

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28092

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

EUGENE JAMES HUTCH, Petitioner-Appellant,
v.
STATE OF HAWAI'I, Respondent-Appellee

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P.P. NO. 98-0309)

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

Upon review of the record, it appears that we lack jurisdiction over Petitioner-Appellant Eugene James Hutch's (Appellant Hutch) appeal from the Honorable Victoria S. Mark's August 3, 2006 "Findings of Fact, Conclusions of Law, and Order Dismissing Complaint for Failure to Prosecute," because the August 3, 2006 order of dismissal 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 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[.]"

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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 [Rule] 12(q) [(regarding dismissal for want of prosecution)] does not mention the necessity of filing a separate document, HRCF [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 HRCF 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)).

The August 3, 2006 order of dismissal appears to dismiss all claims, but the circuit court has not yet reduced the August 3, 2006 order of dismissal 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

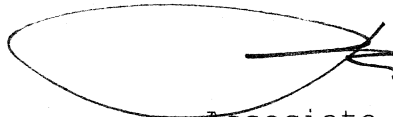
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appropriate parties, and, if there are remaining claims,
(b) containing operative language that affirmatively dismisses
all remaining claims, counterclaims, cross-claims and/or third-
party claims, as HRCF Rule 58 requires for an appealable final
judgment under the holding in Jenkins v. Cades Schutte Fleming &
Wright. Absent an appealable final judgment, this appeal is
premature. Therefore,

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

DATED: Honolulu, Hawai'i, October 31, 2006.


Chief Judge


Associate Judge


Associate Judge