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IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

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STEVEN HOSODA BURKE, an individual, Plaintiff-Appellant, v.
CITY AND COUNTY OF HONOLULU, a municipal corporation,
MICHAEL ARMSTRONG, an individual, Defendants-Appellees,
and
JOHN DOES 1-20, JANE DOES 1-20, DOE PARTNERSHIPS 1-20, DOE
CORPORATIONS 1-20, DOE "NON-PROFIT" CORPORATIONS 1-20 AND
ROE GOVERNMENTAL AGENCIES 1-20, Defendants

NO. CAAP-24-0000448

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CASE NO. 1CCV-24-0000227)

OCTOBER 30, 2026

LEONARD, PRESIDING JUDGE, AND WADSWORTH AND GUIDRY, JJ.

OPINION OF THE COURT BY WADSWORTH, J.

This appeal stems from a wrongful death action brought by self-represented Plaintiff-Appellant Steven Hosoda Burke (**Burke**) against Defendants-Appellees City and County of Honolulu (**the City**) and Michael Armstrong (**Armstrong**) related to the death of Burke's sibling, Linda May Johnson (**Johnson**). Burke appeals from the September 18, 2026 *Judgment on Order Granting [the] City['s] Motion to Dismiss and/or in the Alternative Motion for Summary Judgment, Filed April 22, 2024*, entered pursuant to

Hawaiʻi Rules of Civil Procedure (**HRCP**) Rule 54(b) (**Rule 54(b) Judgment**) by the Circuit Court of the First Circuit (**Circuit Court**).[1/]

On appeal, Burke contends that the Circuit Court erred in several respects by dismissing his claims against the City, including by determining that the doctrine of res judicata, or claim preclusion, barred Burke's claims.

Reviewing the dismissal as a grant of summary judgment, we hold that Burke raised a genuine issue of material fact as to whether the judgment in a related federal action brought by the personal representative of Johnson's estate precludes Burke's claims in this action. Under applicable federal law, a party asserting claim preclusion – here, the City – must show (1) an identity of claims, (2) a final judgment on the merits, and (3) privity between the parties. See infra. Burke presented evidence of his communications with the estate's personal representative raising a genuine issue of material fact as to whether their interests were sufficiently aligned to establish privity. The Circuit Court therefore erred to the extent it dismissed Burke's claims on any basis that was dependent upon the preclusive effect of the federal action. At this stage of the litigation, we decline to sustain the grant of summary judgment on any other basis.

Accordingly, we vacate the Rule 54(b) Judgment.

I. Background

On February 14, 2024, Burke filed a complaint in the Circuit Court (the **Complaint**) against the City and Armstrong. He alleged that on or about February 15, 2022, Johnson sustained fatal injuries caused by Armstrong "on the premises of the Kapolei Police Station" after Johnson "was released from police

[1/] The Honorable Kevin T. Morikone presided. Burke originally appealed from the May 30, 2024 *Order Granting [the] City['s] Motion to Dismiss and/or in the Alternative Motion for Summary Judgment, Filed April 22, 2024* (**Dismissal Order**), which was not a final, appealable order or judgment. On August 7, 2026, we temporarily remanded this matter to the Circuit Court to allow Burke an opportunity to move for an appealable HRCP Rule 54(b) judgment. Burke did so, and on September 18, 2026, the Circuit Court entered the Rule 54(b) Judgment, which perfected the appeal as to the City under Hawaiʻi Rules of Appellate Procedure Rule 4(a)(2).

custody in close proximity to . . . Armstrong." The Complaint asserted six claims: (1) Negligence (against the City); (2) Gross Negligence (against the City); (3) Wrongful Death (against the Honolulu Police Department (**HPD**) and Armstrong); (4) Negligent Hiring, Training, and Supervision (against the HPD); (5) Intentional Infliction of Emotional Distress (**IIED**) (against HPD and Armstrong); and (6) Negligent Infliction of Emotional Distress (**NIED**) (against HPD and Armstrong).[2/]

Burke's Complaint followed the December 18, 2023 dismissal by the United States District Court for the District of Hawaiʻi (**District Court**) of a lawsuit brought by Estate Administrative Services, LLC (**EAS**), as the personal representative of Johnson's estate, against the City (the **federal action**).[3/] See Est. Admin. Servs., LLC v. City & Cnty. of Honolulu (EAS I), No. 23-00127 LEK-RT, 2023 WL 7385604, at *1-2, *11 (D. Haw. Nov. 8, 2023); Est. Admin. Servs., LLC v. City & Cnty. of Honolulu (EAS II), No. 23-00127 LEK-RT, 2023 WL 8716880, at *1 (D. Haw. Dec. 18, 2023). EAS's February 27, 2023 complaint, which included both federal and state law claims, was initially filed in the circuit court and removed to federal court.

