

*** NOT FOR PUBLICATION ***

NO. 26364

IN THE SUPREME COURT OF THE STATE OF HAWAII

MICHAEL B. KELLY, Plaintiff-Appellant

vs.

ANGELA K. KELLY, Defendant-Appellee

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 99-1554)

ORDER DISMISSING APPEAL

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

Upon review of appellant's statement of jurisdiction, appellee's motion to dismiss appeal and the record, it appears that the December 29, 2003 order vacated the 1999 divorce decree entered in FC-D No. 99-1554 and left the case pending for further determination on the division of property. The December 29, 2003 order is an interlocutory order that is not appealable until entry of a new decree dissolving the parties' marriage and dividing property. See 12 Moore's Federal Practice, § 60.68[2] (Matthew Bender 3rd ed.); Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 2871 (1995). The part of the December 29, 2003 order that denied the motion to dismiss the HFCR 60(b) proceeding is not immediately appealable under the collateral order doctrine inasmuch as the denial of the motion to dismiss is effectively reviewable on appeal from a new divorce

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decree. Thus, this appeal is premature and we lack jurisdiction.

Accordingly,

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

DATED: Honolulu, Hawai'i, May 20, 2004.