

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28293

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

KENNETH JELKS, Appellant-Appellant,
v.
HAWAII PAROLING AUTHORITY, STATE OF HAWAI'I,
Appellees-Appellees

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(CV. NO. 06-1-0805)

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that we lack jurisdiction over Appellant-Appellant Kenneth Jelks's (Appellant Jelks) appeal from the Honorable Eden Elizabeth Hifo's May 10, 2006 "Order of Dismissal for Lack of Jurisdiction," because the circuit court has not reduced this order to a separate judgment that is appealable under HRS § 641-1(a) (Supp. 2006), Rules 58 and 72(k) 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).

Appellant Jelks has asserted a secondary appeal from the May 10, 2006 dismissal order that disposed of Appellant Jelks's initial appeal to the circuit court. When a circuit court adjudicates an appeal from an administrative agency order, "[r]eview of any final judgment of the circuit court under this chapter shall be governed by chapter 602." HRS § 91-15 (1993).

The instant case does not directly involve a ruling by an administrative agency, because, through Civil No. 06-1-0805, Appellant Jelks has attempted to appeal to the circuit court from a different circuit court's March 24, 2006 "Decision and Order Dismissing Petition for Post-Conviction Relief Without a Hearing" in S.P.P. No. 05-1-0061. Nevertheless, the intermediate court of appeals has jurisdiction "[t]o hear and determine appeals from any court or agency when appeals are allowed by law[.]" HRS § 602-57(1) (Supp. 2006). Under Hawai'i law, "[a]ppeals shall be allowed in civil matters from all final judgments, orders, or decrees of circuit . . . courts[.]" HRS § 641-1(a) (Supp. 2006). However, HRCP Rule 58 additionally requires that "[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 115, 119, 869 P.2d 1334, 1338 (1994). Thus, "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) (emphasis added). For example, the supreme court has held that, "[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) (emphasis added)).

When a circuit court adjudicates an administrative appeal, HRCF Rule 72(k) also requires that, upon a circuit court's determination of the appeal, "the court having jurisdiction shall enter judgment." HRCF Rule 72(k). Therefore, the separate judgment document rule under the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 869 P.2d 1334 (1994), applies to a secondary appeal from a circuit court order that adjudicates an administrative appeal. See, e.g., Raquinio v. Nakanelua, 77 Hawai'i 499, 500, 889 P.2d 76, 77 (App. 1995) ("We conclude . . . that the requirements for appealability set forth in Jenkins apply to appeals from circuit court orders deciding appeals from orders entered by the Director of Labor and Industrial Relations.").

Regardless whether one characterizes Civil No. 06-1-0805 as a standard civil case or an administrative appeal, the separate judgment document rule under the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 869 P.2d 1334 (1994), applies to Civil No. 06-1-0805. The circuit court has not reduced the May 10, 2006 order of dismissal to a separate judgment, as the separate document rule requires under HRCF Rule 58, HRCF Rule 72(k), and the holding in Jenkins v. Cades Schutte Fleming & Wright. Absent an appealable final judgment,

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this appeal is premature and we lack jurisdiction. Therefore,

IT IS HEREBY ORDERED that the appeal in appellate court case number 28293 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, February 26, 2007.


Chief Judge


Associate Judge


Associate Judge