

*** NOT FOR PUBLICATION ***

NO. 26804

IN THE SUPREME COURT OF THE STATE OF HAWAII

MARSHALL KENNETH FLOWERS, Plaintiff-Appellant

vs.

UNITED SERVICES AUTOMOBILE ASSOCIATION, Defendant-Appellee

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 02-1-1679)

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that the circuit court's April 12, 2004 order granting summary judgment and dismissing Civil No. 02-1-1679 has not been reduced to a separate judgment, as required by HRCP 58. See Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 869 P.2d 1334 (1994). The July 23, 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, the appeal of the August 25, 2004 order awarding attorney's fees and costs is premature and we lack jurisdiction. Therefore,

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

Dated: Honolulu, Hawai'i, October 29, 2004.