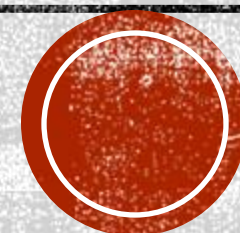


'Aha Ho'okolokolo ma ke Kaiāulu Courts in the Community

Bell v. Hawai'i Public Housing Authority

Overview & Background



INTRODUCTION

This case is about the rights and responsibilities of tenants in public housing

Blossom Bell has been living in public housing for over 40 years. On May 12, 2020, Daniel Lambert, Bell's son-in-law, visited the property to see his minor daughter who was living with Bell.

It is undisputed that Lambert had an altercation with a neighbor that led to severe injuries to the neighbor. It is also undisputed that Bell ordered Lambert off the property within 24 hours and that he has not returned.

In January 2021, Bell was served with a Notice of Violation of Rental Agreement and Proposed Termination of Rental Agreement. The Eviction Board found that Lambert's actions were a violation of Bell's Rental Agreement, that the violation was not curable, and that Bell should be evicted.





**QUESTIONS
PRESENTED**

- 1. Whether Bell sufficiently cured the violation in accordance with the Admissions and Continuing Occupancy Policy**
- 2. Whether or not HPHA abused its discretion.**

SOURCES OF LAW

FEDERAL & STATE

Constitution

- A Constitution is like a blueprint for how the government and the courts operate. Constitutions also recognize certain individual rights of citizens. The principles articulated in a Constitution guide the way we understand the law.

Statute

- Statutes are the laws written by the legislature. Because legislatures are elected, statutory law is considered to represent the public will. However, it is not always easy to know exactly how the legislature intended a statute to be understood.

Case Law

- Case law comes from the rulings that courts make. Many rulings involve interpreting statutes. The decisions of higher courts must be followed by lower courts; this is called Stare Decisis.

Regulation

- Regulations are the rules created by government agencies. To the extent that regulations are within the scope of the agency's authority, they have the force of law.



THE HAWAII' I COURTS

Hawai'i Supreme Court

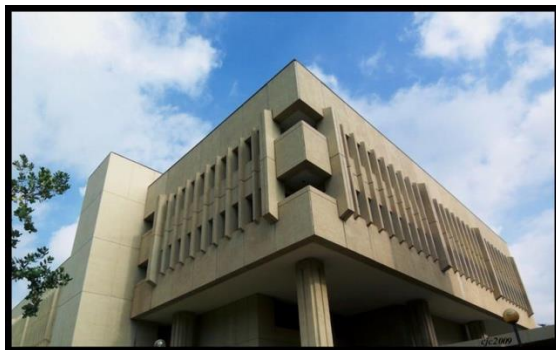
Intermediate Court of Appeals

Circuit
Courts
(including
Family
Courts)

Tax
Appeal
Court

Land
Court

District
Courts



ADMINISTRATIVE LAW

AGENCIES, REGULATIONS, & HEARINGS

The state and federal governments do a lot of different, complicated things. It would be almost impossible to have the legislature pass a law to decide everything from water quality standards to public school student conduct rules. So, the legislature passes laws that create agencies like the Environmental Protection Agency [EPA] or the Hawai'i Public Housing Authority [HPHA] to fulfill a specific purpose related to governing.

Some agencies have the power to make rules, called regulations, that function like laws. Agencies also sometimes make decisions that impact individuals and groups, like granting or denying a permit. For important decisions that affect people's rights or property, the agency may hold a hearing. A hearing is a little like a court case, but less formal and with fewer rules. Within its area of authority and expertise, an agency's actions have the force of law. As in this case, decisions by agencies can often be appealed to the courts.



APPEALS

- When a party disagrees with the outcome of an agency, they may be able to appeal the decision at the trial court level.
- When a trial court reaches its final decision on a case, the losing party has the option to appeal the decision in the hopes of getting it reversed (a new decision in favor of the losing party) or remanded (where the trial court essentially has a do-over).
- The ICA may review decisions of lower courts, and the Supreme Court may review decisions of the ICA. The ICA must hear all cases appealed from lower courts (mandatory review), but the Hawai‘i Supreme Court chooses whether or not to hear each case appealed from the ICA (discretionary review). In some cases, the Supreme Court may choose to take a case directly from the trial court, particularly if it is a case of “fundamental public importance.”
- The federal courts follow similar procedures: the federal appeals courts must hear appeals from the trial courts, but the U.S. Supreme Court often chooses not to hear appeals.



WHAT QUESTIONS DO COURTS DECIDE?

The big question may seem simple:

Who wins?

But courts must answer lots of other questions to get there.

Two main kinds of questions have to be answered during cases:

- **Questions of fact.**
- **Questions of law.**

FACT



FACTUAL QUESTIONS

Questions of Fact:

- Who, what, when, where, why, how.
- Basically, questions of fact cover all of the questions about the things that happened, which have led to the case being brought to court.
- Since the trial courts are the only ones who hear the witnesses, and see the evidence, they are better at judging facts.
- Answering these questions is normally reserved for the jury. Often, courts will refer to the jury as the “trier of fact.”



