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Supreme Court
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IN THE SUPREME COURT OF THE STATE OF HAWAII

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HILO BAY MARINA, LLC and KEAUKAHA MINISTRY LLC,
Plaintiffs-Appellants,

vs.

STATE OF HAWAII; BOARD OF LAND AND NATURAL RESOURCES,
STATE OF HAWAII,
Defendants-Appellees.

SCAP-23-0000310

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CAAP-23-0000310; CASE NO. 3CCV-22-0000095)

SEPTEMBER 12, 2025

CONCURRING AND DISSENTING OPINION BY DEVENS, J.

I concur with the majority opinion's holding that "the State's action to enforce the Deed Restriction, requiring that the Property be used 'for Church purposes only' or else the Property would revert to the State, violates Hawai'i's Establishment Clause in article I, section 4 of the Hawai'i Constitution."

I write separately to dissent with respect to the

majority's overruling of Bremer v. Weeks, 104 Hawai'i 43, 63, 85 P.3d 150, 170 (2004) ("[f]indings of fact . . . that are not challenged on appeal are binding on the appellate court"); Price v. AIG Hawai'i Insurance Co., 107 Hawai'i 106, 108 n.3, 111 P.3d 1, 3 n.3 (2005); and 'Ōlelo: The Corporation for Community Television v. Office of Information Practices, 116 Hawai'i 337, 348, 173 P.3d 484, 495 (2007) ("[Defendant] did not challenge any of these findings of fact on appeal, and thus, we will consider them undisputed facts").

We review a circuit court's grant or denial of a motion for summary judgment de novo. French v. Hawaii Pizza Hut, Inc., 105 Hawai'i 462, 470, 99 P.3d 1046, 1054 (2004). I agree with the majority opinion's position that the question on summary judgment is whether there are any genuine issues of material fact and, further, that "[d]isputed issues of fact cannot be resolved on summary judgment." See French, 105 Hawai'i at 470, 99 P.3d at 1054; Dalton v. City & Cnty. of Honolulu, 51 Haw. 400, 403 n.2, 462 P.2d 199, 202 n.2 (1969). To the extent that Bremer v. Weeks suggests that we review a circuit court's findings of fact under the clearly erroneous standard of review on a motion for summary judgment, I believe it is incorrect. 104 Hawai'i at 57 n.17, 85 P.3d at 164 n.17.

However, as to unchallenged material facts, I conclude

those are binding on this court on appeal as undisputed facts. See 'Ōlelo, 116 Hawai'i at 348-49, 173 P.3d at 495-96. As the majority correctly notes, the purpose of a summary judgment motion is to determine whether material factual disputes exist. See Hawai'i Rules of Civil Procedure (HRCP) Rule 56(c) (eff. 2000). However, if there are unchallenged material facts, this court established over a decade and a half ago in Bremer, Price, and 'Ōlelo that a circuit court's findings are binding on an appellate court as undisputed facts if they are not challenged on appeal.

In general, if a circuit court issues findings of fact and conclusions of law on a summary judgment motion, the circuit court shall ascertain the material facts without substantial controversy and shall render the judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." HRCP Rule 56; French, 105 Hawai'i at 470, 99 P.3d at 1054. While we are not bound on appellate review by a circuit court's reasonable inferences based on these undisputed facts, the purpose of summary judgment is to determine whether there are genuine issues of material fact. Therefore, if the parties do not

challenge a circuit court's findings as to certain facts, it follows that these findings are binding.¹ 'Ōlelo, 116 Hawai'i at 348-49, 173 P.3d at 495-96.

In this case, Appellants did not challenge Finding of Fact (FOF) 3, which provided that "[t]he Territory of Hawai'i engaged in an early form of use-zoning through the sale of land with deed restrictions, including the sale of government lands to religious organizations." However, the Appellants expressly challenged the circuit court's determination in Conclusion of Law 18 that "[t]he practice of selling government lands with deed restrictions was an early form of use-zoning and is interpreted as a historical practice of zoning." While Appellants did not specifically cite to FOF 3 in their points of error on appeal, they consistently contested the State's assertion that the practice of selling government land with religious deed restrictions was similar to current special-use

¹ While HRCF Rule 52 provides that findings of fact are "unnecessary" on a motion for summary judgment, it does not preclude a court from making such findings. This is consistent with HRCF Rule 56(d)'s requirement that when a case is not fully adjudicated on a summary judgment motion, the trial court, after conducting its inquiry into the parties' motions and oppositions, "shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy[.]" HRCF Rule 56(d) (eff. 2000). "Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly." Id. Unless a fact established as without substantial controversy in the trial court's Rule 56(d) decision is challenged, it should be binding upon an appellate court in review of any appeal of that summary judgment decision or the subsequent judgment at trial on the remaining controverted facts.

permitting. Further, the parties do not argue a genuine issue of material fact on appeal, but rather, they base their arguments on whether as a matter of law the deed restriction violates the Establishment Clause.

Given these facts and circumstances, there are no cogent reasons to overturn our case precedent establishing that unchallenged findings in an appeal of a summary judgment decision are binding on appellate courts as undisputed facts. See Dairy Rd. Partners v. Island Ins. Co., 92 Hawai'i 398, 421, 992 P.2d 93, 116 (2000) ("[A] court should not overrule its earlier decisions unless the most cogent reasons and inescapable logic require it.") (citations omitted). This does not alter or foreclose the appellate court from performing a de novo review of the inferences that may reasonably be drawn from such unchallenged facts in a light most favorable to the non-moving party.²

² The majority cites to 17 Indiana Law Encyclopedia Judgment § 111 for the proposition that findings of fact by the trial court "are not binding on appeal and do not alter the appellate court's standard of review[.]" 17 Indiana L. Encyclopedia Judgment § 111, Westlaw (database updated July 2025). However, Indiana's summary judgment rule also states that "[n]o judgment rendered on the motion shall be reversed on the ground that there is a genuine issue of material fact unless the material fact and the evidence relevant thereto shall have been specifically designated to the trial court." Indiana Trial Procedure Rule 56(H) (eff. 2008). That is to say, unchallenged findings of fact may be binding on the appellate court.

I agree with the majority's analysis and holding that the State is precluded from enforcing the deed restriction by article I, section 4 of the Hawai'i Constitution. Thus, I concur in Sections IV and V of the opinion.

/s/ Vladimir P. Devens

