

NO. 28841

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

HOWARD HOFELICH dba H ISABELLE MCGARRY TRUST MARCH 19, 1971
Plaintiff-Appellant,

v.

STATE OF HAWAI'I, et al., Defendants-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIV. NO. 07-1-0133K (KONA))

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

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ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Watanabe, Presiding Judge, Foley and Nakamura, JJ.)

Upon review of the record, it appears that we lack jurisdiction over this appeal that Plaintiff-Appellant Howard Hofelich dba H. Isabelle McGarry Trust of March 19, 1971 (Appellant Hofelich) asserted from the Honorable Elizabeth A. Strance's December 21, 2007 "Order Granting Defendant State of California's Motion to Dismiss [Filed on] September 28, 2007" (the December 21, 2007 dismissal order) because the December 21, 2007 dismissal order is not an appealable final judgment under Hawaii Revised Statutes (HRS) § 641-1(a) (Supp. 2007), Rules 54(b) and 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).

HRS § 641-1(a) (Supp. 2007) authorizes appeals to the intermediate court of appeals from "final judgments, orders, or decrees[.]" HRS § 641-1(a) (Supp. 2007) (emphasis added). Appeals under HRS § 641-1 "shall be taken in the manner . . . provided by the rules of the court." HRS § 641-1(c) (Supp. 2007).

HRCP Rule 58 requires that "[e]very judgment shall be set forth on a separate document." HRCP Rule 58. Based on this requirement under HRCP Rule 58, the Supreme Court of Hawai'i has held that "[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 at 119, 869 P.2d at 1338. The separate judgment must "either resolve all claims against all parties or contain the finding necessary for certification under HRCP [Rule] 54(b)."

Id. "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). Consequently, "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, 20, 122 P.3d 809, 815 (2005) (citation omitted). 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 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).

In the instant case, the December 21, 2007 dismissal order dismisses Appellant Hofelich's complaint only as to one

party, Defendant-Appellee State of California. Furthermore, the circuit court has not reduced the December 21, 2007 dismissal order to a separate judgment pursuant to HRCF Rule 54(b), HRCF Rule 58, and the holding in Jenkins v. Cades Schutte Fleming & Wright. Absent an appealable final judgment, this appeal is premature and we lack jurisdiction. Therefore,

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

DATED: Honolulu, Hawai'i, March 12, 2008.

Corinne Ka Watanabe
Presiding Judge

Daniel P. Foley
Associate Judge

Cy H. Nakamura
Associate Judge