

NO. 28058

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

CLIFFORD E. MILLER and ANNIE H. MILLER,
Plaintiffs/Counterclaim Defendants/Appellants,
v.
MARYLYN BUNKER ROBELLO and OCTAVIA AKIMA,
Defendants/Cross-Claim Plaintiffs/Appellees,
and
FLORENCE MAHI MANUEL, et al.,
Defendants

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CV. NO. 9974)

ORDER GRANTING MOTION TO DISMISS APPEAL
(By: Burns, C.J., Lim and Foley, JJ.)

Upon our review of (1) Defendants/Cross-Claim Plaintiffs/Appellees Marylyn Bunker Robello (Appellee Bunker Robello) and Octavia Akima's (Appellee Akima) September 14, 2006 motion to dismiss Plaintiff/Counterclaim-Defendant/Appellant Annie H. Miller's (Appellant Annie Miller) appeal from the Honorable Ronald Ibarra's June 20, 2006 "Order of Dismissal," (2) the lack of opposition by Appellant Annie Miller thereto, and (3) the record, it appears that the June 20, 2006 order is not an appealable final judgment under HRS § 641-1(a) (Supp. 2005), Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP), and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

Under the HRCP Rule 58 separate document rule, "[a]n

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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).

"Although RCCH 12(q) [(regarding dismissal for want of prosecution)] does not mention the necessity of filing a separate document, HRCP [Rule] 58, as amended in 1990, expressly requires that 'every judgment be set forth on a separate document.'" Price v. Obayashi Hawaii Corporation, 81 Hawai'i 171, 176, 914 P.2d 1364, 1369 (1996). Therefore, "where all claims are dismissed and there is no relevant HRCP Rule 54(b) certification as to one or more but not all of the dismissals, there must be one final order (judgment) dismissing all claims against all parties." CRSC, Inc. v. Sage Diamond Co., Inc., 95 Hawai'i 301, 306, 22 P.3d 97, 102 (App. 2001) (footnote omitted); see also Alford v. City and Count of Honolulu, 109 Hawai'i 14, 21, 122 P.3d 809, 816 (2005) ("[A]n order disposing of a circuit court case is appealable when the order is reduced to a separate judgment." (Citation omitted).)

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

The June 20, 2006 order of dismissal appears to dismiss all claims, but the circuit court has not reduced the June 20, 2006 order to a separate judgment that, on its face, resolves all claims against all parties by (a) entering judgment on the applicable claims in favor of, and against, the appropriate parties, and, if there are remaining claims, (b) containing operative language that affirmatively dismisses all remaining claims, counterclaims, cross-claims and/or third-party claims, as HRCF Rule 58 requires for an appealable final judgment under the holding in Jenkins v. Cades Schutte Fleming & Wright. Absent an appealable final judgment, this appeal is premature and we lack appellate jurisdiction. Therefore,

IT IS HEREBY ORDERED that Appellee Bunker Robello and Appellee Akima's September 14, 2006 motion to dismiss Appellant Annie Miller's appeal is granted, and this appellate case is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, October 9, 2006.


Chief Judge


Associate Judge


Associate Judge