

NO. 28113

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

In the Matter of the Application of

ROBERT BLAINE BOETTNER and DONALD GENE BRANSFORD,  
Applicants-Appellants/Appellees/Cross-Appellees,

and

EDWARD R. KENNEDY, JAMES WHITCOMB, JAMES GILMUR,  
DUKE MCELROY, DAWN ROBERTS FENN SHRADER,  
and the MAUI MEADOWS HOMEOWNERS ASSOCIATION,  
Intervenors-Appellees/Appellants/Cross-Appellees

and

LAWRENCE CHRISTOPHER,  
Intervenor-Appellee/Appellee/Cross-Appellee

and

BOARD OF VARIANCES AND APPEALS, COUNTY OF MAUI,  
Agency-Appellee/Appellee/Cross-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT  
(CV. NO. 05-1-0095(3))

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that we lack jurisdiction over Intervenors-Appellees/Appellants/Cross-Appellees Edward R. Kennedy, James Whitcomb, James Gilmur, Duke McElroy, Dawn Roberts, Fenn Shrader, and the Maui Meadows Homeowners Association's appeal, and Agency-Appellee/Appellee/Cross-Appellant Board of Variances and Appeals, County of Maui's, cross-appeal, from the Honorable Joseph E. Cardoza's July 28, 2006 judgment, because the July 28, 2006 judgment does not

K. HAMAKAHO  
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STATE OF HAWAII

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satisfy the requirements for 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).

HRCP Rule 72(k) requires that, upon a circuit court's determination of an administrative appeal, "the court having jurisdiction shall enter judgment[,]" and HRCP Rule 58 requires that "[e]very judgment shall be set forth on a separate document." The HRCP Rule 58 separate judgment document rule under the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 869 P.2d 1334 (1994), applies to appeals from circuit court orders deciding administrative appeals from agencies' orders. See, e.g., Raquinio v. Nakanelua, 77 Hawai'i 499, 500, 889 P.2d 76, 77 (App. 1995) ("We conclude . . . that the requirements for appealability set forth in Jenkins apply to appeals from circuit court orders deciding appeals from orders entered by the Director of Labor and Industrial Relations."). Under the HRCP Rule 58 separate judgment 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

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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).

In the instant case, the July 18, 2006 judgment purports to end the litigation, but the July 18, 2006 judgment does not does not expressly enter judgment in favor of and against the appropriate parties, as the HRCP Rule 58 separate document rule requires. Furthermore, the July 28, 2006 judgment refers to only one appellant without any specific name, when, in fact, the administrative appeal before the circuit court involved two appellants. Therefore, the July 18, 2006 judgment does not satisfy the requirements for an appealable final judgment under HRCP Rule 58 and the holding in Jenkins v. Cades Schutte Fleming & Wright. Absent an appealable final judgment, this appeal and cross-appeal are premature and we lack jurisdiction. Accordingly,

IT IS HEREBY ORDERED that the appeal and cross-appeal are dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, November 1, 2006.

  
Chief Judge

  
Associate Judge

  
Associate Judge