

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27961

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

PETER A. HART, Plaintiff-Appellant,
v.
ROBERT BLAINE BOETTNER, DONALD GENE BRANSFORD,
POLYNESIAN POLE HOMES, INC., a Hawai'i corporation,
Defendants-Appellees

NORMA T. YARA
CLERK, APPELLATE COURT
STATE OF HAWAII

2006 AUG 22 AM 11:29

FILED

APPEAL FROM CIRCUIT COURT OF THE SECOND CIRCUIT
(CV. No. 02-1-0023(2))

ORDER DISMISSING APPEAL

(By: Burns, C.J., Lim and Foley, JJ.)

Upon review of the record, it appears that we lack jurisdiction over Plaintiff-Appellant Peter A. Hart's (Appellant Hart) appeal from the Honorable Schackley F. Rafetto's May 2, 2006 "Order Granting Defendants' Motion for Entry of Judgment Based Upon Settlement Agreement," because the May 2, 2006 order is not an appealable final judgment under HRS § 641-1(a) (Supp. 2005), Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP), and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

Under the HRCP Rule 58 separate document rule, "[a]n appeal may be taken from circuit court orders resolving claims against parties only after the orders have been reduced to a judgment and the judgment has been entered in favor of and against the appropriate parties pursuant to HRCP [Rule] 58[.]"

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Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i at 119, 869 P.2d at 1338. "An appeal from an order that is not reduced to a judgment in favor or against the party by the time the record is filed in the supreme court will be dismissed." Id. at 120, 869 P.2d at 1339 (footnote omitted).

The record on appeal for this case was filed on July 31, 2006, and the record on appeal does not contain a written judgment that satisfies the requirements for an appealable final judgment under HRCP Rule 58 and the holding in Jenkins v. Cades Schutte Fleming & Wright. It was the duty of Appellant Hart to ensure that the record on appeal contained an appealable final judgment by the time that the record on appeal was filed in the supreme court. HRAP Rule 11(a). Absent an appealable final judgment, this appeal is premature. Therefore,

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

DATED: Honolulu, Hawai'i, August 22, 2006.


Chief Judge


Associate Judge


Associate Judge