NO. 22103

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

MARLENE JONES, and RONALD JONES, Plaintiffs-Appellants

vs.

STATE OF HAWAIʻI and DOE DEFENDANTS 1-50,
Defendants-Appellees

and

STATE OF HAWAIʻI, Defendant and Third-Party
Plaintiff-Appellee

vs.

JANET BOWMAN and ROBERT BRIGHT,
Third-Party Defendants-Appellees
(NO. 22103 (CIV. NO. 96-0955))

SHIRLEY C. JONES, Individually, and as Special
Administratrix of the ESTATE OF CANNON HARRIS JONES,
Deceased, Plaintiffs

vs.

STATE OF HAWAIʻI, JOHN DOES 1-5, JOHN DOE CORPORATIONS
1-5, JOHN DOE PARTNERSHIPS 1-5, ROE PARTNERSHIPS 1-5,
ROE NON-PROFIT ORGANIZATIONS 1-5, and
ROE GOVERNMENTAL AGENCIES 1-5, Defendants

and

STATE OF HAWAIʻI, Defendant and Third-Party Plaintiff

vs.

JANET BOWMAN and ROBERT BOWMAN,
Third-Party Defendants
(NO. 22163 (CIV. NO. 96-0560))

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NOS. 96-0955 AND 96-0560)

SUMMARY DISPOSITION ORDER
(By: Moon, C.J., Levinson, Nakayama, Ramil, JJ.,
and Circuit Court Judge Derrick Chan,
in place of Acoba, J., recused)

In this consolidated appeal,[1] the plaintiffs-appellants Marlene Jones and Ronald Jones (hereinafter "the Joneses") appeal from the first circuit court's judgment in favor of the defendant-appellee State of Hawai'i (hereinafter "the State"), filed on November 24, 1998, and its Findings of Fact (FOFs), Conclusions of Law (COLs), and Order, filed on October 16, 1998. On appeal, the Joneses contend that the circuit court erred in concluding: (1) that the lack of regulatory buoys demarcating the "slow-no-wake zone" offshore Waikīkī was not a legal cause of the death of a swimmer, Cannon Harris Jones (Cannon); (2) that the failure of the Marine Patrol to have officers assigned to patrol offshore Waikīkī on July 4, 1994 was not a legal cause of Cannon's death; and (3) that, even if the Joneses had established a prima facie negligence case under either theory, the State was immune from liability, pursuant to Hawai'i Revised Statutes (HRS) § 662-15(1) (1993), because the decision not to place regulatory slow-no-wake buoys offshore Waikīkī and the assignment of Marine Patrol officers were both "discretionary functions." The Joneses also assert that the circuit court erroneously found Cannon contributorily negligent.

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to the arguments advanced and the issues raised by the parties, we hold as follows:

First, inasmuch as (1) "the failure of [law enforcement officers] to provide protection is ordinarily not actionable," Ruf v. Honolulu Police Department, 89 Hawai'i 315, 322, 972 P.2d 1081, 1089 (1999), (2) the Marine Patrol did not take any

[1] By order of this court dated February 11, 1999, this court consolidated Nos. 22103 and 22163 under 22103.

affirmative act that increased the risk of harm to Cannon, see Freitas v. City and County of Honolulu, 58 Haw. 587, 590, 574 P.2d 529, 532 (1978), and (3) there was no "special relationship" between the Marine Patrol and Cannon giving rise to a duty of care for his welfare, the Marine Patrol did not owe a duty to protect Cannon from harm. See Ruf, supra; Fochtman v. Honolulu Police and Fire Departments, 65 Haw. 180, 183-85, 649 P.2d 114, 1116-17 (1982); Freitas, supra. Because we affirm the circuit court's judgment on the basis that no duty was owed, cf. Taylor-Rice v. State, 91 Hawai'i 60, 73, 979 P.2d 1086, 1099 (1999) (noting that this court may affirm the circuit court's judgment on any ground in the record that support affirmance), we do not reach the Joneses' points of error regarding the Marine Patrol.

Second, with respect to the Joneses' points of error regarding the allegedly negligent failure to install regulatory "slow-no-wake" buoys, the circuit court did not err in concluding that the State was immune from liability. The decision to install such buoys was discretionary, requiring the balancing of "broad public policy" concerns, such as financial and economic considerations, as well as factors regarding the safety of such buoys if installed, their maintenance, and the priority of safety projects. See, e.g., Taylor-Rice v. State, 91 Hawai'i 60, 77-79, 979 P.2d 1086, 1103-105 (1999); Tseu ex rel. Hobbs v. Jeyte, 88 Hawai'i 85, 88, 962 P.2d 344, 347 (1998); Julius Rothschild & Co. v. State, 66 Haw. 76, 80-81, 655 P.2d 877, 881 (1982). Thus, even if the Joneses established a prima facie negligence case against the State due to its failure to install the buoys, the State is immune from liability for its negligence. We do not, therefore, reach the question whether the failure to install regulatory slow-no-wake buoys offshore Waikīkī was a legal cause

of Cannon Jones's death.

Third, inasmuch as the record clearly establishes that the circuit court did not enter any conclusion of law with respect to Cannon's contributory negligence, and the Joneses do not support their allegation that the circuit court improperly considered Cannon's contributory negligence in ruling on the present matter by reference to matters contained in the record, the Joneses have provided us with an insufficient basis on this ground upon which to reverse the circuit court's judgment. Cf. Reed v. City and County of Honolulu, 76 Hawai'i 219, 225, 873 P.2d 98, 104 (1994). Therefore,

IT IS HEREBY ORDERED that the judgment of the first circuit court from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, November 28, 2000.

On the briefs:

Charles J. Ferrera, for
plaintiffs-appellants
Marlene Jones and Ronald
Jones

Carl F. Debo (Deputy Attorney
General), for defendant-
appellee State of Hawai'i