On March 28, 2023, Burke filed a motion to intervene in the federal action, attaching a complaint in intervention. He stated in the motion that his rights would be affected by the federal action and his claims should be resolved in that case. He argued in part: "Burke's claims are closely related to EAS's claims against the City"; "Burke's claims against the City are nearly identical to EAS's claims against the City with regard to bringing a wrongful death action"; and "[t]he claims of . . . Burke and EAS present completely overlapping questions of law and

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[2/] Although the third through sixth claims were asserted against HPD, it was not separately named as a defendant. Rather, Burke alleged that the City was sued for HPD's alleged actions and omissions.

[3/] We take judicial notice of the court records in the federal action, Estate Administrative Services, LLC, as Personal Representative of the Estate of Linda May Johnson v. City & County of Honolulu, Civ. No. 23-00127 LEK-RT (D. Haw.). See Hawaii Rules of Evidence Rule 201; State v. Abdon, 137 Hawaiʻi 19, 26, 364 P.3d 917, 924 (2016) ("The most frequent use of judicial notice of ascertainable facts is in noticing the content of court records." (quoting State v. Akana, 68 Haw. 164, 165, 706 P.2d 1300, 1302 (1985))).

fact."

On March 31, 2023, the District Court denied Burke's motion to intervene because he had failed to comply with a local rule requiring a conference with opposing counsel before filing a motion; Burke was granted leave to refile his motion after conferring with opposing counsel. Burke did not refile the motion.

On June 29, 2023, EAS filed a first amended complaint, and the City subsequently moved to dismiss it under Federal Rules of Civil Procedure Rules 8(a)(2) and 12(b)(6). The District Court dismissed the first amended complaint with prejudice and, on January 2, 2024, entered judgment against EAS. EAS I, 2023 WL 7385604, at *11; EAS II, 2023 WL 8716880, at *1.[4/]

The next month, Burke filed the Complaint in this case.

On April 22, 2024, the City filed a motion to dismiss the Complaint for failure to state a claim under HRCP Rule 12(b)(6) or, in the alternative, for summary judgment under HRCP Rule 56 (**MSJ**). The City attached documents filed in the federal action as exhibits to the MSJ. The City argued that: (1) dismissal was warranted because Burke's claims, brought under Hawaii's wrongful death statute, Hawaii Revised Statutes (**HRS**) § 663-3,[5/] were dependent on the viability of decedent Johnson's

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[4/] EAS appealed from the federal judgment to the Ninth Circuit Court of Appeals. On February 24, 2025, the Ninth Circuit affirmed the judgment in an unpublished memorandum. See Est. Admin. Servs., LLC v. City & Cnty. of Honolulu, No. 24-595, 2025 WL 586359, at *1-*2 (9th Cir. Feb. 24, 2025).

[5/] HRS § 663-3 (2016) states:

> **Death by wrongful act.** (a) When the death of a person is caused by the wrongful act, neglect, or default of any person, the deceased's legal representative, or any of the persons enumerated in subsection (b), may maintain an action against the person causing the death or against the person responsible for the death. The action shall be maintained on behalf of the persons enumerated in subsection (b), except that the legal representative may recover on behalf of the estate the reasonable expenses of the deceased's last illness and burial.
>
> (b) In any action under this section, such damages may be given as under the circumstances shall be deemed fair and just compensation, with reference to the pecuniary injury and loss of love and affection, including:
>
> (1) Loss of society, companionship, comfort, consortium, or protection;

claims against the City, which the District Court found not to be viable; (2) the doctrines of claim preclusion or issue preclusion barred the Complaint; and (3) alternatively, summary judgment was warranted because Burke did not give the requisite notice of his claims for damages to the City within two years of their accrual, as required by HRS § 46-72.

