***** NOT FOR PUBLICATION *****

NO. 24295

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

YAEKO MIYATA, Plaintiff-Appellee

vs.

KENNETH H. NAKAMURA, Defendant-Appellant

and

JANE NAKAMURA, CLAIR NAKAMURA, Defendants

DISTRICT COURT OF THE FIRST CIRCUIT
(CIV. NO. 1RC00-08033)

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

In this ejectment case, Defendant-appellant Kenneth H. Nakamura (Nakamura) appeals from certain orders and judgments of the district court of the first circuit (the court) entered in favor of Plaintiff-appellee Yaeko Miyata (Miyata). For the reasons set forth below, we affirm the following orders and judgments of the district court of the first circuit (the court): (1) the February 2, 2001 judgment for possession and writ of possession and (2) the April 19, 2001 order denying Nakamura's motion for reconsideration.

Initially, in February 1996, Nakamura and Miyata[1]

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[1] The agreement was between Kenneth H. and Jane M. Nakamura and Norman and Yaeko Miyata. Norman Miyata is deceased.

executed an agreement (lease agreement) for the purchase of a State of Hawai‘i lease of 2.2 acres of Waimanalo property (property). On December 8, 2000, Miyata filed a complaint for ejectment in the court alleging that Nakamura had defaulted under the lease agreement,[2] and was unlawfully in possession of the property. Miyatas further alleged that title was not an issue and requested the court issue a writ of possession.

On January 10, 2001, Nakamura filed an Answer to the complaint and a Counterclaim for Specific Performance.

On February 1, 2001, Nakamura failed to appear at trial. Default was entered and the court issued a Judgment of Possession and Writ of Possession, filed on February 2, 2001. The court also dismissed Nakamura's Counterclaim, which was recorded in the clerk's minutes. Additionally, on February 2, 2001, Nakamura filed a Motion to Set Aside the Default Judgment, claiming the clerk had told him the trial date was February 8, 2001 and that his trial notice stated the trial date was February 22, 2001.

On February 14, 2001, Miyata filed an Opposition to the

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[2] While it is not clear from the record, the complaint asserts that Nakamura "has defaulted on the five installments, and at present owes in excess of the $75,000 including interest and costs and fees." Additionally, the Miyatas assert that Nakamura has "breached the 1996 Agreement [(lease agreement)] by failing to pay Plaintiff the July 1, 1998, State Lease payment ($5859.64), the January 1, 1999 State Lease Payment ($5613.11), and the July 1, 2000, State Lease Payment ($2000.00), all of which Plaintiff paid instead[.]"

Motion to Set Aside. In her opposition, Miyata claimed that the trial date was set at the pre-trial conference on January 25, 2001, at which Nakamura was present, therefore Nakamura's claim of confusion about the trial date was just a tactic to delay the legal process and extend his time on the property. On February 15, 2001 a Hearing on the Motion to Set Aside the Default was held. No transcript was designated in the record for this motion. Nakamura's Motion to Set Aside apparently was orally denied.

On February 22, 2001, Nakamura filed a Motion for Reconsideration claiming again that the court lacked subject matter jurisdiction because title to property was in question. He relied specifically on HRS §§ 603-21.7 (1993), 604-5, and 604-6 (1993). Under HRS § 603-21.7, the circuit courts have jurisdiction "for the specific performance of contracts." HRS § 604-5(d), Civil Jurisdiction, states in part that "district courts shall not have cognizance of real actions, nor actions in which the title to real estate comes in question[.]" HRS § 604-6, Ejectment Proceedings, states that "[n]othing in [HRS] section 604-5 shall preclude a district court from taking jurisdiction in ejectment proceedings where the title to real estate does not come in question."

The Order denying the motion to set aside the default

was filed on March 15, 2001.

On March 29, 2001 the court held a hearing to assess Miyata's damages. Nakamura filed a Motion to Dismiss for Lack of Jurisdiction, making the same objections as those made in Nakamura's February 22, 2001 Motion to Reconsider. Defendant's motion was orally denied at the trial.

On April 3, 2001, Miyata filed a Non-Hearing Motion to Amend Judgment and Writ of Possession to correct a clerical error because HRS § 666-11 (summary possession) was mistakenly cited instead of § 604-6 (ejectment) in the Writ. An Amended Judgment for Possession and Writ of Possession were filed by the court.

On April 19, 2001, the Order Denying Nakamura's motion for reconsideration was filed. Subsequently, on April 30, 2001, Nakamura filed his Notice of Appeal.

