

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 28216

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

WOLFGANG EISERMANN, Plaintiff-Appellant,
v.
DONALD L. WILKERSON, Defendant-Appellee

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CV. NO. 00-1-0526)

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 Wolfgang Eisermann's (Appellant Eisermann) appeal from the Honorable Victoria S. Mark's September 22, 2006 "Order Denying: (1) Plaintiff's Notice of Motion for Default Judgment, Filed August 17, 2006, and (2) Motion for Default Judgment by Clerk Pursuant to Hawaii Rules of Civil Procedures Rule 55(b)(1), Filed September 5, 2006," because the September 22, 2006 order is not an appealable final order 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).

Granted, "[a] post-judgment order is an appealable final order under HRS § 641-1(a) if the order ends the proceedings, leaving nothing further to be accomplished." Ditto

v. McCurdy, 103 Hawai'i 153, 157, 80 P.3d 974, 978 (2003) (citation omitted). Furthermore, "the separate judgment requirement articulated in Jenkins [v. Cades Schutte Fleming & Wright], 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994),] is inapposite in the post-judgment context." Ditto v. McCurdy, 103 Hawai'i at 158, 80 P.3d at 979. Nevertheless, a circuit court does not issue post-judgment orders on post-judgment motions until the circuit court has already entered an appealable final judgment. Thus, for example, "[a] Rule 60(b), HRCP, motion is authorized only in situations involving final judgments." Crown Properties, Inc. v. Financial Security Life Insurance Co., Ltd., 6 Haw. App. 105, 112, 712 P.2d 504, 509 (1985); Tradewinds Hotel, Inc. v. Cochrane, 8 Haw. App. 256, 262, 799 P.2d 60, 65 (1990) ("Rule 60(b) applies to motions seeking to amend final orders in the nature of judgments.").

In the instant case, the circuit court has not yet entered an appealable final judgment. Although a final default judgment is appealable (see Casuga v. Blanco, 99 Hawai'i 44, 51, 52 P.3d 298, 305 (App. 2002)), the circuit court has not entered a final default judgment against Defendant-Appellee Donald L. Wilkerson (Appellee Wilkerson). Although the circuit court entered a March 5, 2004 order dismissing this case for lack of prosecution pursuant to Rule 29 of the Rules of the Circuit Courts of the State of Hawai'i (RCCH), "an order disposing of a circuit court case is appealable when the order is reduced to a

separate judgment." Alford v. City and Count of Honolulu, 109 Hawai'i 14, 21, 122 P.3d 809, 816 (2005) (citation omitted). Thus, for example, "[a]lthough RCCH [Rule] 12(q) [(regarding dismissal for want of prosecution)] does not mention the necessity of filing a separate document, HRCP [Rule] 58, as amended in 1990, expressly requires that 'every judgment be set forth on a separate document.'" Price v. Obayashi Hawaii Corporation, 81 Hawai'i 171, 176, 914 P.2d 1364, 1369 (1996). This is because, under HRCP Rule 58, "[a]n appeal may be taken . . . 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 115, 119, 869 P.2d 1334, 1338 (1994).

The circuit court has not yet reduced the March 5, 2004 order of dismissal to a separate judgment, as HRCP Rule 58 requires under the holding in Jenkins v. Cades Schutte Fleming & Wright. If the circuit court would reduce the March 4, 2004 order of dismissal to a separate judgment, then an aggrieved party could seek appellate review of that judgment and all of the previous order that dealt with issues in the case, because "[a]n appeal from a final judgment brings up for review all interlocutory orders not appealable directly as of right which deal with issues in the case." Ueoka v Szymanski, 107 Hawai'i 386, 396, 114 P.3d 892, 902 (2005) (citation and internal

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quotation marks omitted). However, the circuit court has not entered an appealable final judgment in this case. Absent an appealable final judgment, we lack appellate jurisdiction, and this appeal is premature. Therefore,

IT IS HEREBY ORDERED that the appeal in appellate court case number 28216 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, January 19, 2007.


Chief Judge


Associate Judge


Associate Judge