On May 13, 2024, Burke filed his opposition to the MSJ, contending that his claims were viable, they were not barred by claim or issue preclusion, and they were not barred by HRS § 46-72. As to claim and issue preclusion, he argued in part that he was not a party to the federal action and that his claims in this case were "personal to him" and "establish different rights and interests." Burke's supporting declaration authenticated attached copies of email communications between Burke and EAS's counsel on March 29, 2023 – the day after Burke filed his motion to intervene in the federal action. These emails reflected EAS's counsel's objections to the motion, including the following:

- "I now see that you did, in fact, seek to intervene in the probate case [in which EAS was appointed personal representative] and were rejected. Clearly you are collaterally estopped from participating in the pending federal case, and your failure to inform the Court of Judge

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(2) Loss of marital care, attention, advice, or counsel;

(3) Loss of care, attention, advice, or counsel of a reciprocal beneficiary as defined in chapter 572C;

(4) Loss of filial care or attention; or

(5) Loss of parental care, training, guidance, or education, suffered as a result of the death of the person;

by the surviving spouse, reciprocal beneficiary, children, father, mother, and by any person wholly or partly dependent upon the deceased person. The jury or court sitting without jury shall allocate the damages to the persons entitled thereto in its verdict or judgment, and any damages recovered under this section, except for reasonable expenses of last illness and burial, shall not constitute a part of the estate of the deceased. Any action brought under this section shall be commenced within two years from the date of death of the injured person, except as otherwise provided.

Browning's probate order constitutes gross misconduct."

- "You do not have standing to intervene in the federal court litigation in light of Judge Browning's Order filed on August 10, 2022. Judge Browning determined that you are not an heir, and if you disagree with that ruling you will have to file an appeal."

Following a May 21, 2024 hearing, the MSJ was granted and all claims against the City were dismissed with prejudice, as reflected in the court's May 30, 2024 Dismissal Order. This appeal followed.

II. Discussion

Burke contends that the Circuit Court erred: (1) "in determining this was a matter of issue preclusion when there's different and distinct causes of action and a different party bringing the claims"; (2) "in concluding [Burke] cannot recover damages as [Johnson's] brother based on HRS § 663-3"; (3) "in dismissing [Burke's] case based on HRS § 663-3 when the District Court Case was dismissed on procedural grounds rather than substantive grounds"; (4) in not allowing [Burke's] NIED claims to be pursued as an independent and separate claim for emotional distress outside the scope of HRS § 663-3"; (5) "in determining the City was not put on notice pursuant to HRS § 46-72 that warrants dismissal of the case"; and (6) "in not issuing [f]indings of [f]act and [c]onclusions of [l]aw."[6/]

The City addresses several of these contentions, but also argues more generally that Burke's case is barred by the doctrine of claim preclusion, which was one of the bases for the MSJ, and the Circuit Court's ruling can be affirmed on that basis alone.

[6/] Burke's opening brief does not comply with the Hawaiʻi Rules of Appellate Procedure Rule 28(b)(4) in that it does not include "[a] concise statement of the points of error" and does not state "where in the record the alleged error occurred" and "where in the record the alleged error was objected to or the manner in which the alleged error was brought to the attention of the court . . . ." We construe the opening brief section headed "Issues Presented" as an indirect attempt to state points of error. We have renumbered those issues for purposes of organizational clarity.

The Dismissal Order did not specify whether the Circuit Court was dismissing the Complaint under HRCP Rule 12(b)(6) or granting summary judgment for the City under HRCP Rule 56. However, the Dismissal Order made clear that the court "considered the Motion . . . including all attached exhibits and declarations" in reaching its decision. Because matters outside the Complaint were considered by the Circuit Court, the court was required to treat the motion as one for summary judgment and dispose of it as provided in HRCP Rule 56. HRCP Rule 12(b); see Wong v. Cayetano, 111 Hawaiʻi 462, 475, 143 P.3d 1, 14 (2006).

We therefore apply the standard of review relating to motions for summary judgment. See Foytik v. Chandler, 88 Hawaiʻi 307, 313, 966 P.2d 619, 625 (1998). We review the Circuit Court's grant or denial of summary judgment de novo; "[s]ummary judgment is appropriate 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." Wong, 111 Hawaiʻi at 476, 143 P.3d at 15 (quoting Kau v. City & Cnty. of Honolulu, 104 Hawaiʻi 468, 473, 92 P.3d 477, 482 (2004)). Although the Dismissal Order does not specify the basis for the Circuit Court's ruling, "[w]e may affirm summary judgments on any grounds in the record, including those upon which the circuit court did not rely." Saplan v. U.S. Bank Nat'l Ass'n as Tr. for BAFC 2007-A, 154 Hawaiʻi 181, 186, 549 P.3d 266, 271 (2024) (quoting Reyes v. Kuboyama, 76 Hawaiʻi 137, 140, 870 P.2d 1281, 1284 (1994)).