LEGAL QUESTIONS

Questions of Law - These questions aren't about what happened:

- **What is the law?**
- **Was the law applied correctly by the lower court?**
- Answering these questions is reserved for the judge. Courts refer to the judge as the "trier of law."
- Appeals courts merely look at the record of the case from the trial court.
- Witnesses and juries are not part of the appeals process.
- Appeals usually focus on questions of law.



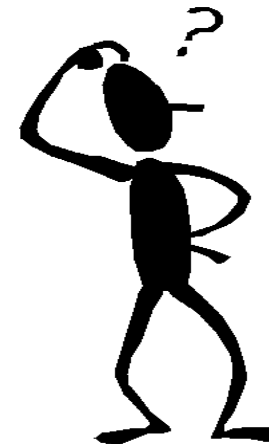
LEGAL QUESTIONS

Sometimes legal questions arise because a situation is novel or new.

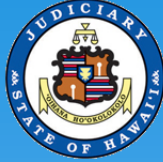
- When the Constitution was written, there were no telephones, computers, or AK-47s
 - How does the right to free speech change when we communicate with TikTok and Instagram instead of letters and newspapers?
 - Is the right to bear arms different today because guns can fire hundreds of bullets per minute instead of taking two minutes to reload and not working when it rains?

Even when a law written down, it may not be obvious how it applies.

- The rule is “No vehicles in the park.”
 - I understand I cannot drive my car in the park.
 - Are Segway tours allowed?
 - Can my child ride a tricycle in the park?
 - What about pushing my baby in a stroller?



**NO VEHICLES
ALLOWED
BEYOND THIS
POINT**



'Aha Ho'okolokolo ma ke Kaiāulu
Courts in the Community

Bell v. Hawai'i Public Housing Authority

THE CASE

SPOCÉ [spoh•chey]
Students for Public Outreach & Civic Education



THE FACTS OF THE CASE

Blossom Bell is a public housing tenant. Daniel Lambert, her son-in-law, got into an altercation with a neighbor. Lambert unlawfully entered the neighbor's home and struck him with a baseball bat resulting in severe injuries requiring hospitalization.

Public housing tenancy is governed by the Admission and Continuing Occupancy Policy (ACOP). The ACOP states the types of violations that can result in eviction. The ACOP also sets forth whether violations can be cured (fixed) and what the timeframe is to cure each violation.

The Eviction Board held that Lambert's assault on a neighbor violated the ACOP as criminal activity that threatens the health or safety of other residents. The Board also held that the violation could not be cured because Bell could not "un-enter" the home or "un-assault" the neighbor.

Twice, the Eviction Board found that the eviction was proper. Twice, the circuit court disagreed.





PUBLIC HOUSING IN HAWAI‘I

More than 45,000 people in Hawai‘i are served and housed in public housing. Hawai‘i Public Housing Authority manages 6,270 units across 85 public housing properties.

The Hawai‘i Legislature has found that “the health and general welfare of the people of the state require that the people of this state have safe and sanitary rental housing accommodations available at affordable rents” and “ that a grave shortage in the number of such accommodations affordable by families and individuals of low- and moderate-income in the state exists.” HRS§201H-121



HOW THE CASE REACHED THE SUPREME COURT

The Eviction Board made an initial determination in favor of eviction. The Board held that Lambert's criminal activity was a violation of Bell's rental agreement and that the violation was not curable.

- **The Circuit Court remanded to the Board (sent back to reconsider) for the Board to determine whether the violation was curable.**

The Eviction Board again reached the conclusion that eviction was proper. The Board held that removing Lambert from the property did not cure the violation because Lambert could not "un-enter" the neighbor's unit or "un-assault" the neighbor.

- **The Circuit Court reversed the Board's decision and ordered HPHA to reinstate Bell's rental agreement. The court held that Bell committed neither the unauthorized entry nor the assault and that she cured the violation by removing Lambert from the property within 24 hours.**

The Supreme Court agreed to take appeal directly from the Circuit Court because this was a case of first impression and a matter of "fundamental public importance"



WHAT IS THE PROPER STANDARD FOR EVICTIONS?

HPHA points to several parts of Bell's rental agreement and to federal statute:

GUESTS AND VISITORS:... (b) Tenant shall be responsible for the conduct of Tenant's guests and visitors while they are on the premises, and may be subject to rental agreement termination for failure to ensure that their guests and visitors do not:... (2) Engage in criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other Tenants[.]” Rental Agreement ¶8

¶13 TENANT'S OBLIGATIONS. Tenant shall:... (q) Assure that no Tenant, member of the Tenant's household, guest or visitor of the Tenant or member of the household or any other person under the Tenant's control engages in: (1) Any criminal activity or conduct that threatens the health, safety or right to peaceful enjoyment of the premises by other residents[.] Rental Agreement ¶13

¶19 (a) Grounds for termination of rental agreement. Management may terminate rental agreement only for:... (2) Other good cause. Other good cause includes without limitation, the following: (i) Criminal activity...; (b) Management will immediately seek termination of this Rental Agreement for criminal activity... as described in Paragraph 13. Rental Agreement ¶19

Each public housing agency shall utilize leases which . . . provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy[.] U.S.C. § 1437(d)(1)(6)

Bell contends that evictions are controlled exclusively by the ACOP.



