

NO. 28697

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

GARDINER BOSEY SMITH III,
Plaintiff-Appellant,

v.

STATE OF HAWAI'I, DEPARTMENT OF PUBLIC SAFETY,
CARMELLO LOPEZ SANTIAGO, FSM IV Manager; HALAWA
CORRECTIONAL FACILITY; RAYMOND ONOUYE, SGT/ACO/H/C.F.,
Defendants-Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIV. NO. 07-1-0785)

ORDER DISMISSING APPEAL

(By: Watanabe, Presiding Judge, Foley and Nakamura, JJ.)

Upon review of the record, it appears that we lack jurisdiction over Plaintiff-Appellant Gardiner Bosey Smith, III's (Appellant Smith), appeal from the Honorable Glenn J. Kim's August 8, 2007 minute order and August 23, 2007 written order denying Appellant Smith's motion for summary judgment on the merits of Appellant Smith's complaint.

The Supreme Court of Hawai'i has specifically noted that "a minute order is not an appealable order." Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 321 n.3, 966 P.2d 631, 633 n.3 (1998) (emphasis added). Therefore, the August 8, 2007 minute order denying Appellant Smith's motion for summary judgment is not an appealable order.

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

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More importantly, however, "[a] decision to deny a motion for summary judgment is generally not appealable until after the conclusion of a trial on the merits." Estate of Dietrich v. Burrows, 167 F.3d 1007, 1010 (6th Cir. 1999) (citation omitted). Hawaii Revised Statutes (HRS) § 641-1(a) (Supp. 2006) authorizes appeals to the intermediate court of appeals only from "final judgments, orders, or decrees[.]" (Emphasis added). Furthermore, pursuant to the separate document rule under Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP), "[a]n appeal may be taken . . . 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). "An appeal from an order that is not reduced to a judgment in favor 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). The circuit court has not yet entered a final judgment in this case. Therefore, the August 23, 2007 written order denying Appellant Smith's motion for summary judgment is not eligible for appellate review at this time.

Absent an appealable final judgment, this appeal is premature and we lack appellate jurisdiction. Therefore,

IT IS HEREBY ORDERED that appellate court case number
28697 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, November 27, 2007.

Corinne K.A. Watasele
Presiding Judge

Daniel R. Foley
Associate Judge

Craig W. Nakamura
Associate Judge