A. Claim Preclusion

Burke contends that the Circuit Court erred in applying claim or issue preclusion to this case "when there's different and distinct causes of action and a different party bringing the claims."

"The doctrine of res judicata, or claim preclusion, is founded in concerns of judicial economy to prevent litigants from bringing successive actions based on the same facts." Wong, 111 Hawaiʻi at 477, 143 P.3d at 16 (citing Kauhane v. Acutron Co., 71

Haw. 458, 463, 795 P.2d 276, 278-79 (1990)); see Brownback v. King, 592 U.S. 209, 215 n.3 (2021) ("Claim preclusion prevents parties from relitigating the same claim or cause of action, even if certain issues were not litigated in the prior action." (internal quotation marks omitted) (citing Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc., 590 U.S. 405, 411 (2020))). The preclusive effect of the federal action on this subsequent state action is governed by federal claim preclusion law. Wong, 111 Hawaiʻi at 477, 143 P.3d at 16 (citing Semtek Int'l Inc. v. Lockheed Martin Corp., 531 U.S. 497, 507 (2001)). Under federal law, a party asserting claim preclusion must show "(1) an identity of claims, (2) a final judgment on the merits, and (3) privity between parties." Headwaters Inc. v. U.S. Forest Serv., 399 F.3d 1047, 1052 (9th Cir. 2005) (quoting Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency, 322 F.3d 1064, 1077 (9th Cir. 2003))

1. Identity of Claims

"Suits involve the same claim . . . if the later suit arises from the same transaction or involves a common nucleus of operative facts." Brownback, 592 U.S. at 215 n.3 (internal quotation marks and brackets omitted) (quoting Lucky Brand Dungarees, 590 U.S. at 411). The Ninth Circuit considers four criteria in determining whether successive cases involve the same claim: "(1) whether the two suits arise out of the same transactional nucleus of facts; (2) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (3) whether the two suits involve infringement of the same right; and (4) whether substantially the same evidence is presented in the two actions." Mpoyo v. Litton Electro-Optical Sys., 430 F.3d 985, 987 (9th Cir. 2005) (citing Chao v. A-One Med. Servs., Inc., 346 F.3d 908, 921 (9th Cir. 2003)).

The first criterion is the "most important" and is often "outcome determinative." Media Rights Techs., Inc. v. Microsoft Corp., 922 F.3d 1014, 1028-29 (9th Cir. 2019) (quoting Harris v. Cty. of Orange, 682 F.3d 1126, 1131 (9th Cir. 2012),

and citing numerous other cases); Mpoyo, 430 F.3d at 987. "Whether two suits arise from the same transactional nucleus of facts depends upon whether they are related to the same set of facts and whether they could conveniently be tried together." In re Nance, 156 F.4th 961, 966 (9th Cir. 2025) (internal quotation marks and emphasis omitted) (quoting ProShipLine Inc. v. Aspen Infrastructures Ltd., 609 F.3d 960, 968 (9th Cir. 2010)); see Media Rights Techs., 922 F.3d at 1027 ("We are most concerned with the facts or events from which the alleged harms arose."). "Newly articulated claims based on the same nucleus of facts may still be subject to a res judicata finding if the claims could have been brought in the earlier action." Tahoe-Sierra Pres. Council, 322 F.3d at 1078.

Here, the federal action and this state court action both arise from the same transaction or set of facts, namely Johnson's death "on the premises" of the Kapolei Police Station following her release from police custody. Specifically, EAS brought claims for negligence and violation of civil rights against the City based on this set of facts.[7/] Similarly, in this action, Burke brought wrongful death, IIED, and negligence-based claims "stem[ming] from the fatal beating of . . . Johnson . . . that occurred on the premises of the Kapolei Police Station . . . ."

