

FOR PUBLICATION

CONCURRING OPINION BY WATANABE, ACTING C.J.

In light of Rules 1^{1/} and 29^{2/} of the Rules of the Tax Appeal Court of the State of Hawai'i, I believe that the separate judgment requirement of Hawai'i Rules of Civil Procedure (HRCPP) Rule 58 may apply in some situations to Tax Appeal Court cases. See Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). Indeed, in Rhoads v. Okamura, 98 Hawai'i 407, 49 P.3d 373 (2002), the Hawai'i Supreme Court appears to have implicitly acknowledged that HRCPP Rule 58 is applicable to such cases. Id. at 410-11, 49 P.3d at 376-77.

In this case, however, Appellant-Appellant Donald A. Lewis (Lewis) is appealing an order dismissing his appeal to the Tax Appeal Court in its entirety, for lack of subject matter jurisdiction. In Ellis v. Crockett, 51 Haw. 45, 451 P.2d 814, reh'g denied, 51 Haw. 86, 451 P.2d 814 (1969), the Hawai'i

^{1/} Rule 1 of the Rules of the Tax Appeal Court of the State of Hawai'i (RTACSH) provides, in relevant part:

FORM AND STYLE OF PAPERS.

The form and style of papers filed with the court shall be in conformity with the requirements of . . . the Hawai'i Revised Statutes, the Hawai'i Rules of Civil Procedure, and Rule 3 of the Rules of the Circuit Courts of the State of Hawai'i.

RTACSH Rule 1 (emphasis added).

^{2/} Rule 29 of the RTACSH provides, in relevant part, as follows:

GENERAL PROCEDURE.

In procedural matters not specifically provided for by the foregoing rules, the court will be guided, to the extent applicable, by the Rules of the Circuit Courts of the State of Hawai'i, and the Hawai'i Rules of Civil Procedure.

RTACSH Rule 29 (emphases added).

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Supreme Court held that "[a]n order dismissing a complaint in its entirety is a judgment denying all relief to the plaintiff whose complaint is being dismissed[,]" and that an "order dismissing the entire case is in fact a *judgment*" governed by HRCF Rule 58. Id. at 59, 451 P.2d at 824 (emphases in original). In light of Ellis, the facts of which are distinguishable from Jenkins, I agree that we have appellate jurisdiction to consider the merits of Lewis's appeal. In all other respects, I concur with the majority's opinion.

Corinne K. A. Watanabe
Acting Chief Judge