

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28733

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

MAGDALENA CAMPOS, an individual,  
Plaintiff-Appellant,

v.

MARRHEY CARE HOME, LLC, a Hawai'i Limited  
Liability Company; MARCELA ORESKO CARLOS,  
an individual; CASE MANAGEMENT PROFESSIONALS, INC.,  
a Hawai'i Corporation; DOE DEFENDANTS 1-30,  
Defendants-Appellees.NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIVIL NO. 05-1-0053)ORDER GRANTING DECEMBER 6, 2007 MOTION TO DISMISS APPEAL  
(By: Recktenwald, C.J., Watanabe and Nakamura, JJ.)

Upon review of (1) Defendant-Appellee Case Management Professionals, Inc.'s (CMP) December 6, 2007 motion to (a) dismiss as untimely the Amended Notice of Appeal filed on November 14, 2007 and (b) limit this appeal to the Notice of Appeal filed on September 7, 2007, (motion to dismiss); (2) Defendants-Appellees Marrhey Care Home, LLC, and Marcela Oresko Carlos's December 13, 2007 joinder in the motion to dismiss; (3) Plaintiff-Appellant Magdalena Campos's (Campos) memorandum in opposition to the motion to dismiss; and (4) the record, it appears that we lack appellate jurisdiction and must dismiss this appeal.

CMP argues that we lack appellate jurisdiction because Campos's September 6, 2007 notice of appeal does not refer to the

Honorable Glenn J. Kim's July 9, 2007 judgment and the June 26, 2007 Order Granting CMP's Motion to Dismiss and therefore, Campos's November 14, 2007 Amended Notice of Appeal could not add the judgment and order to the appeal. However, "the requirement that the notice of appeal designate the judgment or part thereof appealed from is not jurisdictional." State v. Bohannon, 102 Hawai'i 228, 235, 74 P.3d 980, 987 (2003) (citation and internal quotation marks omitted) (emphasis added); City and County of Honolulu v. Midkiff, 57 Haw. 273, 275, 554 P.2d 233, 235 (1976).

In contrast, however, the requirements for an appealable final judgment are jurisdictional. Hawaii Revised Statutes (HRS) § 641-1(a) (Supp. 2006) authorizes appeals from "final judgments, orders, or decrees[.]" HRS § 641-1(a) (Supp. 2006). Appeals under HRS § 641-1 "shall be taken in the manner . . . provided by the rules of the court." HRS § 641-1(c) (Supp. 2006). Rule 58 of the Hawai'i Rules of Civil Procedure (HRCPP) requires that "[e]very judgment shall be set forth on a separate document." HRCPP Rule 58. Based on this requirement under HRCPP Rule 58, the Supreme Court of Hawai'i has held 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 HRCPP [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

[I]f a judgment purports to be the final judgment in a case involving multiple claims or multiple parties, the judgment (a) must specifically identify the party or parties for and against whom the judgment is entered, and (b) must (i) identify the claims for which it is entered, and (ii) dismiss any claims not specifically identified[.]

Id. (emphases added). 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 HRCF [Rule] 54(b)." Id. at 119, 869 P.2d at 1338. Although Campos asserted five separate causes of action in her complaint, the July 9, 2007 judgment does not, on its face, identify the claim or claims for which judgment is entered, nor does the July 6, 2007 judgment state that the circuit court is entering judgment on all five of the counts in Campos's complaint. Although the July 9, 2007 judgment contains a statement that declares "[t]here are no other claims or parties remaining in this case[.]" the Supreme Court of Hawai'i has noted that

[a] statement that declares "there are no other outstanding claims" is not a judgment. If the circuit court intends that claims other than those listed in the judgment language should be dismissed, it must say so: for example, "Defendant Y's counterclaim is dismissed," or "Judgment upon Defendant Y's counterclaim is entered in favor of Plaintiff/Counter-Defendant Z," or "all other claims, counterclaims, and cross-claims are dismissed."

Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i at 119-20 n.4, 869 P.2d at 1338-39 n.4 (emphasis added). Therefore, the

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July 9, 2007 judgment does not satisfy the requirements for an appealable final judgment under the holding in Jenkins v. Cades Schutte Fleming & Wright. Absent an appealable final judgment, we lack appellate jurisdiction over this case, and Campos's appeal is premature. Accordingly

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

DATED: Honolulu, Hawai'i, January 7, 2008.



Chief Judge



Associate Judge



Associate Judge