Burke contends that his six state law claims "greatly differ" from EAS's negligence and civil rights claims in the

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[7/] In Count I, EAS alleged that the City was "at a minimum negligent or grossly negligent, and such negligence was a substantial factor in wrongfully causing the death of . . . JOHNSON." In Count II, EAS alleged that the City violated Johnson's rights under the Fourth, Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution, Article I of the Hawaiʻi State Constitution, and 42 U.S.C. Section 1983.

The City contends that it is unclear whether EAS brought a wrongful death action under HRS § 663-3, supra, or a survival action under HRS § 663-7. See HRS § 663-7 (2016) ("A cause of action arising out of a wrongful act, neglect, or default . . . shall not be extinguished by reason of the death of the injured person. The cause of action shall survive in favor of the legal representative of the person and any damages recovered shall form part of the estate of the deceased."). Although the complaint was not specific in that regard, it appears the District Court may have treated the complaint as a survival action. It should not matter for the identity-of-claims analysis, however, where Burke's claims for his own injuries arose from the same set of facts as EAS's claims, whether based on HRS § 663-3 or § 663-7.

federal action. He maintains that his claims "are personal to him . . . and his damages include loss of society, companionship, [and] consortium." In seeking to intervene in the federal action, however, Burke described these same claims (and others) as "nearly identical" to those brought by EAS, even though "different damages are involved." In sum, the harms alleged by EAS and Burke, even if different, arise from the same set of facts and could have been conveniently tried together.

As for the remaining "same claim" criteria, at least some of Burke's claims (*e.g.*, the NIED and IIED claims) "arguably address different particular rights and therefore criteria two and three are not conclusive." Mpoyo, 430 F.3d at 987. And as Burke acknowledges, "substantially the same evidence would be presented in the two actions" given the common nucleus of facts related to Johnson's death.

In these circumstances, where the two actions clearly share a common nucleus of operative fact, "[t]he first criterion controls and assures the two suits involve the same claim or cause of action." Id. at 988.

2. Final Judgment on the Merits

"[A] final judgment of a federal district court is final for the purposes of res judicata even if an appeal is pending." Wong, 111 Hawaiʻi at 477, 143 P.3d at 16 (citing Robi v. Five Platters, Inc., 838 F.2d 318, 327 (9th Cir. 1988)).

Here, the District Court entered a final judgment on EAS's federal and state law claims against the City. The judgment was based on the court's: (1) November 8, 2023 order dismissing the state law negligence claim (Count I) with prejudice and the federal civil rights claim (Count II) without prejudice for failure to state a claim under FRCP Rule 12(b)(6); and (2) December 18, 2023 order dismissing Count II with prejudice after EAS failed to file a second amended complaint. EAS I, 2023 WL 7385604, at *6 ("Count I is dismissed with prejudice because it is clear that Count I cannot be saved by amendment"), *11; EAS II, 2023 WL 8716880, at *1.

Burke argues that the dismissal was "procedural and not substantive in nature" because EAS "failed to file a [s]econd [a]mended [c]omplaint on time." Not so. "Dismissal for failure to state a claim is a judgment on the merits for purposes of claim preclusion." Save the Bull Trout v. Williams, 51 F.4th 1101, 1109 (9th Cir. 2022) (citing Stewart v. U.S. Bancorp, 297 F.3d 953, 957 (9th Cir. 2002)). "The judgment on the merits became final and preclusive when [EAS] abandoned [its] opportunity to amend." Id. (citing Muhammad v. Oliver, 547 F.3d 874, 876 (7th Cir. 2008)).

3. Privity Between the Parties

"For two parties to have privity, they must be 'so identified in interest that they represent precisely the same right' on the relevant issues." Grondal v. United States, 21 F.4th 1140, 1163 (9th Cir. 2021) (ellipsis and brackets omitted) (quoting In re Schimmels, 127 F.3d 875, 881 (9th Cir. 1997); Washington v. Crown Res. Corp., No. 25-2397, 2026 WL 2903703, at *4 (9th Cir. Sept. 28, 2026) ("Our precedents require precise alignment of relevant interests to overcome the general rule against nonparty preclusion.").

As to EAS's relationship to Burke, EAS is the personal representative of Johnson's estate and Burke is a purported heir. Burke argues that he is a "different party" than EAS, and points out that "[Counsel] on behalf of EAS made it clear that he did not want [Burke] to be a part of the District Court case as he vehemently objected to the filing of [Burke's] joinder via email." Indeed, Burke presented evidence that when he sought to intervene in the federal action, EAS's counsel asserted that Burke was "collaterally estopped" from doing so with respect to any of his asserted claims, and took the position based on a probate court ruling that Burke "[is] not an heir" of Johnson's estate.

