

**Electronically Filed  
Supreme Court  
SCWC-20-0000320  
17-JUL-2023  
02:21 PM  
Dkt. 59 ODMR**

SCWC-20-0000320

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

---

ARYN NAKAOKA and DARCIE NAKAOKA,  
Petitioners/Plaintiffs-Appellants,

vs.

EUGENE SHIZURU and CAROLE SHIZURU; DANIEL T.M. CHOY,  
individually and dba CORINTHIANS REALTY; and LYNIEL  
CHOY, individually and dba RAINBOW REALTY INTERNATIONAL,  
Respondents/Defendants-Appellees.

---

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS  
(CAAP-20-0000320; CIV. NO. 1CC161002076)

ORDER

(By: Recktenwald, C.J., McKenna, and Eddins, JJ.,  
Circuit Judge Wong and Circuit Judge Johnson,  
assigned by reason of vacancies)

On July 12, 2023, Petitioners/Plaintiffs-Appellants  
Aryn Nakaoka and Darcie Nakaoka (the Nakaokas) filed a motion  
for reconsideration of our July 7, 2023 summary disposition  
order affirming the Intermediate Court of Appeals' (ICA)  
judgment in Nakaoka v. Shizuru, 151 Hawai‘i 510, 517 P.3d 783  
(App. 2022).

Hawai‘i Rules of Appellate Procedure (HRAP) Rule 40(b) require motions for reconsideration to “state with particularity the points of law or fact that the moving party contends the court has overlooked or misapprehended.” “[A] motion for reconsideration is not a vehicle for arguments that could have been presented earlier.” Protect & Pres. Kahoma Ahupua‘a Ass’n v. Maui Plan. Comm’n, No. SCWC-15-0000478, 2021 WL 2828030, at \*1 (Haw. July 7, 2021). “We again remind litigants that a motion for reconsideration is not the time to relitigate old matters.” Briggs v. Hotel Corp. of Pac., Inc., 73 Haw. 276, 287 n.7, 831 P.2d 1335, 1342 n.7 (1992).

In their motion for reconsideration, the Nakaokas raise some new arguments and revisit some old ones. The Nakaokas abandon their long-held theory that the mediation requirement in Hawai‘i Revised Statutes (HRS) § 508D-18 is jurisdictional and instead argue that the parties’ failure to mediate required dismissal of the case for failure to state a claim. The Nakaokas have not raised this argument before, and it is not appropriately raised in a motion for reconsideration. See Maui Plan. Comm’n, 2021 WL 2828030, at \*1. The Nakaokas’ argument that the attorneys’ fees award “should be equitably adjusted” simply repeats arguments made in the supplemental

briefs and at oral argument,<sup>1</sup> and is, again, not appropriately raised in a motion for reconsideration. See Briggs, 73 Haw. at 287 n.7, 831 P.2d at 1342 n.7. To the extent the Nakaokas raise waiver and estoppel arguments, those arguments are deemed waived.

Upon careful review of the motion for reconsideration, the record, the briefs submitted by the parties, including supplemental briefs, and also having heard oral argument on June 22, 2023,

IT IS HEREBY ORDERED that the motion is denied.

DATED: Honolulu, Hawai'i, July 17, 2023.

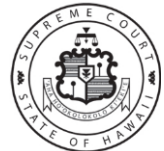
/s/ Mark E. Recktenwald

/s/ Sabrina S. McKenna

/s/ Todd E. Eddins

/s/ Paul B.K. Wong

/s/ Ronald G. Johnson



---

<sup>1</sup> These arguments were, notably, omitted from their briefing in the ICA and in their application for certiorari. The Nakaokas failed to convince us in their supplemental briefing and at oral argument that we should notice plain error pursuant to HRAP Rule 28(b)(4)(D).