

**Electronically Filed
Intermediate Court of Appeals
CAAP-15-0000556
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NO. CAAP-15-0000556

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

COMMUNITY BASED EDUCATION SUPPORT SERVICES,
Applicant-Appellant, v.
CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL,
WINDWARD PLANNING COMMISSION, COUNTY OF HAWAII,
DEPARTMENT OF PLANNING, COUNTY OF HAWAII,
Appellees-Appellees,
and
JEFFREY GOMES,
Intervenor-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 14-1-223)

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Nakamura, C.J., Foley and Leonard, JJ.)

Upon review of (1) the record and (2) the December 15, 2015 order consolidating appellate court case numbers CAAP-15-0000556 and CAAP-15-0000665 under appellate court case number CAAP-15-0000556, it appears that we lack appellate jurisdiction

over the appeals that Applicants/Appellants/Appellants Community Based Education Support Services and Connections New Century Public Charter School (the Appellants) have asserted from the Honorable Melvin H. Fujino's July 14, 2015 judgment in favor of Appellee-Appellee Windward Planning Commission, County of Hawai'i (Appellee Windward Planning Commission) and Intervenor/Appellee/Appellee Jeffrey Gomes, because the July 14, 2015 judgment does not satisfy the requirements for an appealable final judgment under Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2015), Rules 58 and 72(k) 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).

HRS § 91-15 (2012 & Supp., 2015) provides that "[r]eview of any final judgment of the circuit court or, if applicable, the environmental court, under this chapter shall be governed by chapter 602." The Hawai'i Intermediate Court of Appeals has jurisdiction "[t]o hear and determine appeals from any court or agency when appeals are allowed by law[.]" HRS § 602-57(1) (Supp. 2015). The applicable law for this appeal provides that "[a]ppeals shall be allowed in civil matters from all final judgments, orders, or decrees of circuit . . . courts[.]" HRS § 641-1(a). Appeals under HRS § 641-1 "shall be taken in the manner . . . provided by the rules of court." HRS § 641-1(c). HRCP Rule 58 requires that "[e]very judgment shall be set forth on a separate document." "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 HRCP [Rule] 58[.]" Jenkins, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994) (emphasis added). "Thus, based on Jenkins and HRCP Rule 58, an order is not appealable, even if it resolves all claims against the parties, until it has been reduced to a separate judgment." Carlisle v. One (1) Boat, 119 Hawai'i 245, 254, 195 P.3d 1177, 1186 (2008); Bailey v. DuVauchelle, 135 Hawai'i 482, 489, 353 P.3d 1024, 1031 (2015). "An appeal from an order that is not reduced to a judgment in favor or against the party by the time the record is filed in the supreme court will be dismissed." Jenkins, 76 Hawai'i at 120, 869 P.2d at 1339 (footnote omitted).

Although the instant case involves an administrative appeal, HRCP Rule 72(k)¹ similarly requires that, upon a circuit court's adjudication of an administrative appeal, "the court having jurisdiction shall enter judgment." HRCP Rule 72(k). Therefore, the separate judgment document rule under the holding in Jenkins applies to a secondary appeal from a circuit court order that adjudicates an administrative appeal. 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."). When interpreting the requirements for a judgment under HRCP Rule 58, the Supreme Court of Hawai'i

¹ Rule 81(e) of the Hawai'i Rules of Civil Procedure requires that the Hawai'i Rules of Civil Procedure "shall apply to any proceedings in a circuit court pursuant to appeal to the circuit court from a governmental official or body (other than a court), except as otherwise provided in Rule 72."

explained that its reason for strictly enforcing the separate document rule was that

[i]f 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 HRCF [Rule] 58.

Jenkins, 76 Hawai'i at 119, 869 P.2d at 1338 (citation omitted).

Consequently, "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 HRCF [Rule] 54(b)." Id.

In the instant case, the circuit court has attempted to resolve all claims in this appellate case by way of two judgments:

- (1) a September 22, 2014 HRCF Rule 54(b)-certified judgment in favor of Interveners/Appellees/Appellees Sidney Fuke (Appellee Fuke) and Terence T. Yoshioka (Appellee Yoshioka) and against the Appellants; and
- (2) the July 14, 2015 judgment in favor of Appellee Windward Planning Commission and Appellee Gomes and against the Appellants.

A final judgment in this case must adjudicate the Appellants' respective appeals in Civil NO. 14-1-0223 as to all of the remaining parties whom the Appellants specifically named as parties in the two notices of appeal that they filed in Civil NO. 14-1-0223, namely, Appellee Windward Planning Commission, Respondent/Appellee/Appellee Department of Planning, County of Hawai'i (Appellee County Department of Planning), Appellee Gomes,

and Intervenor/Appellee/Appellee Sandra Song (Appellee Song). While the July 14, 2015 judgment adjudicates the Appellants' respective appeals as to the Appellee Windward Planning Commission and Appellee Gomes, the July 14, 2015 judgment does not adjudicate the Appellants' appeals as to the Appellee County Planning Department and Appellee Song. Although the July 14, 2015 judgment does not adjudicate the Appellants' appeals as to all of the remaining parties, the July 14, 2015 judgment does not contain the finding necessary under HRCP Rule 54(b) for the certification of a judgment as to one or more but fewer than all claims or parties. Although the July 14, 2015 judgment concludes with a statement that "[t]here are not remaining claims against any parties in this action[,] " the Supreme Court of Hawai'i has explained that

[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."

Jenkins, 76 Hawai'i at 119-20 n.4, 869 P.2d at 1338-39 n.4 (emphases added).

Because the July 14, 2015 judgment does not resolve this administrative appeal as to all the remaining named parties in Civil No. 14-1-0223, the July 14, 2015 judgment does not satisfy the requirements for an appealable final judgment under HRS § 641-1(a), HRCP Rule 58, HRCP Rule 72(k), and the holding in Jenkins. Absent an appealable final judgment, this appeal is premature and we lack jurisdiction.

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

Accordingly, IT IS HEREBY ORDERED AND DECREED that appellate court case number CAAP-15-0000556 is dismissed for lack of appellate jurisdiction.

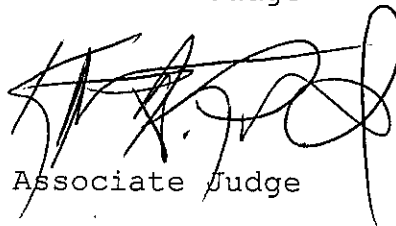
DATED: Honolulu, Hawai'i, April 19, 2016.



Chief Judge



Associate Judge



Associate Judge