We conclude that this evidence raised at least a genuine issue of material fact as to whether Burke and EAS were so identified in interest that they "represent precisely the same right." Grondal, 21 F.4th at 1163; see Crown Res., 2026 WL

2903703, at *5 ("Whether a non-party has been 'adequately represented by someone with the same interests is a fact-intensive inquiry.'" (ellipsis omitted) (quoting GP Vincent II v. Est. of Beard, 68 F.4th 508, 518 (9th Cir. 2023))). To the extent the MSJ was granted on the basis of claim preclusion, it was in error.

B. Wrongful Death Claims by a Sibling Under HRS § 663-3

In support of his second contention (supra), Burke disputes the City's argument that as Johnson's sibling, he could not bring a wrongful death claim. Relying on Lealaimatafao v. Woodward-Clyde Consultants, 75 Haw. 544, 867 P.2d 220 (1994), he argues that he was "wholly or partly dependent [on Johnson] for physical, moral, and/or social necessities."

The City's argument – that HRS § 663-3 does not authorize wrongful death actions by siblings – was not made in the MSJ. Rather, the argument was first asserted in the City's reply memorandum, giving Burke no opportunity to respond as contemplated under HRCP Rule 56. Because the City's argument was not properly presented under HRCP Rule 56, it could not properly have been the basis for granting the MSJ.

C. "Derivative" Wrongful Death Claims Under HRS § 663-3

In support of his third contention (supra), Burke disputes the City's argument that his wrongful death claims were dependent on the viability of Johnson's claims against the City, which the District Court found not to be viable.

The City makes the same argument in its answering brief that it made below. The argument, however, is dependent upon the alleged preclusive effect of the judgment in the federal action. As discussed above, Burke presented evidence raising at least a genuine issue of material fact as to whether Burke and EAS were in privity, and thus a genuine issue as to whether the federal judgment precluded his wrongful death claims here. To the extent the MSJ was granted based on the City's "derivative" argument, it was in error.

D. NIED Claim

Given our disposition vacating the grant of summary judgment, we need not reach Burke's argument that the Circuit Court should have allowed him to pursue his NIED claim as "an independent and separate claim for emotional distress outside the scope of HRS § 663-3."

E. Notice of Damages Under HRS § 46-72

Burke disputes the City's argument below that he did not give the requisite notice of his claims for damages to the City within two years of their accrual, as required by HRS § 46-72. Burke contends that "[the City] became aware of his claim well before the two-year requirement . . . when he filed his Motion to Intervene on March 28, 2023."

There is no indication that the Circuit Court granted the MSJ based on the notice issue, and the City does not respond to Burke's argument in its answering brief. We therefore decline to sustain the grant of summary judgment on this basis.

F. Findings of Fact and Conclusions of Law

Burke contends that the Circuit Court erred in not issuing findings of fact and conclusions of law. He cites no authority imposing such a requirement when a trial court grants a motion for summary judgment. See Hilo Bay Marina, LLC v. State, 156 Hawaiʻi 478, 487 n.11, 575 P.3d 568, 577 n.11 (2025) ("[A]lthough it may be helpful for a trial court to make findings that specific material facts are uncontested, such findings – even if unchallenged on appeal – do not bind this court nor alter our *de novo* standard of review." (citing 10A Wright & Miller's Federal Practice & Procedure § 2716 (4th ed. 2025) for the proposition: "In considering an appeal from the disposition of a Rule 56 motion, the appellate court normally will not have the district court's findings of fact and conclusions of law on the motion before it since Rule 52(a)(3) makes these findings unnecessary on summary judgment motions.")). Burke's argument is without merit.

III. Conclusion

For these reasons, the Rule 54(b) Judgment is vacated and this case is remanded to the Circuit Court for further proceedings consistent with this opinion.

On the briefs:

Steven H. Burke
Self-represented Plaintiff-Appellant.

Katherine M.K. Neste,
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City and County of Honolulu,
for Defendants-Appellees.

/s/ Katherine G. Leonard
Presiding Judge

/s/ Clyde J. Wadsworth
Associate Judge

/s/ Kimberly T. Guidry
Associate Judge