

NO. 28318

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

FRANCIS GRANDINETTI, III, et al., Plaintiffs-Appellants,
CORRECTIONS CORPORATION OF AMERICA, dba CCA, a
multi-state company doing business in the State of
Hawaii, et al., Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Civ. No. 06-1-1762)

ORDER DENYING THE MAY 18, 2007 MOTION FOR RECONSIDERATION
(By: Watanabe, Presiding J., Foley, and Nakamura, JJ.)

Upon review of (1) the April 27, 2007 order dismissing this appeal for lack of appellate jurisdiction; (2) Plaintiff-Appellant Francis Grandinetti, III's (Appellant Grandinetti) May 7, 2007 application to the Hawaii Supreme Court for a writ of certiorari; (3) Appellant Grandinetti's May 18, 2007 motion for reconsideration of the April 27, 2007 dismissal order pursuant to Hawaii Rules of Appellate Procedure (HRAP) Rule 40; and (4) the record, it appears that we lack jurisdiction to adjudicate the merits of Appellant Grandinetti's May 18, 2007 HRAP Rule 40 motion for reconsideration.

A party to an appeal may apply in writing to the supreme court for a writ of certiorari "[n]o later than 90 days after filing of the intermediate court of appeals' . . . dismissal order[.]" HRAP Rule 40.1. "The timely filing of an application

EM. RIMANDO
CLERK, APPELLATE COURT
STATE OF HAWAII

2007 MAY 29 AM 9:47

FILED

for a writ of certiorari stays finality of the intermediate court of appeals' judgment on appeal unless otherwise ordered by the supreme court." HRAP Rule 41 (emphases added). Because HRAP Rule 41 provides that only the Hawai'i Supreme Court may modify such a stay, when a party applies to the Hawai'i Supreme Court for a writ of certiorari, this court lacks jurisdiction to modify the stay. Therefore, when Appellant Grandinetti filed his May 7, 2007 HRAP Rule 40.1 application for a writ of certiorari, we lost jurisdiction over this case. Consequently, we presently lack jurisdiction to adjudicate the merits of Appellant Grandinetti's May 18, 2007 HRAP Rule 40 motion for reconsideration.

Accordingly,

IT IS HEREBY ORDERED that Appellant Grandinetti's May 18, 2007 HRAP Rule 40 motion for reconsideration is denied based on our lack of jurisdiction over this case.

DATED: Honolulu, Hawai'i, May 29, 2007.

Francis Grandinetti, III,
plaintiff-appellant, pro se
on the motion.

Corinne Ka Watanabe
Presiding Judge

Daniel R. Foley
Associate Judge

Craig W. Nakamura
Associate Judge