

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28703

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

JOHN S. FAGAN, Plaintiff-Appellant,

v.

KELLY W. CLARK, Defendant-Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 06-1-0322 (HILO))

ORDER DISMISSING APPEAL

(By: Recktenwald, C.J., Watanabe and Nakamura, JJ.)

Upon review of the record, it appears that we lack jurisdiction over Plaintiff-Appellant John S. Fagan's (Appellant Fagan) appeal from the Honorable Greg K. Nakamura's June 26, 2007 order granting Appellant Fagan's motion for a default judgment and March 15, 2007 order granting Appellant Fagan's motion for a preliminary injunction, because the circuit court has not yet reduced the circuit court's dispositive rulings to a separate, appealable, final judgment that satisfies the requirements for an appealable final judgment under Hawaii Revised Statutes (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).

K.H. NAKAMURA
JUDGE
CIRCUIT COURT OF THE THIRD CIRCUIT

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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.

[I]f 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[.]

Id. (emphases added). 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.

A default judgment is an appealable final judgment. Casuga v. Blanco, 99 Hawai'i 44, 52, 52 P.3d 298, 306 (App. 2002). Nevertheless, the June 26, 2007 order granting Appellant Fagan's motion for a default judgment is not a "default judgment," but rather, the June 26, 2007 order is an interlocutory order granting Appellant Fagan's motion for a default judgment. Likewise, the March 15, 2007 order granting Appellant Fagan's motion for a preliminary injunction is an

interlocutory order. In circuit court civil cases, interlocutory orders are generally not eligible for appellate review until the circuit court enters a final judgment. "An appeal from a final judgment brings up for review all interlocutory orders not appealable directly as of right which deal with issues in the case." Ueoka v Szymanski, 107 Hawai'i 386, 396, 114 P.3d 892, 902 (2005) (citation and internal quotation marks omitted). In the instant case, the circuit court has not yet entered a separate judgment, as HRCF Rule 58 requires. Absent an appealable final judgment, we lack jurisdiction over this appeal.

For the purpose of clarification, we note that, even if we would deem the June 26, 2007 order to be a "judgment" document, the June 26, 2007 order would not satisfy the requirements for an appealable final judgment under the holding in Jenkins v. Cades Schutte Fleming & Wright. For example, in order to be an appealable final judgment, the judgment must expressly enter judgment in favor of and against the appropriate parties, and in a case with multiple causes of action, the judgment must specifically identify the claim or claims on which the circuit court is entering judgment. The June 26, 2007 order does not expressly enter judgment in favor of and against the appropriate parties. Although Appellant Fagan asserted seven separate counts in his complaint, the June 26, 2007 order does not specifically identify the count or counts on which the

circuit court intends to enter judgment. This case will not be eligible for appellate review until the circuit court enters a separate judgment that specifically identifies and resolves (by entering judgment on and/or expressly dismissing) all seven counts in Appellant Fagan's complaint.

Appellant Fagan's appeal is premature, and, thus, we lack jurisdiction over this appeal. Accordingly

IT IS HEREBY ORDERED that appellate court case number 28703 is dismissed for lack of appellate jurisdiction.

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

Mark Reardon

Chief Judge

Connie K.A. Watanabe

Associate Judge

Craig S. Nakamura

Associate Judge