TYPE OF VIOLATION	TIME TO REMEDY
Any member of the household has ever been convicted of drug-related criminal activity for the manufacture or production of methamphetamine on the premises of federally assisted housing	0 Days
Any drug related criminal activity on or off the project premises	0 Days
Any member of the household has been convicted of a felony	0 Days
Where tenant has received notice from the United States Department of Housing and Urban Development that the tenant is no longer eligible to remain in the unit	0 Days
A history of chronic violations of any material term of the Rental Agreement	0 Days
A history of chronic rent delinquency.	0 Days
Any violation of any provision of the Rental Agreement that potentially threatens the health or safety of other residents or the Corporation's employees or their representatives (ex. Fire hazards, slip and falls, unsanitary conditions, vicious animals, etc.)	24 Hours
Non payment or failure to pay rent when due	14 Days
Any Other Violation	30 days in all other cases unless management

RENTAL AGREEMENT VIOLATIONS



HUD V RUCKER

In Department of Housing & Urban Development v. Rucker, public housing tenants challenged rules allowing eviction based on drug-related criminal activity engaged in by tenants' household members, guests, or other persons under their control, regardless of the tenants' knowledge.

- HPHA interprets Rucker to allow for eviction based on the criminal activity of guests regardless of the tenant's participation in or knowledge of the activity.
- Bell argues that Rucker specifically targeted drug-related offenses. Bell also contends that HUD guidance and court decisions following Rucker show that, even with drug offenses, public housing authorities have discretion to allow tenants to cure violations. While the ACOP could provide for eviction in these cases, it does not.



STANDARD OF REVIEW

Judicial review of contested cases,” section (g) provides:

(g) Upon review of the record the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions, decisions, or orders are:

(1) In violation of constitutional or statutory provisions; or

(2) In excess of the statutory authority or jurisdiction of the agency; or

(3) Made upon unlawful procedure; or

(4) Affected by other error of law; or

(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(6) Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.



BELL'S ARGUMENT

The ACOP governs public housing evictions. Under the ACOP, only the seventh or ninth type of violation could apply to the facts of Bell's eviction. Both these types of violation allow time for the tenant to cure the violation (24 hours and 30 days respectively).

Here, it is undisputed that Bell ordered Lambert to leave the property within 24 hours and he has not returned.

Therefore, Bell argues that the violation was cured in a timely fashion and the HPHA acted in an arbitrary and capricious manner in ordering her eviction.



HOUSING AUTHORITY ARGUMENT

Bell's rental agreement properly subjected her to eviction based on Lambert's criminal activity. Bell was responsible for her guests' criminal activity that threatened the health, safety, and the right to peaceful enjoyment of other residents. Lambert was Bell's guest and Lambert's criminal assault on Bell's neighbor endangered the health and safety of other residents.

The gravity of the offense and the resulting injury to the neighbor justified eviction.

Furthermore, the Board exercised its expertise and experience in regard to evictions of federal housing tenants and was well within its discretion to conclude that Bell failed to cure her rental agreement violation based on Lambert's criminal activity and therefore, the Board's decision is entitled to deference and Bell has not met the high burden to surmount that deference.

Therefore, the Housing Authority argues the circuit court decision should be reversed, and Bell's eviction should be reinstated.



Dep't of Hous. & Urban Dev. v. Rucker, 535 U.S. 125, (2002)

Kolio vs. Hawaii Public Housing Authority, 135 Hawai'i 267, 349 P.3d 374 (2015)

Housing Authority of Covington v. Turner, 295 S.W.3d 123 (Ky. Ct. App. 2009)

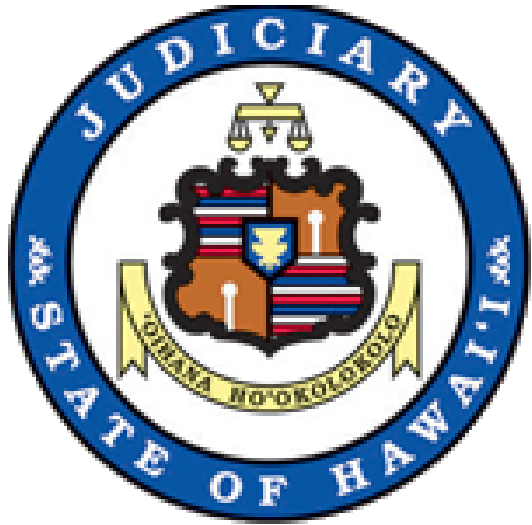
Scarborough v. Winn Residential L.L.P./Atlantic Terrace Apartments, 890 A.2d 249 (D.C. 2006)

42 U.S.C. § 1437d(l)(6)

26 C.F.R. § 966.4(f)(12)(i)(A)

RELEVANT SOURCES OF LAW





‘Aha Ho‘okolokolo ma ke Kaiāulu

Courts in the Community

ANY QUESTIONS?

