

NO. 28532

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

ROSALINA ITURRALDE, individually and in her capacity as Personal Representative of the Estate of Arturo Iturralde, Plaintiffs-Appellants/Cross-Appellees, v. MEDTRONIC SOFAMOR DANEK, USA, a Tennessee corporation licensed to do business in Hawai'i; HILO MEDICAL CENTER, a Hawai'i non-profit corporation; HAWAII HEALTH SYSTEMS CORPORATION, a public benefit corporation; STATE OF HAWAII; ROBERT RICKETSON, M.D.; JOHN DOES 2-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; and DOE PARTNERSHIPS 1-10, Defendants-Appellees/Cross-Appellants

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(Civ. No. 03-1-0017)

ORDER DISMISSING APPEAL

(By: Watanabe, Presiding J., Foley, and Nakamura, JJ.)

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

2007 AUG 14 AM 9:30

FILED

Upon review of the record, it appears that we do not have jurisdiction over this appeal from the Final Judgment entered by the Circuit Court of the Third Circuit (the circuit court)¹ on February 14, 2007. Accordingly, we dismiss the appeal for lack of appellate jurisdiction.

Hawaii Revised Statutes (HRS) § 641-1(a) (Supp. 2006) authorizes appeals to the intermediate court of appeals "in civil matters from all final judgments, orders, or decrees of circuit . . . courts[.]"

"When a written judgment, order, or decree ends the litigation by fully deciding all rights and liabilities of all parties, leaving nothing further to be adjudicated, the judgment, order, or decree is final and appealable." Casumpang v. ILWU,

¹ The Honorable Glenn S. Hara presided.

Local 142, 91 Hawai'i 425, 426, 984 P.2d 1251, 1252 (1999)
(citation omitted).

In Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 869 P.2d 1334 (1994), the Hawai'i Supreme Court established the necessary elements for a satisfactory final judgment in a multi-party, multi-claim lawsuit:

(1) An 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 [Hawai'i Rules of Civil Procedure (HRCP) Rule] 58; (2) if a judgment purports to be the final judgment in a case involving multiple claims or multiple parties, the judgment (a) must specifically identify the party or parties for and against whom the judgment is entered, and (b) must (i) identify the claims for which it is entered, and (ii) dismiss any claims not specifically identified; (3) 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); and (4) 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).

. . . . [F]or all appeals from circuit courts filed after March 31, 1994, we will enforce strict compliance with the separate document requirement of HRCP [Rule] 58. Thus, after March 31, 1994 an appeal from an order that purports to be a final order as to all claims and parties in civil cases may be taken only after the order has been reduced to a judgment in favor of or against the parties.⁴ If claims are resolved by a series of orders, a final judgment upon all the claims must be entered.

⁴ For example: "Pursuant to the jury verdict entered on (date), judgment in the amount of \$_____ is hereby entered in favor of Plaintiff X and against Defendant Y upon counts I through IV of the complaint." A statement that declares "there are no other outstanding claims" is not a judgment. If the circuit court intends that claims other than those listed in the judgment language should be dismissed, it must say so; for example, "Defendant Y's counterclaim is dismissed," or "Judgment upon Defendant Y's counterclaim is entered in favor of Plaintiff/Counter-Defendant Z," or "all other claims, counterclaims, and cross-claims are dismissed."

Id. at 119-20, 869 P.2d at 1388-89.

The Jenkins court also stated:

We are required to determine if we have jurisdiction in each appeal. If we do not require a judgment that resolves *on its face* all of the issues in the case, the

burden of searching the often voluminous circuit court record to verify assertions of jurisdiction is cast upon this court. Neither the parties nor counsel have a right to cast upon this court the burden of searching a voluminous record for evidence of finality, and we should not make such searches necessary by allowing the parties the option of waiving the requirements of HRCP [Rule] 58.

Jenkins, 76 Hawai'i at 119, 869 P.2d at 1338 (emphasis added; citations omitted).

Thus, although multiple orders in a case collectively may have addressed all the claims, this court has a duty to confirm its jurisdiction. As such, in order to ensure completeness and finality to permit the right of appeal and to obviate the need for this court to search voluminous records to verify its jurisdiction, Jenkins requires that the final separate judgment involving multiple claims and multiple parties must on its face identify and resolve all the claims.

Although the February 14, 2007 separate judgment (1) entered judgment in favor of Defendant-Appellee Medtronic Sofamor Danek, USA (Medtronic) and against all parties and dismissed with prejudice all claims against Medtronic; (2) entered judgment in favor of Plaintiffs-Appellants Estate of Arturo Iturralde (Estate) and Rosalina Iturralde (Rosalina) and against Defendants-Appellees Hilo Medical Center, Hawaii Health Systems Corporation, and the State of Hawai'i (collectively, HMC Defendants); (3) entered judgment in favor of Estate and Rosalina and against Defendant-Appellee Robert Ricketson, M.D. (Ricketson); (4) entered judgment in favor of Ricketson and against HMC Defendants on Ricketson's cross-claim for contribution and for recovery of any payment made by Ricketson in excess of his several liability; (5) entered judgment in favor of

HMC Defendants and against Ricketson on HMC Defendants' cross-claim for contribution and for recovery of any payment made by HMC Defendants in excess of their several liability; and (6) dismissed all other claims and cross-claims, it failed to identify, which claims were resolved between: Estate and HMC Defendants; Estate and Ricketson; Rosalina and HMC Defendants; and Rosalina and Ricketson. Consequently, under Jenkins, the final judgment is deficient, the appeal and the cross-appeal are premature, and this court lacks jurisdiction over the appeal and the cross-appeal. Therefore,

IT IS HEREBY ORDERED THAT the appeal and the cross-appeal are dismissed for lack of jurisdiction.²

DATED: Honolulu, Hawai'i, August 14, 2007.

Corinne Ka Watanabe

Presiding Judge

Daniel R. Foley

Associate Judge

Cheryl M. Nakamura

Associate Judge

² The notice of appeal and cross-appeal in this case appear to have been filed before the Circuit Court of the Third Circuit either resolved various post-verdict or post-judgment motions filed by the parties or the motions were deemed denied pursuant to Hawai'i Rules of Appellate Procedure Rule 4(a)(3).