

NO. 28119

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

E.M. RIMANDO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

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FILED

GENEVIE MOMILANI KAINA, Plaintiff-Appellant,  
v.

MARK P. GELLMAN, D.O.; CHERYL VASCONCELLOS;  
HANA COMMUNITY HEALTH CENTER; DOES 1-20, inclusive,  
Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT  
(CV. NO. 03-1-0259(3))

ORDER GRANTING IN PART AND DENYING IN PART  
THE OCTOBER 26, 2006 MOTION TO DISMISS APPEAL  
(By: Burns, C.J., Lim and Foley, JJ.)

Upon review of (1) Defendants-Appellees Mark P. Gellman, D.O., Cheryl Vasconcellos, and Hana Community Health Center's (the Appellees) October 26, 2006 motion to dismiss Plaintiff-Appellant Genevieve Momilani Kaina's (Appellant Kaina) appeal, and (2) the record, it appears that we lack jurisdiction to review part of Appellant Kaina's appeal from the Honorable Joseph E. Cardoza's July 27, 2006 "Order Denying Plaintiff's Renewed Motion for Consolidation," because a portion of the July 27, 2006 order is not an appealable final judgment or order under HRS § 641-1 (Supp. 2005), Rule 54(b) of the Hawaii Rules of Civil Procedure (HRCP), HRCP Rule 58, and our holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawaii 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[.]" 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 July 27, 2006 order is not a final judgment, and the circuit court did not certify the July 27, 2006 order for an interlocutory appeal pursuant to HRS § 641-1(b) (Supp. 2005). Therefore, the July 27, 2006 order is not appealable unless it qualifies as an exception to the standard requirements for appealability under HRCP Rule 58 and HRS § 641-1 (Supp. 2005).

As an exception to the standard requirements for appealability, the supreme court "ha[s], in rare situations, considered an interlocutory order so effectively 'final' that [it] ha[s] exercised appellate jurisdiction over an appeal that is neither a final judgment nor has been allowed by the circuit court under HRS § 641-1(b)." Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 321, 966 P.2d 631, 633 (1998).

Appellate jurisdiction in these cases is exercised under the collateral order doctrine. These interlocutory appeals are limited to orders falling in that small class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require

that appellate consideration be deferred until the whole case is adjudicated.

Id. (citations and internal quotation marks omitted). In order to be appealable under the collateral order doctrine, an appealed order must satisfy all three of the following requirements: "the order must [1] conclusively determine the disputed question, [2] resolve an important issue completely separate from the merits of the action, and [3] be effectively unreviewable on appeal from a final judgment." Id. at 322, 966 P.2d at 634 (citations and internal quotation marks omitted) (brackets in original).

The July 27, 2006 order provides two distinct rulings. First, the July 27, 2006 order denies Appellant Kaina's renewed motion to consolidate the two bifurcated counts in Appellant Kaina's complaint. Second, the July 27, 2006 order sanctions Appellant Kaina by requiring Appellant Kaina to pay the opposing parties' attorneys' fees and costs in the amount of \$6,805.07 within ninety days. With respect to the first ruling within the July 27, 2006 order that denies Appellant Kaina's renewed motion to consolidate the two bifurcated counts in Appellant Kaina's complaint, the July 27, 2006 order (1) conclusively determines the disputed question and (2) resolves an important issue completely separate from the merits of the action, but (3) this portion of the July 27, 2006 order is not effectively unreviewable on appeal from a final judgment, because it does not

appear that bifurcation would result in irreparable harm. Furthermore, the supreme court has already held in Appellant Kaina's previous appeal in supreme court case number 27911 that an order denying a motion to consolidate bifurcated counts is not appealable under the collateral order doctrine. Robinson v. Ariyoshi, 65 Haw. 641, 655, 658 P.2d 287, 298 (1982) ("a statement of a superior court [is] binding on inferior tribunals"). Therefore, the portion of the July 27, 2006 order that denies Appellant Kaina's renewed motion to consolidate the bifurcated counts is not appealable under the collateral order doctrine.

However, the second ruling in the July 27, 2006 order that sanctions Appellant Kaina by ordering Appellant Kaina to pay the opposing parties' attorneys' fees and costs within ninety days might be appealable under the collateral order doctrine. The supreme court held that, where an interlocutory sanction order against a party did not specify the exact amount of the sanction, the interlocutory sanction order "fail[ed] to satisfy the strict prerequisites of the collateral order doctrine," and thus, "[wa]s not a final appealable order." Siangco v. Kasadate, 77 Hawai'i 157, 162, 883 P.2d 78, 83 (1994). In contrast, however, the supreme court also held that an interlocutory sanction order satisfied the requirements for appealability under the collateral order doctrine where "the order directed payment of the assessed sum and was immediately enforceable through

contempt proceedings." Harada v. Ellis, 60 Haw. 467, 480, 591 P.2d 1060, 1070 (1979). In the instant case, the portion of the July 27, 2006 order that sanctions Appellant Kaina by ordering her to pay the opposing parties' attorneys' fees and costs within ninety days (1) conclusively determines the disputed question, (2) resolves an important issue completely separate from the merits of the action, and (3) might be effectively unreviewable on appeal from a final judgment, because, if Appellant Kaina fails to pay the specific amount of attorneys' fees and costs within the specific ninety-day deadline, Appellant Kaina may well be subject to a contempt proceeding. Therefore,

IT IS HEREBY ORDERED that the Appellees' October 26, 2006 motion to dismiss this appeal is granted in part and denied in part as follows:

- the Appellees' October 26, 2006 motion to dismiss this appeal is granted to the extent that Appellant Kaina seeks appellate review of the portion of the July 27, 2006 order that denies Appellant Kaina's renewed motion for consolidation of the bifurcated counts in Appellant Kaina's complaint, but
- the Appellees' October 26, 2006 motion to dismiss this appeal is denied to the extent that Appellant Kaina seeks appellate review of the portion of the July 27, 2006 order that sanctions Appellant Kaina by ordering Appellant Kaina to pay the Appellees' attorneys' fees and costs within ninety days.

Therefore, when the parties file their appellate briefs, the parties shall limit their substantive arguments to the issue whether the circuit court erred when the circuit court sanctioned Appellant Kaina by ordering Appellant Kaina to pay the Appellees' attorneys' fees and costs within ninety days. To the extent that we deny the Appellees' October 26, 2006 motion to dismiss this

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appeal, we deny the motion without prejudice to the parties' further addressing in their appellate briefs the issue whether the July 27, 2006 order is an appealable order under the collateral order doctrine.

DATED: Honolulu, Hawai'i, November 3, 2006.

  
Chief Judge

  
Associate Judge

  
Associate Judge