

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28322

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

AUDREY THEISEN LEE, Plaintiff-Appellant,
v.
COUNTY OF HAWAI'I, JOHN DOES 1-10, et al., Defendants-Appellees

NORMA T. YARA
CLERK, APPELLATE COURT
STATE OF HAWAI'I

2007 MAR -2 AM 10:38

FILED

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CV. NO. 06-1-0110)

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 Audrey Theisen Lee's (Appellant Lee) appeal from the Honorable Glenn S. Hara's November 20, 2006 "Order Denying Plaintiff's Motion to Amend Her Complaint Filed June 16, 2006" because the circuit court has not yet reduced the June 20, 2006 "Order Granting Defendant County of Hawaii's Motion to Dismiss with Leave to File a Motion to Amend Complaint" to a separate, appealable final judgment 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).

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. 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. 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.

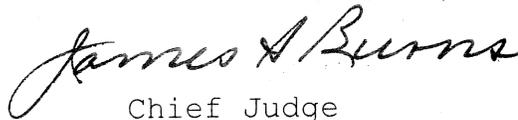
The appealed order, i.e., the November 20, 2006 "Order Denying Plaintiff's Motion to Amend Her Complaint Filed June 16, 2006," is interlocutory, and, thus, it is not independently appealable. Although the circuit court entered the June 20, 2006 order granting Defendant-Appellee County of Hawaii's (Appellee County) motion to dismiss Appellant Lee's complaint, "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). Thus, 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

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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). The circuit court has not yet reduced the June 20, 2006 order granting Appellee County's motion to dismiss Appellant Lee's complaint to a separate judgment, as HRCF Rule 58 requires under the holding in Jenkins v. Cades Schutte Fleming & Wright. Absent an appealable final judgment, this appeal is premature and must be dismissed. Accordingly,

IT IS HEREBY ORDERED that this appeal in appellate court case number 28322 is dismissed for lack of appellate jurisdiction.

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


Chief Judge


Associate Judge


Associate Judge