

NO. 28317

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

PETE MUNOZ AND CONNIE MUNOZ,
Plaintiffs-Appellants,

v.

YOSHIMI AND SANAE HATA; SANAE HATA TRUST;
PAUL AND JUNE THOMAS; LARRY AND LORI LAND,
Defendants-Appellees

FILED
2007 MAR -8 PM 1:04
CLERK OF THE COURT
STATE OF HAWAII

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CV. NO. 06-1-0283(1))

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that we lack jurisdiction over Plaintiffs-Appellants Pete Munoz and Connie Munoz's (the Munoz Appellants) appeal from the Honorable Joel E. August's November 20, 2006 "Order Granting Defendants Yoshimi Hata, Sanae Hata, Sanae Hata Trust, Paul Thomas and June Thomas' Motion to Dismiss Plaintiffs' Complaint Filed August 28, 2006" and November 29, 2006 "Order Granting Motion to Dismiss Complaint Filed By Defendants Larry and Lori Land on September 1, 2006" because the circuit court has not yet reduced these dispositive orders to a separate, appealable final judgment under HRS § 641-1(a) (Supp. 2006), 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[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i at 119, 869 P.2d at 1338. Furthermore, "if the judgment resolves fewer than all claims against all parties, or reserves any claim for later action by the court, an appeal may be taken only if the judgment contains the language necessary for certification under HRCP [Rule] 54(b)[.]" Id. Therefore, "an appeal from any judgment will be dismissed as premature if the judgment does not, on its face, either resolve all claims against all parties or contain the finding necessary for certification under HRCP [Rule] 54(b)."
Id.


Although the circuit court's November 20, 2006 dismissal order and November 29, 2006 dismissal order appear to dispose of this circuit court case, "an order disposing of a circuit court case is appealable when the order is reduced to a separate judgment." Alford v. City and Count of Honolulu, 109 Hawai'i 14, 21, 122 P.3d 809, 816 (2005) (citation omitted) (emphasis added). Thus, for example, the supreme court has held that, "[a]lthough RCCH [Rule] 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

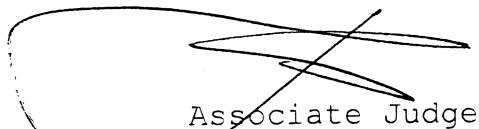
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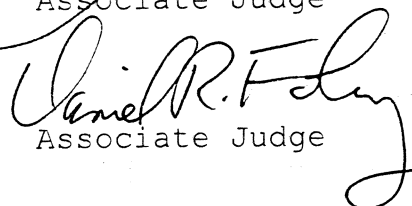
requires that 'every judgment be set forth on a separate document.'" Price v. Obayashi Hawaii Corporation, 81 Hawai'i 171, 176, 914 P.2d 1364, 1369 (1996) (emphasis added). The circuit court has not yet reduced the November 20, 2006 dismissal order and November 29, 2006 dismissal order to a separate judgment, as HRCP Rule 58 requires under the holding in Jenkins v. Cades Schutte Fleming & Wright. Absent an appealable final judgment, this appeal is premature and must be dismissed. Accordingly,

IT IS HEREBY ORDERED that this appeal in appellate court case number 28317 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, March 8, 2007.


Chief Judge


Associate Judge


Associate Judge