

NO. 24698

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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KERI LYNN MORITA, individually, as Special Administrator of the Estate of Daison M. Morita, as Guardian Ad Litem for her daughter, Kailina Morita, and as Guardian Ad Litem for her daughter, Kailee Morita; RICHARD T. MORITA; SUE MORITA-RODRIGUES, Plaintiffs-Appellees

vs.

COUNTY OF HAWAI'I, STATE OF HAWAI'I, JOHN DOES 1-10, JANE DOES 1-10, DOE PARTNERSHIPS 1-10, DOE CORPORATIONS 1-10, DOE NONPROFIT CORPORATIONS 1-10, and DOE GOVERNMENTAL ENTITIES 1-10, Defendants-Appellants

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JOHN GALLAGHER and MELANIE GALLAGHER, Plaintiffs-Appellees,

vs.

COUNTY OF HAWAI'I, JOHN and MARY DOES 1-10, and DOE CORPORATIONS, PARTNERSHIPS, OR OTHER ENTITIES 1-10, Defendants-Appellants.

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COUNTY OF HAWAI'I, Third-Party Plaintiff-Appellant,

vs.

KERI LYNN MORITA, as Special Administrator of the Estate of Daison M. Morita, Third-Party Defendant-Appellee.

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APPEAL FROM THE THIRD CIRCUIT COURT

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that the circuit court's October 17, 2001 judgment in the consolidated cases Civil No. 99-0101 and Civil No. 00-1-0123, the Honorable Riki May Amano presiding, purports to be a final judgment in favor of Plaintiffs-Appellees Keri Lynn Morita (Appellee Keri Morita), Richard T. Morita, Sue Morita-Rodrigues, John Gallagher, Melanie Gallagher, and against Defendants-Appellants County of Hawai'i

(Appellant County) and State of Hawai'i (Appellant State). The judgment does not, on its face, resolve all claims against all parties. See Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994) ("[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)."). The October 17, 2001 judgment does not resolve the following five claims: (1) Appellant State's third-party complaint against Appellee Keri Morita in Civil No. 00-1-0123; (2) Appellant State's cross-claim against Appellant County in Civil No. 00-1-0123; (3) Appellant State's cross-claim against Appellant County in Civil No. 99-0101; (4) Appellant County's cross-claim against Appellant State in Civil No. 00-1-0123; and (5) Appellant County's cross-claim against Appellant State in Civil No. 99-0101. The stipulation to dismiss the Appellant County's third-party complaint against Appellee Keri Morita in Civil No. 00-1-0123 pursuant to Rule 41(a) of the Hawai'i Rules of Civil Procedure (HRCP) need not be included in the final judgment. See Amantiad v. Odum, 90 Hawai'i 152, 158 n.7, 977 P.2d 160, 166 n.7 (1999) (When parties stipulated to dismiss a plaintiff's claim pursuant to HRCP Rule 41(a), "a separate judgment is neither required nor authorized, inasmuch as [the] plaintiff's dismissal of [the] action, by filing a stipulation of dismissal signed by all parties, is effective without order of the court." (Citation, internal quotation marks, and original brackets omitted)).

Where, as here, "the judgment resolves fewer than all claims against all parties, . . . an appeal may be taken only if the judgment contains the language necessary for certification under HRCP 54(b)." Jenkins, 76 Hawai'i at 119, 869 P.2d at 1338. The October 17, 2001 judgment does not contain the finding

necessary for certification under HRCP 54(b). Therefore, 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, March 14, 2002.