In her answering brief, Miyata contends that: (1) Nakamura's notice of appeal is untimely, (2) the appeal is moot, and (3) the court cannot decide this case because Nakamura failed to order the trial transcripts.

"A trial court's dismissal for lack of subject matter jurisdiction is a question of law, reviewable *de novo*." See Schenk v. Schenk, 103 Hawai'i 303, 309, 81 P.3d 1218, 1224 (App. 2003) (quoting Norris v. Hawaiian Airlines, Inc., 74 Haw. 235, 239, 842 P.2d 634, 637 (1992)) (applying standard of review of

motions to dismiss under Hawai‘i Rules of Civil Procedure Rule 12(b)(1)). As an initial matter, Nakamura states that the court lacked jurisdiction to decide this action because HRS § 604-5(d) states that the district courts shall not have jurisdiction over "real actions" or "actions in which the title to real estate comes in question[.]" Nakamura, essentially argues that an ejectment action always brings title into question.

HRS § 1-16 (1993) instructs that "[l]aws in pari materia, or upon the same subject matter, shall be construed with reference to each other. What is clear in one statute may be called in aid to explain what is doubtful in another." Knauer v. Foote, 101 Hawai‘i 81, 91, 63 P.3d 389, 399 (2003) (quoting HRS § 1-16). By virtue of HRS § 604-6, the district courts are expressly vested with jurisdiction to hear ejectment proceedings. The words "nothing in section 604-5" in HRS § 604-6 indicate that the text of HRS § 604-5 does not bar the district court from exercising such jurisdiction, so long as "title . . . does not come in question at the trial[.]" HRS § 604-6. Nakamura failed to appear and was defaulted, and accordingly title did not come into issue at trial.

HRS § 603-21.7(a)(3) does not prohibit the district court from determining "the specific performance of contracts." HRS § 603-21.7(a)(3) only prescribes instances where the circuit

court shall have jurisdiction without a jury, unless required by statute. On the other hand, HRS § 604-5(a) grants the district court jurisdiction over counterclaims.[3] Nakamura's counterclaim for specific performance arose "out of and refers to the land or premises, the possession of which is being sought[,]" i.e. the Waimanalo property. Nakamura's argument, that the district court lacked jurisdiction over his counterclaim because it requested specific performance of a contract, is rebutted by HRS § 604-5(a)[4]. See CR Dispatch Serv., Inc. v. Dove Auto, Inc., 86 Hawai'i 149, 948 P.2d 570 (App. 1997) (holding that pursuant to HRS § 604-6, district court had jurisdiction over counterclaim in summary possession case because the counterclaim arose out of and referred to the land or premises which possession was being sought). Therefore, the district court had subject matter jurisdiction over the ejectment action.

As to Miyata's arguments that Nakamura's notice of appeal was untimely, Hawai'i Rules of Appellate Procedure (HRAP)

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[3] HRS § 604-5(a) states in relevant part that the "district court shall have jurisdiction over any counterclaim otherwise properly brought before the district court by any defendant in such summary possession or ejection action if the counterclaim arises out of and refers to the land or premises, the possession of which is being sought, regardless of the value of the debt, amount, damages, or property claim contained in the counterclaim."

[4] In any event, the court retained jurisdiction because as mentioned, Nakamura defaulted and title did not come into issue at trial. See HRS § 604-6. Moreover, title did not come into question with regard to the counterclaim because Nakamura defaulted.

Rule 4(a)(1) (2003) provides that "the notice of appeal shall be filed within 30 days after entry of the judgment or appealable order." Regarding Miyata's first jurisdictional contention, the February 1, 2001 oral order of default was not appealable. The order of default was recorded in the minutes of the court. Thus, it could not have been considered a final judgment upon which an appeal could have been taken. Absent entry of an order of default, the order of default is not reviewable. Cf. State v. English, 68 Haw. 46, 52, 705 P.2d 12, 17 (1985) (holding that the minutes of court proceedings capturing the substance of a court's oral decision do not substitute for the necessary written order).

Next, Miyata argues that the February 2, 2001 writ of possession should have been appealed by March 4, 2001. However, Nakamura moved for reconsideration on February 22, 2001. The court denied the motion on April 19, 2001. The denial triggered the time for appeal. See HRAP 4(a)(3) ("If, not later than 10 days after entry of judgment, any party files a motion that seeks to reconsider, vacate, or alter the judgment . . . The time for filing the notice of appeal is extended until 30 days after entry of an order disposing of the motion[.]"; see also HRS § 641-1(a) (stating that "[a]ppeals shall be allowed in civil matter from all final judgments, orders, or decrees of circuit and district courts . . . to the supreme court[.]"). Nakamura's April 30,

2001 notice of appeal was timely filed within the thirty day period.

