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NO. 28660

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

FILED
2007 DEC 11 AM 11:54
K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

JOHN W. RUSSELL, II, and HAZEL TUIFAGU,
Plaintiffs-Appellees,

v.

NATHAN PARK,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 1RC06-1-6708)

ORDER GRANTING NOVEMBER 28, 2007 MOTION TO DISMISS APPEAL
(By: Recktenwald, C.J., Watanabe and Nakamura, JJ.)

Upon review of (1) Defendant-Appellant Nathan Park's (Appellant Park) November 28, 2007 motion to dismiss his appeal from the Honorable Hilary Benson Gangnes's June 20, 2007 minute order, and (2) the record, it appears that Appellant Park's November 28, 2007 motion has merit because we lack jurisdiction over this appeal.

> Pursuant to HRS § 641-1(a)(1993), appeals are allowed in civil matters from all final judgments, orders, or decrees of circuit and district courts. In district court cases, a judgment includes any order from which an appeal lies. A final order means an order ending the proceeding, leaving nothing further to be accomplished. When a written judgment, order, or decree ends the litigation by fully deciding all rights and liabilities of all parties, leaving nothing further to be adjudicated, the judgment, order, or decree is final and appealable.

Casumpang v. ILWU, Local 142, 91 Hawaiʻi 425, 426, 984 P.2d 1251, 1252 (1999) (citations, internal quotation marks, and footnote omitted) (emphases added). The separate judgment document rule under Rule 58 of the Hawaiʻi Rules of Civil Procedure (HRCP) and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawaiʻi 115, 869 P.2d 1334 (1994) is

> not applicable to district court cases. Consequently, an order that fully disposes of an action in the district court may be final and appealable without the entry of judgment on a separate document, as long as the appealed order ends the litigation by fully deciding the rights and liabilities of all parties and leaves nothing further to be adjudicated.

Casumpang v. ILWU, Local 142, 91 Hawaiʻi at 427, 984 P.2d at 1253 (emphases added).

The district court entered an appealable final judgment when the district court entered the April 18, 2007 default judgment that fully disposed of all the claims in this case. However, Appellant Park did not file his July 20, 2007 notice of appeal within thirty days after entry of the April 18, 2007 default judgment, as Rule 4(a)(1) of the Hawaiʻi Rules of Appellate Procedure (HRAP) requires. Appellant Park did not file any post-judgment motion that would have extended the time period for filing a notice of appeal from the April 18, 2007 default

judgment pursuant to HRAP Rule 4(a)(3).[1] Therefore, Appellant Park's July 20, 2007 notice of appeal is not timely as to the April 18, 2007 default judgment.

Appellant Park has attempted to appeal from the June 20, 2007 minute order, which, among other things, purports to dispose of Appellant Park's May 2, 2007 motion to set aside the April 18, 2007 default judgment, apparently pursuant to Rule 60(b) of the District Court Rules of Civil Procedure (DCRCP). "A post-judgment order is an appealable final order under HRS § 641-1(a) if the order ends the proceedings, leaving nothing further to be accomplished." Ditto v. McCurdy, 103 Hawaiʻi 153, 157, 80 P.3d 974, 978 (2003) (citation omitted). For example, "[a]n order denying a motion for post-judgment relief under HRCP [Rule] 60(b) is an appealable final order under HRS § 641-1(a)." Ditto v. McCurdy, 103 Hawaiʻi at 160, 80 P.3d at 981 (citation omitted). Similarly, an order denying a motion

[1] "If any party files a timely motion . . . to reconsider, alter or amend the judgment or order, . . . the time for filing the notice of appeal is extended until 30 days after entry of an order disposing of the motion[.]" HRAP Rule 4(a)(3). With respect to the "timely" requirement under HRAP Rule 4(a)(3), Rule 59(e) of the District Court Rules of Civil Procedure (DCRCP) provides that "[a] motion to alter or amend the judgment shall be served not later than 10 days after entry of judgment." Because Appellant Park filed his May 2, 2007 motion to set aside the April 18, 2007 default judgment more than ten days after entry of the April 18, 2007 default judgment, Appellant Park's May 2, 2007 motion was not a "timely" motion under DCRCP Rule 59 that would have extended the time for filing the notice of appeal pursuant to HRAP Rule 4(a)(3). Therefore, we deem Appellant Park's May 2, 2007 motion to set aside the April 18, 2007 default judgment to be a DCRCP Rule 60(b) motion that does not extend the time for filing a notice of appeal from the April 18, 2007 default judgment pursuant to HRAP Rule 4(a)(3).

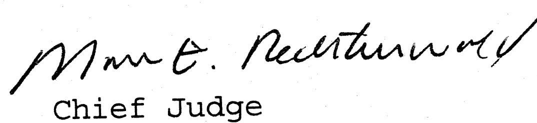
for post-judgment relief under DCRCP Rule 60(b) is an appealable final order under HRS § 641-1(a) (Supp. 2006). Although the June 20, 2007 minute order purports to dispose of Appellant Park's May 2, 2007 DCRCP Rule 60(b) motion to set aside the April 18, 2007 default judgment, the supreme court has specifically noted that "a minute order is not an appealable order." Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawaiʻi 319, 321 n.3, 966 P.2d 631, 633 n.3 (1998) (emphasis added). Therefore, the district court has not yet entered a post-judgment order that is appealable pursuant to HRS § 641-1(a) (Supp. 2006). At this time in the litigation, Appellant Park cannot appeal unless the district court enters a written post-judgment order or written amended final judgment that ends the post-judgment proceedings for Appellant Park's May 2, 2007 DCRCP Rule 60(b) motion and leaves nothing further to be accomplished.

Absent a timely appeal from an appealable final order or an appealable final judgment, we lack appellate jurisdiction. Therefore,

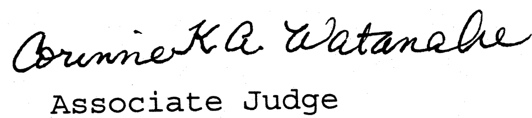
IT IS HEREBY ORDERED that Appellant Park's November 28, 2007 motion to dismiss this appeal is granted, and appellate

court case number 28660 is dismissed for lack of appellate jurisdiction.

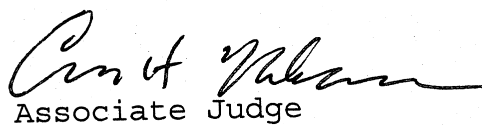
DATED: Honolulu, Hawaiʻi, December 11, 2007.



Chief Judge



Associate Judge



Associate Judge