

NO. 25031

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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THE ESTATE OF ALOYSIUS KLINK, by it Special Administratrix,  
HILDEGARD T. KLINK; DANIA M. KLINK, a minor, by HILDEGARD T.  
KLINK, individually; MICHAEL KLING; DIANA KLINK-JAMES; JULIA A.  
KLINK; and ALEXANDER M. KLINK, Plaintiffs-Appellants

vs.

STATE OF HAWAI'I, Defendant-Appellee

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APPEAL FROM THE THIRD CIRCUIT COURT  
(CIV. NO. 98-039)

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that the March 18, 2002 judgment in Civil No. 98-039, the Honorable Riki May Amano presiding, does not satisfy the requirements of Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP). "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 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). "[I]f a judgment purports to be the final judgment in a case involving multiple claims or multiple parties, the judgment . . . must specifically identify the party or parties for and against whom the judgment is entered, and . . . must . . . identify the claims for which it is entered[.]" Id. "[A]n 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 54(b)." Id.

Although there are multiple plaintiffs in this case,

the March 18, 2002 judgment enters judgment against a single "Plaintiff" without specifically identifying the party. Furthermore, although the March 3, 1998 first amended complaint asserted multiple causes of action against Defendant-Appellee State of Hawai'i, the March 18, 2002 judgment does not identify each of the claims for which it is entered.

The March 18, 2002 judgment also does not resolve any claims or cross-claims that parties and circuit court dismissed through stipulations of dismissal and that were signed by less than all parties who appeared in Civil No. 98-039. A stipulation of dismissal that is signed by less than all parties who have appeared in an action is governed by Rule 41(a)(2) of the Hawai'i Rules of Civil Procedure (HRCP), which requires a court order. See HRCP Rule 41(a)(2) ("Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper.").

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 v. Cades Schutte Fleming & Wright, 76 Hawai'i at 120 n.4, 869 P.2d at 1339 n.4. Granted, it is not necessary for the March 18, 2002 judgment to resolve the claims that the parties dismissed pursuant to HRCP Rule 41(a)(1)(B) through "a stipulation of dismissal signed by all parties who have appeared in the action[,] " which is effective "without order of [the] court." HRCP Rule 41(a)(1); see, e.g., Amantiad v. Odum, 90 Hawai'i 152, 158 n.7, 977 P.2d 160, 166 n.7 (1999). However, the March 18, 2002 judgment fails to resolve the claims that the

parties and circuit court dismissed pursuant to HRCF Rule 41(a)(2). Therefore, the March 18, 2002 judgment does not satisfy the requirements for a separate judgment under HRCF Rule 58 according to our holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i at 119, 869 P.2d at 1338, and the appeal is premature. Accordingly,

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

DATED: Honolulu, Hawai'i, July 23, 2002.