As to Miyata's third point, the March 15, 2001 order denying Nakamura's motion to set aside default, was appealable notwithstanding the fact that the February 1, 2001 order of default was not appealable. The motion to set aside default was a post-judgment motion which was final. See Casumpang, 91 Hawai'i at 426, 984 P.2d at 1252 (holding that a "'final order' means an order ending the proceeding, leaving nothing further to be accomplished").

As to Miyata's fourth point, the March 29, 2001 denial of the oral motion to dismiss for lack of jurisdiction is not appealable. Because the March 29, 2001 denial was only evidenced in the minutes of the district court, this court may not review the oral denial by the court. Cf. English, 68 Haw. at 52, 705 P.2d at 17.

However, regarding Miyata's fifth point, the February 2, 2001 judgment of possession was appealable. Under HRAP 3(c)(1), the appellant "shall designate the judgment, order, or party thereof and the court or agency appealed from." However, "a mistake in designating the judgment, . . . should not result in loss of the appeal as long as the intent to appeal from a specific judgment can be fairly inferred from the notice and the

appellee is not misled by the mistake." City and County of Honolulu v. Midkiff, 57 Haw. 273, 275-76, 554 P.2d 233, 235 (1976). Inasmuch as his appeal from the writ of possession is a direct result of the judgment for possession, this court can infer that Nakamura intended to appeal from the judgment of possession.

Finally, Miyata argues that Nakamura's appeal is premature because the court's findings of fact (findings) and conclusions of law (conclusions) have yet to be filed. However, an appealable final judgment was issued (the February 2, 2001 writ of possession) and the findings and conclusions are unnecessary. Miyata argues that there must have been certification under HRCP 54(b) pursuant to Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai‘i 115, 117-18, 869 P.2d 1334, 1335-37 (1994). However, "an order that fully disposes of an action in the district court may be final and appealable without the entry of judgment on a separate document, as long as the appealed order ends the litigation by fully deciding the rights and liabilities of all parties and leaves nothing further to be adjudicated." Casumpang, 91 Hawai‘i at 427, 984 P.2d at 1253. See Ciesla v. Reddish, 78 Hawai‘i 18, 20, 889 P.2d 702, 704 (1995) (holding that judgment for possession (accompanied by a writ of possession) was immediately appealable under the *Forgay*

doctrine).

Nakamura also contends that he was wrongfully evicted because the writ of possession cited to HRS § 666-1, pertaining to an action of summary possession, when the writ should have cited to HRS § 604-6 as an ejectment action. The forms for the writ of possession were identical, the only difference between what was issued and what was not issued was the reference to the statute. HRS § 604-6 provides that "[i]f the defendant is defaulted or if on the trial it is proved that the plaintiff is entitled to the possession of the premises, the court shall give judgment for the plaintiff and shall issue a writ of possession." Due to Nakamura's failure to appear, he defaulted and the writ of possession was issued. "[G]enerally, statutes prescribing the form and contents of executions should be followed, and if the execution contains all that is required by statute it is sufficient." Ditto v. McCurdy, 102 Hawai'i 518, 524, 78 P.3d 331, 337 (2003) (citations omitted). The writ of possession contains all that is required by statute, therefore the citation to HRS § 604-6 did not render the writ void. Moreover, as the writ was later properly amended, and Nakamura does not demonstrate any prejudice resulted from the clerical error, the execution of the writ was proper.

In her answering brief, Miyata further argues that

Nakamura's appeal is moot because Miyata cancelled the lease to the Waimanalo property. As such, Miyata could not transfer title to the property. However, Nakamura's counterclaim prayed for an order conveying the property to him, or in the alternative for damages in the amount of $250,000. Hence, inasmuch as Nakamura had requested monetary damages, the appeal is not moot. Miyata also argues that because trial transcripts were not ordered and are not part of the record this court need not determine if the court erred. However, the transcripts are unnecessary for this court to decide the question of jurisdiction and the improper issuance of the writ of possession raised by Nakamura.

Based on the foregoing, IT IS HEREBY ORDERED that (1) the February 2, 2001 judgment for possession, (2) the February 2, 2001 writ of possession, and (3) the April 19, 2001 order denying motion for reconsideration are affirmed.

DATED: Honolulu, Hawai‘i, May 18, 2004

On the briefs:

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