

SUPREME COURT OF HAWAI‘I

Kilakila ‘O Haleakalā v. Board of Land and Natural Resources

131 Haw. 193 (2013) · No. SCWC-11-0000353 · Decided December 13, 2013

SUMMARY

The Hawai‘i Supreme Court held that the Board of Land and Natural Resources effectively rendered a final decision and order when it approved a conservation district use permit without first holding a contested case hearing requested by Kilakila ‘O Haleakalā. The court concluded that the appeal was not moot because the permit remained in effect and could still be challenged. It reversed the dismissal of the agency appeal and held that the circuit court had jurisdiction under Hawai‘i Revised Statutes § 91-14.

CASE DETAILS

COURT	Supreme Court of Hawai‘i
WRITING FOR THE COURT	Paula A. Nakayama, J.; Mark E. Recktenwald, C.J.; R. Mark Nakayama, J.; Sabrina S. McKenna, J.; Richard W. Pollack, J.; James E. Acoba, Jr., J.
JURISDICTION	Hawaii
DECIDED	December 13, 2013
DOCKET	SCWC-11-0000353
DISPOSITION	vacated
PROCEDURAL POSTURE	Petition for writ of certiorari reviewing the Intermediate Court of Appeals' affirmance of the circuit court's dismissal of an administrative appeal for lack of jurisdiction and mootness.
STANDARD OF REVIEW	Subject-matter jurisdiction is reviewed de novo under the right/wrong standard. The court also applied de novo review to the circuit court's dismissal and accepted the pleaded factual allegations as true for standing purposes.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Hawai‘i.
PARTIES	Kilakila ‘O Haleakalā v. Board of Land and Natural Resources, Department of Land and Natural Resources, William Aila, in his official capacity as Chairperson of the Board of Land and Natural Resources, University of Hawai‘i, Thomas M. Apple, in his official capacity as Chancellor of the University of Hawai‘i at Mānoa

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QUESTIONS PRESENTED

1. Whether the appeal was moot after the Board later granted Kilakila ‘O Haleakalā's request for a contested case hearing while leaving the permit in effect.
2. Whether the circuit court had jurisdiction under Hawai‘i Revised Statutes § 91-14 when the Board issued a final permit decision without first holding or formally denying a requested contested case hearing.
3. Whether the administrative proceedings satisfied the requirements for an appeal under the PASH/Kaleikini test, including a hearing required by law, final agency action, compliance with agency procedures, and standing.

HOLDINGS

1. The appeal was not moot because the permit remained in effect and the reviewing court could still grant effective relief, including a stay or reversal of the permit.
2. When an agency votes to grant a permit while a valid request for a contested case hearing is pending, the agency's failure to grant or deny the request becomes an effective denial, and the permit vote constitutes a final decision and order appealable under HRS § 91-14.
3. A contested case hearing was required by law because the BLNR chairperson determined under HAR § 13-5-40(a)(4) that the scope of the project or the public interest required a public hearing, and the governing rules required the agency to conduct the required hearing.
4. Kilakila ‘O Haleakalā satisfied the requirements by following the applicable agency rules and sufficiently alleging injury to its Native Hawaiian traditional and customary, aesthetic, and environmental interests; it therefore had standing to appeal.

KEY QUOTATIONS

“Because BLNR voted to grant the permit without having held a contested case hearing as requested by KOH prior to taking that vote, BLNR effectively rendered a final decision and order within the meaning of HRS § 91-14, and KOH at that point had the right to appeal to circuit court.” (131 Haw. at 196)

“We therefore conclude that BLNR should have held a contested case hearing as required by law and requested by KOH prior to decision making on UH’s application, and that the circuit court had jurisdiction to hear KOH’s HRS § 91-14 agency appeal.” (131 Haw. at 206)

FACTUAL BACKGROUND

The University of Hawai‘i applied for a conservation district use permit to construct an advanced solar telescope and related facilities near the summit of Haleakalā. Kilakila ‘O Haleakalā submitted written and oral requests for a contested case hearing, but the Board of Land and Natural Resources neither granted nor denied the requests before voting to approve the permit. Kilakila ‘O Haleakalā alleged that the project threatened its members' Native Hawaiian traditional and customary practices and their aesthetic and environmental interests in the summit area.

PROCEDURAL HISTORY

Kilakila ‘O Haleakalā opposed the University of Hawai‘i's application for a conservation district use permit and repeatedly requested a contested case hearing. The Board of Land and Natural Resources granted the permit without first granting or denying the request, and later granted a contested case hearing subject to a standing determination. The circuit court dismissed the HRS § 91-14 appeal for lack of jurisdiction and deemed it moot; the ICA affirmed. The Hawai‘i Supreme Court vacated both decisions and remanded.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The case was remanded to the circuit court for further proceedings consistent with the opinion concerning Kilakila ‘O Haleakalā's request for a stay or reversal of the conservation district use permit granted by BLNR.

CASES CITED

- Kaleikini v. Thielen, 124 Hawai‘i 1, 237 P.3d 1067 (2010)
- Pub. Access Shoreline Haw. v. Haw. Cnty. Planning Comm'n, 79 Hawai‘i 425, 903 P.2d 1246 (1995)
- Kaniakapupu v. Land Use Comm'n, 111 Hawai‘i 124, 139 P.3d 712 (2006)
- Aames Funding Corp. v. Mores, 107 Hawai‘i 95, 110 P.3d 1042 (2005)
- Ka Pa‘akai O Ka ‘Aina v. Land Use Comm'n, 94 Hawai‘i 31, 7 P.3d 1068 (2000)
- Citizens for the Prot. of the N. Kohala Coastline v. County of Hawai‘i, 91 Hawai‘i 94, 979 P.2d 1120 (1999)
- Pele Defense Fund v. Paty, 73 Haw. 578, 837 P.2d 1247 (1992)
- Life of the Land v. Land Use Commission, 63 Haw. 166, 623 P.2d 431 (1981)
- Mahuiki v. Planning Commission, 65 Haw. 506, 654 P.2d 874 (1982)
- East Diamond Head Ass'n v. Zoning Board of Appeals, 52 Haw. 518, 479 P.2d 796 (1971)
- Akau v. Olohana Corp., 65 Haw. 383, 652 P.2d 1130 (1982)
- Life of the Land v. Land Use Commission, 61 Haw. 3, 594 P.2d 1079 (1979)
- Mottl v. Miyahira, 95 Hawai‘i 381, 23 P.3d 716 (2001)
- Buscher v. Boning, 114 Hawai‘i 202, 159 P.3d 814 (2007)

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