

NO. 28892

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

EMERSON
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2008 APR 10 AM 9:41

FILED

COUNTY OF MAUI, Plaintiff-Appellee, v. STEVE LUNDBORG,
Defendant-Appellant, and JOHN DOES 1-10, JOHN DOE
PARTNERSHIPS 1-10, JOHN DOE CORPORATIONS 1-10, and JOHN
DOE GOVERNMENT ENTITIES 1-10, Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(Civ. No. 05-1-0402(3))

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that we lack jurisdiction over the appeal filed by Defendant-Appellant Steve Lundborg (Appellant Lundborg) from the Honorable Joseph E. Cardoza's November 6, 2007 "Order Granting Plaintiff County of Maui's Motion for Summary Judgment and Denying Defendant Steve Lundborg's Motion to Dismiss Plaintiff County of Maui's First Amended Complaint for Declaratory Judgment Filed on 08/23/07" (the November 6, 2007 summary judgment order) because the circuit court has not reduced the November 6, 2007 summary judgment order to a separate judgment, as required under Hawaii Revised Statutes (HRS) § 641-1(a) (Supp. 2007), Rule 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).

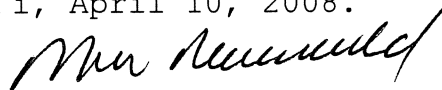
HRS § 641-1(a) (Supp. 2007) authorizes appeals to the intermediate court of appeals from "final judgments, orders, or decrees[.]" (Emphasis added.) Appeals under HRS § 641-1 (Supp. 2006) "shall be taken in the manner . . . provided by the rules of the court." HRS § 641-1(c) (Supp. 2007). HRCP Rule 58 requires that "[e]very judgment shall be set forth on a separate

document." HRCF Rule 58. Based on this requirement under HRCF Rule 58, the supreme court 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 HRCF [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).

In the instant case, the circuit court has not yet reduced the November 6, 2007 summary judgment order to a separate judgment in favor of and against the appropriate parties, as HRCF Rule 58 requires under the holding in Jenkins v. Cades Schutte Fleming & Wright. Absent an appealable final judgment, Appellant Lundborg's appeal is premature. Therefore,

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

DATED: Honolulu, Hawai'i, April 10, 2008.



Chief Judge



Associate Judge



Associate Judge