J. signed the May 24, 2023 Order, but his temporary designation ended May 30, 2023, with the swearing in of a permanent judge.

HRAP Rule 42(b), and granted the requested relief, dismissing the appeal with prejudice;

(4) In the June 5, 2023 Motion for Reconsideration, Goold seeks reconsideration of the May 24, 2023 Order. Goold asks the court to vacate the May 24, 2023 Order and reinstate the appeal, grant his request for a continuance for good cause, and "again . . . to evaluate **sanctioning [Specially Appearing Defendant-Appellee Hawaiian Electric Company, Inc. (HECO)]** for abusive behavior weaponizing its Rule 11 Sanctions Motion" (Emphasis in original.) First, Goold "objects" to the dismissal of the appeal, and states that Goold "does not agree to stipulated relief ordered by Honorable Court." Despite the objection, Goold unambiguously stated in the May 15, 2023 Motion for Reconsideration that if the court denied Goold's request for a continuance, then in the alternative the court should grant Goold's proposed stipulation to dismiss the appeal with prejudice: "If Mr. Goold's request for continuation to resolve uncertainty about [the circuit court] Judge's decision is a bridge too far, Mr. Goold agrees to dismiss this matter with prejudice as described in Appendix C";

(5) Second, Goold asserts the court misunderstood that the May 15, 2023 Motion for Reconsideration did not seek reconsideration of the May 10, 2023 Order but instead provided "clear and convincing evidence" and "good cause" that Goold is entitled to a fifth extension of time for the opening brief, in response to the April 14, 2023 order that stated, among other things, no further extensions of time would be granted absent extraordinary circumstances. Goold's assertion is confusing because the May 15, 2023 Motion for Reconsideration is unambiguously titled, "Motion for Reconsideration," and the motion, filed only five days after the May 10, 2023 Order denying Goold's motion for fifth extension of time for the opening brief, plainly states, "[Goold] therefore moves Honorable ICA for reconsideration of continuance until this uncertainty can become a certainty";

(6) Third, on March 15, 2023, the court, among other things, denied Goold's motion for the court to enter findings of fact and conclusions of law that HECO violated HRCP Rule 11 in the underlying case, without prejudice to Goold raising the issue in the briefs on the merits. Goold provides no justification to reach a different result here; and

(7) Given Goold's inconsistent positions taken in the May 15, 2023 Motion for Reconsideration and the June 5, 2023 Motion for Reconsideration, it is questionable whether Goold has demonstrated that the court overlooked or misapprehended any point of law or fact in the May 24, 2023 Order. HRAP Rule 40(b). Nonetheless, in deference to Goold's self-represented status, Waltrip v. TS Enterprises, Inc., 140 Hawai'i 226, 239, 398 P.3d 815, 828 (2016) (requiring courts to construe pro se filings in a reasonable manner that promotes access to justice), and because Hawai'i's appellate courts have "consistently adhered to the policy of affording litigants the opportunity to have their cases heard on the merits, where possible," Schefke v. Reliable Collection Agency, Ltd., 96 Hawai'i 408, 420, 32 P.3d 52, 64 (2001) (citation and quotation marks omitted), the court will grant in part and deny in part the June 5, 2023 Motion for Reconsideration by reinstating the appeal. But Goold fails to demonstrate good cause for a fifth extension of time for the opening brief, or sanctions against HECO.

Therefore, IT IS HEREBY ORDERED that the June 5, 2023 Motion for Reconsideration is granted in part and denied in part as follows:

1. The May 24, 2023 Order Granting Motion to Dismiss Appeal is vacated and the appeal is reinstated.

2. The May 15, 2023 Motion for Reconsideration is construed as a motion for a fifth extension of time for the opening brief, and the motion is denied. Within seven days from the date of this order, Goold shall file the opening brief that Goold attached as Appendix A to the May 15, 2023 Motion for

Reconsideration, with a revised statement of points of error that complies with HRAP Rule 28(b)(4).³

3. Goold's request in the June 5, 2023 Motion for Reconsideration to "evaluate sanctioning [HECO] for abusive behavior weaponizing Rule 11 Sanctions Motion" is denied without prejudice to Goold raising the arguments in the briefs on the merits.

DATED: Honolulu, Hawai'i, June 29, 2023.

/s/ Clyde J. Wadsworth
Presiding Judge

/s/ Karen T. Nakasone
Associate Judge

/s/ Kimberly T. Guidry
Associate Judge

³ If necessary, after the circuit court enters a written order on Goold's HRCP Rule 60(b) motion, Goold may file a motion to supplement the record on appeal with the circuit court's order and for leave to file a first amended opening brief. The court expresses no opinion here whether it would grant such a motion.