

NO. 28180

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

JANEE MARIE TAYLOR, Plaintiff

vs.

PETER NAKAMURA, County Clerk for
the County of Kaua'i, Defendant

E.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2006 OCT 10 AM 10:50

FILED

ORIGINAL PROCEEDING

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

(By: Moon, C.J., Levinson, Nakayama, Acoba and Duffy, JJ.)

We have considered Plaintiff Janee Marie Taylor's Election Complaint, Defendant Peter Nakamura's motion to dismiss and the affidavit and exhibits appended to each. Having heard this matter without oral argument and in accordance with HRS § 11-173.5(b) (Supp. 2005) (requiring the supreme court to "give judgment fully stating all findings of fact and of law"), we set forth the following findings of fact and conclusions of law and enter the following judgment.

FINDINGS OF FACT

1. Plaintiff Janee Taylor was one of five candidates for the office of mayor of the County of Kaua'i in the September 23, 2006 Kauai county primary election.

2. The primary election results for the office of mayor of County of Kauai were: (1) Bryan J. Baptiste: 8,173 votes; (2) Jesse Fukushima: 4,725 votes; (3) John R. Hoff: 1,984 votes; (4) Bruce J. Pleas: 1,083 votes; and (5) Janee M. Taylor: 377 votes.

3. On September 26, 2006, defendant county clerk Peter Nakamura determined that candidate Bryan J. Baptiste received a majority of the votes cast for the office of mayor.

4. On September 26, 2006, defendant Nakamura declared that candidate Baptiste was elected mayor in the September 23, 2006 primary election in accordance with Section 1.03.B.1 of the Charter of the County of Kaua'i.

5. On September 29, 2006, plaintiff Taylor filed a complaint contesting the September 23, 2006 Kaua'i county primary election for mayor.

6. The complaint contests the election results for mayor based on plaintiff Taylor's allegations of discrepancies in the primary election printouts, the possibility of Kaua'i County's noncompliance with federal and state election laws and the failure to properly educate and advise voters.

7. Plaintiff Taylor seeks a judgment from the supreme court directing an investigation of election procedures and practices concerning the September 23, 2006 county primary election.

8. Defendant Nakamura filed a motion to dismiss the complaint for failure to state claims upon which relief can be granted.

CONCLUSIONS OF LAW

1. When reviewing a motion to dismiss a complaint for failure to state a claim upon which relief can be granted, the court must accept plaintiff's allegations as true and view them

in the light most favorable to the plaintiff; dismissal is proper only if it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim that would entitle him or her to relief. AFL Hotel & Restaurant Workers Health & Welfare Trust Fund v. Bosque, 110 Hawai'i 318, 321, 132 P.3d 1229, 1232 (2006).

2. The court's consideration of matters outside the pleadings converts a motion to dismiss into one for summary judgment. Foytik v. Chandler, 88 Hawai'i 307, 313, 966 P.2d 619, 625 (1998). Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Estate of Doe v. Paul Revere Ins. Group, 86 Hawai'i 262, 269-270, 948 P.2d 1103, 1110-1111 (1997).

3. Discrepancies in the September 23, 2006 Kaua'i county primary election printouts and the possibility of Kaua'i County's noncompliance with federal and state election laws do not amount to actual information of mistakes or errors sufficient to the change the election results for mayor.

4. The failure to properly educate and advise voters in Kaua'i County does not demonstrate that the results of the September 23, 2006 Kaua'i county primary election for mayor would have been changed.

5. In a primary election challenge, HRS § 11-173.5(b) (Supp. 2005) authorizes the supreme court to "decide what candidate was nominated or elected."

6. The remedy provided by HRS § 11-173.5(b) (Supp. 2005) of having the court decide which candidate was nominated or elected is the only remedy that can be given for primary election irregularities. Funakoshi v. King, 65 Haw. 312, 316, 651 P.2d 912, 914 (1982).

7. An investigation into election procedures and practices is not a remedy authorized by HRS § 11-173.5(b) (Supp. 2005).

8. There is no genuine issue of material fact related to plaintiff Taylor's primary election contest.

JUDGMENT

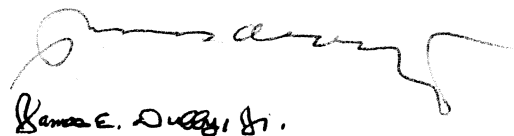
Based upon the foregoing findings of fact and conclusions of law, judgment is entered in favor of defendant Peter Nakamura, County Clerk for the County of Kaua'i.

The clerk of the supreme court shall forthwith serve a certified copy of this judgment on the county clerk of the County of Kaua'i in accordance with HRS § 11-173.5(b) (Supp. 2005).

DATED: Honolulu, Hawai'i, October 10, 2006.

Janee Marie Taylor,
plaintiff pro se
on the complaint

Christiane L. Nakea-Tresler
and Rosa Flores
for defendant Peter Nakamura
on the motion to dismiss



Kama E. Duggan, Sr.