

NO. 22342

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

WALTER CULLEN, Plaintiff-Appellant

vs.

AIG HAWAII INSURANCE COMPANY, INC., Defendant-Appellee

and

HOWARD W. WILKINSON, JOHN AND MARY DOES 1-10,
DOE CORPORATIONS, PARTNERSHIPS, OR OTHER
ENTITIES 1-10, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 98-3448)

SUMMARY DISPOSITION ORDER

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

Plaintiff-appellant Walter Cullen (Cullen) appeals from the first circuit court's February 10, 1999 order of dismissal, dismissing his complaint without prejudice, and the subsequent amended order granting defendant-appellee AIG Hawai'i Insurance Company, Inc. (AIG) attorneys' fees in the amount of \$250.00.

On appeal, Cullen contends that the circuit court, the Honorable Kevin S.C. Chang presiding, erred by: (1) dismissing AIG on the basis of Olokele Sugar Co. v. McCabe, Hamilton & Renny Co., 53 Haw. 69, 487 P.2d 1363 (1971), "because reliance on that case is no longer adequate;" (2) determining Cullen's action was in the "nature of assumpsit" and awarding attorneys' fees

pursuant to Hawai'i Revised Statutes (HRS) § 607-14 (Supp. 1999); and (3) amending the final judgment on April 22, 1999 to award attorneys' fees after entry of judgment and after a valid notice of appeal had been filed.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we hold as follows:

First, pursuant to HRS § 641-1(a) (1993) and Hawai'i Rules of Civil Procedure (HRCP) Rule 54(b), this court has jurisdiction over the February 10, 1999 final judgment. See TBS Pacific, Inc. v. Tamura, 5 Haw. App. 222, 224-25, 686 P.2d 37, 41 (1984). Second, the circuit court was without jurisdiction to enter an amended judgment on April 22, 1999 because a notice of appeal from the original judgment had been filed six weeks earlier. See Azer v. Courthouse Racquetball Corp., 9 Haw. App. 530, 532, 852 P.2d 75, 78 (1993) (when notice of appeal was filed, "lower court lost jurisdiction to render the Costs Judgment"); Rana v. Bishop Ins. of Hawai'i, 6 Haw. App. 1, 13, 713 P.2d 1363, 1372, aff'd, 68 Haw. 269, 713 P.2d 1363 (1985) (order denying motion for attorneys' fees reversed because it was entered after notice of appeal filed); Wisdom v. Pflueger, 4 Haw. App. 455, 461, 667 P.2d 844, 849 (1983) (upon filing of notice of appeal, "the lower court lost its jurisdiction to award attorneys' fees until the disposition of the appeal").

Accordingly, the circuit court's April 22, 1999 amended judgment is void. Third, the policy reasons for the Olokele rule apply to preclude a plaintiff from joining a tortfeasor and the plaintiff's own insurer in the same action. See Olokele, 53 Haw. at 71-72, 487 P.2d 770-71. Accordingly, the circuit court did not err by reading Olokele to preclude Cullen's claim against AIG. Fourth, the circuit court's order is also affirmed because Cullen failed to raise the circuit court's alternate, and independent, ground for dismissing his uninsured motorist (UM) and underinsured motorist (UIM) claims based on ripeness.

IT IS HEREBY ORDERED that the circuit court's February 10, 1999 judgment is affirmed.

DATED: Honolulu, Hawai'i, February 6, 2002.

On the briefs:

William Fenton Sink for
plaintiff-appellant

K. Rae McCorkle,
R. John Seibert and
Kenneth J. Mansfield
of McCorriston Miller
Mukai MacKinnon for
defendant-appellee