

NO. 27012

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

LYNN AWAI-TAVARES, Individually and as next friend to CODY
TAVARES, a minor, Plaintiffs-Appellants

vs.

STATE OF HAWAI'I, DEPARTMENT OF EDUCATION, Defendant-Appellee

and

JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10; and DOE
GOVERNMENTAL AGENCIES 1-10 inclusive, Defendants

APPEAL FROM THE SECOND CIRCUIT
(CIV. NO. 99-0778)

ORDER DENYING MOTION FOR RECONSIDERATION
(By: Nakayama, J. for the court¹)

Upon consideration of the motion for reconsideration of the June 23, 2005 order dismissing appeal,² the papers in support and the record, it appears that our order dismissing No. 26740 explained that the August 2, 2004 notice of appeal was a premature appeal that did not fall within the provision of HRAP 4(a)(2) because an HRCP 58 separate judgment was not entered by the time the record for No. 26740 was filed with the supreme court on October 1, 2004, citing Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 120, 869 P.2d 1334, 1339 (1994) ("An

¹Considered by: Moon, C.J., Levinson, Nakayama, and Acoba, JJ. and Circuit Judge Chan, in place of Duffy, J. recused.

²The May 9, 2005 order dismissing appeal was vacated on June 3, 2005 because the order was signed in error by Associate Justice Duffy, who recused himself from this case on March 3, 2005.

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2005 JUL -7 AM 10:24

appeal from an order that is not reduced to a judgment in favor of or against the party by the time the record is filed in the supreme court will be dismissed [as premature]."). Therefore,

IT IS HEREBY ORDERED that the motion for reconsideration is denied.

DATED: Honolulu, Hawai'i, July 7, 2005.

FOR THE COURT:

Pamela A. Nakamura

Associate Justice

