

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 28523

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAIIJOE J. MAYES and BEVERLY M. MAYES, Petitioners-Appellants,
v. KAA NAPALI HILLSIDE HOMEOWNERS' ASSOCIATION, a
Hawai'i non-profit corporation, Respondent-AppelleeAPPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(S.P. No. 06-1-0080(3))ORDER DISMISSING APPEAL

(By: Recktenwald, C.J., Watanabe and Nakamura, J.)

Upon review of the record, it appears that we lack jurisdiction over Petitioners-Appellants Joe J. Mayes and Beverly M. Mayes's (the Mayes Appellants) appeal from the Honorable Joseph E. Cardoza's January 3, 2007 "Order Dismissing Petition to Expunge Invalid Nonconsensual Common Law Lien" because the January 3, 2007 dismissal order is not an appealable final judgment under Hawaii Revised Statutes § 641-1(a) (Supp. 2006), 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).

Under the HRCPP 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 HRCPP [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i at 119, 869 P.2d at 1338. "An appeal from an order that is not reduced to a judgment in favor of or against the party by the time the record is filed in the supreme court will be dismissed." Id. at 120, 869 P.2d at 1339 (footnote omitted). For example, "[a]lthough [Rules of the Circuit Courts of the State of Hawai'i (RCCH) Rule] 12(q) [(regarding dismissal for want of prosecution)] does not mention the necessity of filing a separate document, HRCPP [Rule] 58, as amended in 1990, expressly requires that 'every judgment be set forth on a separate document.'" Price v.

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Obayashi Hawaii Corp., 81 Hawai'i 171, 176, 914 P.2d 1364, 1369 (1996); Alford v. City & County of Honolulu, 109 Hawai'i 14, 21, 122 P.3d 809, 816 (2005) ("an order disposing of a circuit court case is appealable when the order is reduced to a separate judgment").

The January 3, 2007 dismissal order appears to dismiss the Mayes Appellants' petition, but the circuit court has not yet reduced the January 3, 2007 dismissal order to a separate judgment, as HRCP Rule 58 requires under the holding in Jenkins v. Cades Schutte Fleming & Wright. Absent an appealable final judgment, this appeal is premature. Therefore,

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

DATED: Honolulu, Hawai'i, July 25, 2007.

Man E. Acuña

Chief Judge

Brunie K. A. Watanabe

Associate Judge

Cory H. Nakamura

Associate Judge