

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28228

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

GEORGE KAHO'OHANO, as Next Friend of
DASIA MARIE MORALES-KAHO'OHANO, a minor,
and JARRETT KAHO'OHANO, Individually,
Plaintiffs-Appellees,

v.

DEPARTMENT OF HUMAN SERVICES, STATE OF HAWAI'I,
Defendant/Third-Party Plaintiff/Third-Party Counterclaim
Defendant/Counterclaim Defendant/Cross-claim
Plaintiff-Appellant, ET AL.,

AND

GEORGE KAHO'OHANO, as Next Friend of
DASIA MARIE MORALES-KAHO'OHANO, a minor,
and JARRETT KAHO'OHANO, Plaintiffs-Appellees,

v.

SUSAN DRELICH, M.D., Defendant/Cross-claim Plaintiff/
Cross-claim Defendant-Appellee, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CIVIL NOS. 03-1-0012(1) AND 03-1-0257(1))

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that we lack jurisdiction over Defendant/Third-Party Plaintiff/Third-Party Counterclaim Defendant/Counterclaim Defendant/Cross-claim Plaintiff-Appellant Department of Human Services, State of Hawaii's appeal from the Honorable Joel E. August's September 21, 2006 judgment and December 4, 2006 amended judgment, because neither of these judgments are appealable final judgments under Hawaii Revised Statutes (HRS) § 641-1(a) (Supp. 2005), Rule 58 of the Hawai'i Rules of Civil Procedure (HRCPP), and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

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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[.]" 76 Hawai'i at 119, 869 P.2d at 1338.

[I]f a judgment purports to be the final judgment in a case involving multiple claims or multiple parties, the judgment (a) must specifically identify the party or parties for and against whom the judgment is entered, and (b) must (i) identify the claims for which it is entered, and (ii) dismiss any claims not specifically identified[.]

Id. (emphases added). "If the circuit court intends that claims other than those listed in the judgment language should be dismissed, it must say so: for example, . . . 'all other claims, counterclaims, and cross-claims are dismissed.'" Id. at 119-20 n.4, 869 P.2d at 1338-39 n.4. Furthermore, "if the judgment resolves fewer than all claims against all parties, or reserves any claim for later action by the court, an appeal may be taken only if the judgment contains the language necessary for certification under HRCP [Rule] 54(b)[.]" Id. at 119, 869 P.2d at 1338. Therefore, "an appeal from any judgment will be dismissed as premature if the judgment does not, on its face, either resolve all claims against all parties or contain the finding necessary for certification under HRCP [Rule] 54(b)."
Id.

Although Plaintiffs-Appellees George Kaho'ohanohano, as Next Friend of Dasia Marie Morales-Kaho'ohanohano, and Jarrett Kaho'ohanohano asserted multiple claims against the various

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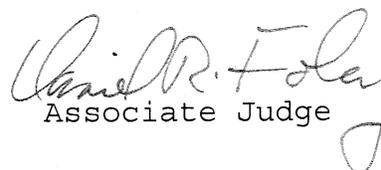
defendants in these two consolidated circuit court cases, neither the September 21, 2006 judgment nor the December 4, 2006 amended judgment specifically identifies the claim or claims for which the circuit court entered judgment. Furthermore, although the parties additionally asserted counterclaims, cross-claims and third-party claims, neither judgment dismisses those other claims that the circuit court apparently does not intend to include in the judgment language. Finally, although neither the September 21, 2006 judgment nor the December 4, 2006 amended judgment resolves all of the parties' claims against all parties in this case, neither judgment contains the finding necessary for certification under HRCF Rule 54(b). Consequently, neither judgment satisfies the requirements for an appealable final judgment under HRCF Rule 58 and the holding in Jenkins v. Cades Schutte Fleming & Wright. Absent an appealable final judgment, this appeal is premature. Therefore,

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

DATED: Honolulu, Hawai'i, January 17, 2007.


Chief Judge


Associate Judge


Associate Judge