

SUPREME COURT OF THE STATE OF HAWAI‘I

Oahu Publications, Inc. v. Takase

139 Haw. 236 (2016) · No. SCPW-16-0000038 · Decided December 12, 2016

SUMMARY

The Hawai‘i Supreme Court addresses procedures for protecting confidential personal information that was improperly included in a publicly accessible court filing under Hawai‘i Court Records Rule 9. The court considers mootness and the public-interest exception, the public right of access to judicial records, and the procedures for sealing or redacting improperly disclosed information. The proceeding arose from a petition for writs of prohibition and mandamus concerning a probable-cause application in a criminal case.

CASE DETAILS

COURT	Supreme Court of the State of Hawai‘i
WRITING FOR THE COURT	Pollack, J.; Recktenwald, C.J.; Nakayama, J.; McKenna, J.; Wilson, J.
JURISDICTION	Hawaii
DECIDED	December 12, 2016
DOCKET	SCPW-16-0000038
DISPOSITION	other
PROCEDURAL POSTURE	Original proceeding seeking a writ of prohibition against enforcement of a district court sealing order and a writ of mandamus requiring public disclosure, notice, an opportunity to object, and specific findings before sealing court documents.
STANDARD OF REVIEW	The opinion does not state a separately labeled standard of review. It addresses the original writ petition and exercises supervisory authority over court-record procedures.
PRECEDENTIAL VALUE	Published Hawai‘i Supreme Court opinion; precedential.
PARTIES	Oahu Publications Inc., dba The Honolulu Star-Advertiser v. The Honorable Barbara T. Takase, Judge of the District Court of the Third Circuit, North and South Hilo Division, State of Hawai‘i, Ethan Ferguson

TOPICS

appellate procedure

mootness

first amendment

constitutional law

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PRACTICE AREAS

constitutional law

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court records and public access

privacy law

QUESTIONS PRESENTED

1. Whether the petition remained reviewable under the public-interest and capable-of-repetition-yet-evading-review exception to mootness after a redacted application was filed.
2. What procedures Hawai‘i courts should follow when personal information protected by Hawai‘i Court Records Rule 9 is improperly included in a publicly accessible filing.
3. Whether the writ of prohibition and writ of mandamus requested by Oahu Publications should issue under the circumstances.

HOLDINGS

1. The petition was reviewable under the public-interest and capable-of-repetition-yet-evading-review exception to mootness because improper disclosure of protected personal information was likely to recur, could evade review, and required an authoritative determination.
2. When personal information is improperly included in a publicly accessible court filing in violation of HCRR Rule 9, a party that learns of the violation must take immediate steps to seal the document or offending content and file a properly redacted version.
3. Upon receiving a motion to seal based on an improper disclosure of personal information, the court should promptly seal the document or offending content, narrowly tailor the sealing, issue a written order stating the reason for sealing, notify the public and parties of the right to object, and require an expeditious redacted filing if one has not been submitted.
4. When the court itself discovers protected personal information in a publicly accessible filing, it may, but is not affirmatively required to, take remedial action using procedures similar to those applicable when a party or nonparty discovers the improper filing.

KEY QUOTATIONS

“When personal information has been improperly included in a publicly accessible document in violation of the Hawai‘i Court Records Rules, remedial measures must be taken to rectify the rule violation.” (at 27-28)

“These procedures reflect a balanced approach to individual privacy concerns and public accessibility.” (at 28-29)

FACTUAL BACKGROUND

Ethan Ferguson was arrested without a warrant and charged with five counts of sexual assault. The State filed probable-cause applications containing the full name and residential address of a minor complainant and full Social Security numbers of individuals depicted in a photographic lineup. The district court sealed the

applications ex parte, and the State filed a redacted version seven days later. Oahu Publications sought writ relief to challenge the sealing procedure and require notice, an opportunity to object, and factual findings.

PROCEDURAL HISTORY

The State filed probable-cause applications containing the full name and address of a minor complainant and full Social Security numbers. The district court granted the State's ex parte motion to seal the applications, and the State later filed a redacted version. Oahu Publications petitioned the Hawai'i Supreme Court for writs of prohibition and mandamus. The Supreme Court reached the merits under the public-interest and capable-of-repetition-yet-evading-review exception to mootness, dismissed the prohibition request as moot, and denied mandamus as unnecessary in light of the opinion's procedural directives and the filing of the redacted application.

DISPOSITION

other

CASES CITED

- Okada Trucking Co. v. Bd. of Water Supply, 99 Hawai'i 191, 196, 53 P.3d 799, 804 (2002)
- Oahu Publ'ns Inc. v. Ahn, 133 Hawai'i 482, 493 n.13, 494-95, 507-08, 331 P.3d 460, 471 n.13, 472-73, 485-86 (2014)
- Richardson v. City & Cty. of Honolulu, 76 Hawai'i 46, 55, 868 P.2d 1193, 1202 (1994)
- Kam v. Noh, 70 Haw. 321, 325, 770 P.2d 414, 417 (1989)
- State v. Pacquing, 129 Hawai'i 172, 181-82, 297 P.3d 188, 197-98 (2013)
- Greidinger v. Davis, 988 F.2d 1344, 1353-54 (4th Cir. 1993)
- Cohan v. Ayabe, 132 Hawai'i 408, 418, 322 P.3d 948, 958 (2014)
- Enos v. Pac. Transfer & Warehouse, Inc., 79 Hawai'i 452, 457, 903 P.2d 1273, 1278 (1995)
- Richardson v. Sport Shinko (Waikiki Corp.), 76 Hawai'i 494, 507, 880 P.2d 169, 182 (1994)
- Press-Enter. Co. v. Superior Court of Cal., 464 U.S. 501, 513 (1984)
- In re Estate of Campbell, 106 Hawai'i 453, 462, 106 P.3d 1096, 1105 (2005)
- Gannett Pac. Corp. v. Richardson, 59 Haw. 224, 233, 580 P.2d 49, 56 (1978)

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