

*** NOT FOR PUBLICATION ***

NO. 26740

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

LYNN AWAI-TAVARES, Individually and as next friend to CODY
TAVARES, a minor, Plaintiffs-Appellants

vs.

STATE OF HAWAI'I, DEPARTMENT OF EDUCATION, Defendant-Appellee

and

JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10, and DOE
GOVERNMENTAL AGENCIES 1-10 inclusive, Defendants

APPEAL FROM THE SECOND CIRCUIT COURT
(CIV. NO. 99-0778)

ORDER DISMISSING APPEAL

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

Upon consideration of appellee's motion to dismiss appeal, the papers in support and the record, it appears that the circuit court's May 28, 2004 decision was not reduced to a separate judgment pursuant to HRCP 58 by the time the record was filed in the supreme court on October 1, 2004. See Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119-120, 869 P.2d 1334, 1338-39 (1994). The July 6, 2004 "Notice of Entry of Judgment" is a notice entered pursuant to HRCP 77(d) and is not a separate judgment entered pursuant to HRCP 58. Thus, this appeal is premature and we lack jurisdiction. Therefore,

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

Dated: Honolulu, Hawai'i, November 5, 2004.