

NO. 28289

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

HEINRICH ALEXANDER RIETHBROCK,
Plaintiff-Appellant,
v.
MARION BARBARA LANGE, Defendant-Appellee

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

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APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(FC-D NO. 04-1-0147)

ORDER DENYING DEFENDANT-APPELLANT MARION BARBARA LANGE'S
FEBRUARY 14, 2007 MOTION TO DISMISS FOR LACK OF JURISDICTION
(By: Burns, C.J., Lim and Foley, JJ.)

Upon review of (1) Defendant-Appellee Marion Barbara Lange's (Appellee Lange) February 14, 2007 motion to dismiss this appeal for lack of appellate jurisdiction, (2) Plaintiff-Appellant Heinrich Alexander Riethbrock's (Appellant Riethbrock) February 21, 2007 memorandum in opposition to Appellee Lange's February 14, 2007 motion to dismiss, and (3) the record, it appears that Appellee Lange's February 14, 2007 motion to dismiss lacks merit.

This appeal involves a post-decree order. In family court cases "[a]n interested party aggrieved by any order or decree of the court may appeal to the intermediate appellate court for review of questions of law and fact upon the same terms and conditions as in other cases in the circuit court[.]" HRS § 571-54 (2006). In circuit court cases, aggrieved parties may

appeal from "final judgments, orders or decrees[.]" HRS

§ 641-1(a) (Supp. 2006). Divorce cases are somewhat unique in that

Hawaii divorce cases involve a maximum of four discrete parts: (1) dissolution of the marriage; (2) child custody, visitation, and support; (3) spousal support; and (4) division and distribution of property and debts. Black v. Black, 6 Haw. App. 493, 728 P.2d 1303 (1986). In Cleveland v. Cleveland, 57 Haw. 519, 559 P.2d 744 (1977), the Hawaii Supreme Court held that an order which finally decides parts (1) and (4) is final and appealable even if part (2) remains undecided. Although we recommend that, except in exceptionally compelling circumstances, all parts be decided simultaneously and that part (1) not be finally decided prior to a decision on all the other parts, we conclude that an order which finally decides part (1) is final and appealable when decided even if parts (2), (3), and (4) remain undecided; that parts (2), (3), and (4) are each separately final and appealable as and when they are decided, but only if part (1) has previously or simultaneously been decided; and that if parts (2), (3), and/or (4) have been decided before part (1) has been finally decided, they become final and appealable when part (1) is finally decided.

Eaton v. Eaton, 7 Haw. App. 111, 118-19, 748 P.2d 801, 805 (1987)

(footnote omitted).

In the instant case, it appears that the family court decided part (1) (i.e., the dissolution of the marriage) through the August 8, 2005 stipulated divorce decree. The family court resolved part (4) (i.e., the division and distribution of property and debts) through a series of orders, namely the March 6, March 29, and June 8, 2006 orders. The June 8, 2006 order was the final order in that series that made all three orders resolving part (4) appealable. Cf. S. Utsunomiya Enterprises, Inc. V. Moomuku Country Club, 75 Haw. 480, 494-95,

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866 P.2d 951, 960 (1994).^{1/} However, Appellant Riethbrock did not appeal from the June 8, 2006 order.

Instead, Appellant Riethbrock attacked the June 8, 2006 order by filing Appellant Riethbrock's October 5, 2006 post-decree motion to terminate all judicial efforts to sell the real property and to dismiss all remaining property division claims in this case, presumably pursuant to Rule 60(b) of the Hawai'i Family Court Rules (HFCR). Appellant Riethbrock is now appealing from the October 26, 2006 order denying Appellant Riethbrock's post-decree motion to terminate all judicial efforts to sell the real property and to dismiss all remaining property division claims in this case.

As already stated, in family court cases, "[a]n interested party aggrieved by any order or decree of the court may appeal to the intermediate appellate court for review of questions of law and fact upon the same terms and conditions as in other cases in the circuit court[.]" HRS § 571-54 (2006). HRS § 641-1(a) (Supp. 2006) governs the terms and conditions for appeals in the circuit courts, and "[a] post-judgment order is an

^{1/} [I]n cases such as this, where the disposition of the case is embodied in several orders, no one of which embraces the entire controversy but collectively does so, it is a necessary inference from 54(b) that the orders collectively constitute a final judgment and entry of the last of the series of orders gives finality and appealability to all.

S. Utsunomiya Enterprises, Inc. V. Moomuku Country Club, 75 Haw. 480, 494-95, 866 P.2d 951, 960 (1994) (citations, internal quotation marks, and ellipsis points omitted).

appealable final order under HRS § 641-1(a) if the order finally determines the post-judgment proceeding." Hall v. Hall, 96 Hawai'i 105, 111 n.4, 26 P.3d 594, 600 n.4 (App. 2001) (citation omitted), affirmed in part, and vacated in part on other grounds, Hall v. Hall, 95 Hawai'i 318, 22 P.3d 965 (2001).

The order that finally determined the post-decree proceeding for Appellant Riethbrock's October 5, 2006 post-decree motion to terminate all judicial efforts to sell the real property and to dismiss all remaining property division claims in this case was the October 26, 2006 order. Therefore, the October 26, 2006 order denying Appellant Riethbrock's post-decree motion to terminate all judicial efforts to sell the real property and to dismiss all remaining property division claims in this case is an appealable post-decree order under HRS § 571-54 (2006). Appellant Riethbrock filed his November 27, 2006 notice of appeal within thirty days^{2/} after entry of the October 26, 2006 post-decree order, as Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure required, and, thus, Appellant Riethbrock's appeal is timely as to the October 26, 2006 post-decree order. Therefore, we have jurisdiction over Appellant Riethbrock's appeal from the October 26, 2006 post-decree order pursuant to HRS § 571-54 (2006), and Appellee Lange's motion to dismiss this

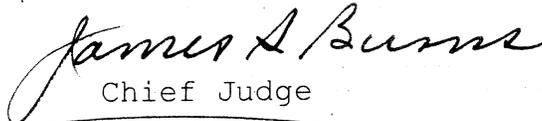
^{2/} The thirtieth calendar day after October 26, 2006 was Sunday, November 26, 2006, and, thus, Rule 26(a) of the Hawai'i Rules of Appellate Procedure (HRAP) extended the thirty-day time period under HRAP Rule 4(a)(1) until Monday, November 27, 2006.

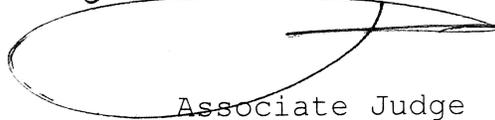
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appeal for lack of jurisdiction lacks merit. Accordingly,

IT IS HEREBY ORDERED that Appellee Lange's February 14, 2007 motion to dismiss for lack of jurisdiction is denied. Nevertheless, we deny Appellee Lange's February 14, 2007 motion to dismiss for lack of jurisdiction without prejudice to the parties' further arguing jurisdiction issues in their appellate briefs.

DATED: Honolulu, Hawai'i, March 2, 2007.


Chief Judge


Associate Judge


Associate Judge