

*** NOT FOR PUBLICATION ***

NO. 25136

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

DENNIS RUSH and RESULTS PRODUCTIONS, LLC, Plaintiffs-Appellees

vs.

NANCY WILSON, Defendant-Appellant

and

TROY D. STRATOS, also known as TROY D. STAFFORD; STRATOSPHERE PRODUCTIONS, INC., STRATOSPHERE FILMWORKS, INC.; STRATOSPHERE SOUNDWORKS, INC.; ATMOSPHERE MANAGEMENT, LLC; AMERICAN SAVINGS BANK, a nominal defendant; JOHN LEVY, JOHN LEVY ENTERPRISES, INC.; JANE DOES 1-9; and JOHN DOES 1-8, Defendants

APPEAL FROM THE SECOND CIRCUIT COURT
(CIV. NO. 00-1-0264)

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that we do not have jurisdiction over Defendant-Appellant Nancy Wilson's (Appellant Wilson) appeal from the February 28, 2001 judgment and the April 29, 2002 order denying Appellant Wilson's motion to set aside the judgment pursuant to Rule 60(b) of the Hawai'i Rules of Civil Procedure (HRCP).

The February 28, 2001 judgment in Civil No. 00-1-0264(3), the Honorable Joseph E. Cardoza presiding, does not satisfy the requirements for a final judgment pursuant to the HRCP Rule 58 separate document rule under our holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 869 P.2d 1334 (1994).

[I]f a judgment purports to be the final judgment in a case involving multiple claims or multiple partes, the judgment . . . must . . . specifically identify the party or parties for and against whom the judgment is entered, and . . . must . . .

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identify the claims for which it is entered, and . . .
dismiss any claims not specifically identified[.]

Id. at 119, 869 P.2d at 1338.

For example: "Pursuant to the jury verdict entered on (date), judgment in the amount of \$___ is hereby entered in favor of Plaintiff X and against Defendant Y upon counts I through IV of the complaint." 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."

Id. at 119-20 n.4, 869 P.2d at 1338-39 n.4. "[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 [Rule] 54(b)." Id. at 119, 869 P.2d at 1338. Although Plaintiffs-Appellees Dennis Rush and Results Productions, LLC's, complaint asserted twelve separate counts, the February 28, 2001 judgment does not specifically identify the claims for which it is entered against Appellant Wilson. Furthermore, although the February 28, 2001 judgment resolves fewer than all claims against all parties, it does not contain an express finding that there is no just reason for delay in the entry of judgment, which is necessary for certification under HRCP Rule 54(b). Therefore, the February 28, 2001 judgment does not satisfy the requirements of the HRCP Rule 58 separate document rule, and the February 28, 2001 judgment is not an appealable final judgment under HRS § 641-1(a) (1993).

Although an order denying a HRCP Rule 60(b) motion to set aside a judgment is final and appealable, First Trust Company

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of Hilo, Ltd. v. Reinhardt, 3 Haw. App. 589, 592, 655 P.2d 891, 893 (1982), a HRCF Rule 60(b) motion is authorized only in situations involving a final judgment. Crown Properties, Inc. v. Financial Security Life Insurance Co., Ltd., 6 Haw. App. 105, 112, 712 P.2d 504, 509 (1985). Absent the entry of a final judgment, the April 29, 2002 order denying Appellant Wilson's HRCF Rule 60(b) motion to set aside the judgment is not an appealable final post-judgment order under HRS § 641-1(a) (1993). Therefore, Appellant Wilson's appeal is premature, and we lack appellate jurisdiction. Accordingly,

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

DATED: Honolulu, Hawai'i, August 21, 2003.