

NO. 25156

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

CAROL L. NEPAGE-FONTES, Petitioner-Appellant

vs.

JOHN E. NEPAGE, Respondent-Appellee

APPEAL FROM THE FIRST CIRCUIT COURT
(TRUST NO. 00-1-0069)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Ramil, and Acoba, JJ.)

Upon review of the record, it appears that the Honorable Colleen K. Hirai's May 16, 2002 judgment finally determined the issues in Respondent-Appellee John E. NePage's July 5, 2001 petition to compel Petitioner-Appellant Carol L. NePage-Fontes (Appellant NePage-Fontes) to comply with the probate court's September 28, 2000 order granting Appellant NePage-Fontes' May 9, 2000 petition for court intervention and supervision of the John S. NePage Revocable Trust, dated September 24, 1996. However, the May 16, 2002 judgment did not end the entire trust proceeding in T. No. 00-1-0069 because it did not dispose of Appellant NePage-Fontes' April 10, 2002 "Verified Petition for an Order Removing Respondent as Successor Co-Trustee, and Ordering Respondent to Deed Properties and for Fees and Costs to Petition," which is still pending before the probate court. Therefore, pursuant to HRS § 641-1(a) (1993) and Rule 34(a) of the Hawai'i Probate Rules, Appellant NePage-Fontes could appeal from the May 16, 2002 judgment only if the probate court certified it for appeal in the manner provided by Rule 54(b) of the Hawai'i Rules of Civil Procedure (HRCP).

In analogous circumstances under the HRCP, "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).” Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai‘i 115, 119, 869 P.2d 1334, 1338 (1994). When “a judgment purports to be certified under HRCP [Rule] 54(b), the necessary finding of no just reason for delay . . . must be included in the judgment.” Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai‘i at 120, 869 P.2d at 1339 (citation omitted). Although the May 16, 2002 judgment refers to HRCP Rule 54(b), it does not contain the necessary finding of no just reason for delay. Therefore, this appeal is premature and we lack jurisdiction. Accordingly,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai‘i, December 13, 2002.