

NO. 28047

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

LARRY A. JOHNSON, Plaintiff-Appellee,
v.
LYNN B. NAKKIM, et al., Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CV. NO. 05-1-141)

ORDER DISMISSING APPEAL

(By: Burns, C.J., Lim and Foley, JJ.)

Upon review of the record, it appears that we lack jurisdiction over Defendant-Appellant Lynn B. Nakkim's (Appellant Nakkim) appeal from the following three orders that the Honorable Glen S. Hara entered: (1) the June 20, 2006 "Order Granting Plaintiff's Motion for Entry of Rule 54(b) Judgment and Other Relief Filed on 4/10/2006," (2) the October 25, 2005 "Order Granting Plaintiff's Motion for Judgment by Default, or in the Alternative, for Summary Judgment, Filed on 8/12/05," and (3) the October 25, 2005 "Findings and Order Striking from the Record Defendant Lynn B. Nakkim's Memorandum in Opposition to Plaintiff's Motion for Judgment by Default, or in the Alternative, for Summary Judgment, Filed August 12, 2005, Filed on 9/22/2005," because the circuit court has not yet reduced these orders to a separate judgment that either (a) resolves all claims by all parties or (b) resolves at least one claim and

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contains the language necessary for certification under Rule 54(b) of the Hawai'i Rules of Civil Procedure (HRCP), as the separate document rule requires under HRS § 641-1(a) (Supp. 2005), HRCP Rule 58, and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

Under the separate document rule, "[a]n appeal may be taken from circuit court orders resolving claims against parties only after the orders have been reduced to a judgment and the judgment has been entered in favor of and against the appropriate parties pursuant to HRCP [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i at 119, 869 P.2d at 1338. "An appeal from an order that is not reduced to a judgment in favor or against the party by the time the record is filed in the supreme court will be dismissed." Id. at 120, 869 P.2d at 1339 (footnote omitted).

The record on appeal for this case was filed on September 18, 2006, and the record on appeal does not contain a separate judgment that satisfies the requirements for an appealable final judgment under HRCP Rule 58 and the holding in Jenkins v. Cades Schutte Fleming & Wright. It was the duty of Appellant Nakkim to ensure that the record on appeal contained an appealable final judgment by the time that the record on appeal was filed in the supreme court. Haw. R. App. P. 11(a). Absent an appealable final judgment, this appeal is premature.

Therefore,

IT IS HEREBY ORDERED that the appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, October 5, 2006.

James A. Burns
Chief Judge


Associate Judge

Daniel P. Foley
Associate Judge