

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28953

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

In the Matter of UNITED PUBLIC WORKERS,
AFSCME, LOCAL 646, AFL-CIO, Union,
Petitioner-Appellant,

v.

LINDA LINGLE, Governor, State of Hawai'i; HAWAII GOVERNMENT
EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO; and MUFI
HANNEMANN, Mayor, City and County of Honolulu; UNIVERSITY OF
HAWAII PROFESSIONAL ASSEMBLY, and COUNTY OF HAWAI'I (2007-003),
Intervenors-Appellees,

and

HAWAI'I LABOR RELATIONS BOARD,
Appellee-Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 07-1-1265)

ORDER DISMISSING APPEAL
FOR LACK OF APPELLATE JURISDICTION

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

Upon review of the record in this case, it appears that we lack jurisdiction over the appeal that Complainant/Appellee/Appellant United Public Workers, AFSCME, Local 646, AFL-CIO (Appellant UPW) asserted from the Honorable Sabrina S. McKenna's January 4, 2008 judgment, because the January 4, 2008 judgment does not, on its face, resolve the administrative appeal as to all parties in the case.

Hawaii Revised Statutes (HRS) § 377-9(j) (1993 & Supp. 2007) provides that, when a party appeals from a ruling by Appellee-Appellee Hawai'i Labor Relations Board (Appellee HLRB)

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to a circuit court, "[a]ny party may appeal from the judgment of a circuit court entered under this chapter, subject to chapter 602, in the manner provided for civil appeals from the circuit courts." HRS § 377-9(j) (1993 & Supp. 2007); see also HRS § 91-15 (1993) ("Review of any final judgment of the circuit court under this chapter shall be governed by chapter 602."). The intermediate court of appeals has jurisdiction "[t]o hear and determine appeals from any court or agency when appeals are allowed by law[.]" HRS § 602-57(1) (Supp. 2007). "Appeals shall be allowed in civil matters from all final judgments, orders, or decrees of circuit . . . courts[.]" HRS § 641-1(a) (1993 & Supp. 2007). Appeals under HRS § 641-1 "shall be taken in the manner . . . provided by the rules of the court." HRS § 641-1(c) (1993 & Supp. 2007). Rule 72(k)¹ of the Hawai'i Rules of Civil Procedure (HRCP) requires that, upon a circuit court's determination of an administrative appeal, "the court having jurisdiction shall enter judgment[,]" and HRCP Rule 58 requires that "[e]very judgment shall be set forth on a separate document." Therefore, the HRCP Rule 58 separate judgment document rule under the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 869 P.2d 1334 (1994), applies to an administrative appeal before a circuit court. See, e.g., Raquinio v. Nakanelua, 77 Hawai'i 499, 500, 889 P.2d 76, 77 (App.

¹ Rule 81(e) of the Hawai'i Rules of Civil Procedure (HRCP) requires that the Hawai'i Rules of Civil Procedure "shall apply to any proceedings in a circuit court pursuant to appeal to the circuit court from a governmental official or body (other than a court), except as otherwise provided in Rule 72."

1995) ("We conclude . . . that the requirements for appealability set forth in Jenkins apply to appeals from circuit court orders deciding appeals from orders entered by the Director of Labor and Industrial Relations."). Under the HRCP Rule 58 separate judgment document rule, "[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 HRCP [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i at 119, 869 P.2d at 1338. "If the circuit court intends that claims other than those listed in the judgment language should be dismissed, it must say so; for example, . . . 'all other claims, counterclaims, and cross-claims are dismissed.'" Id. at 120 n.4, 869 P.2d at 1339 n.4. "[A]n 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 HRCP [Rule] 54(b)." Id. at 119, 869 P.2d at 1338.

Through the January 4, 2008 judgment, the circuit court enters judgment in favor of Intervenor/Appellant/Appellee Linda Lingle and against Appellant UPW and Appellee HLRB, but the January 4, 2008 judgment neither enters judgment nor dismisses the administrative appeal as to the other remaining parties in the case. Although the January 4, 2008 judgment declares that "[n]o claims or parties remain[,]" the supreme court has

explained 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, . . . 'all other claims, counterclaims, and cross-claims are dismissed.'" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i at 120 n.4, 869 P.2d at 1339 n.4. The January 4, 2008 judgement does not, on its face, utilize operative language to resolve the administrative appeal as to all of the parties in the case, nor does the January 4, 2008 judgment contain the finding necessary for certification under HRCF [Rule] 54(b). Therefore, the January 4, 2008 judgment is not an appealable final judgment.

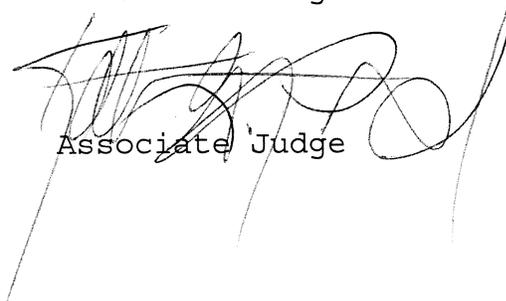
Absent an appealable final judgment, Appellant UPW's appeal is premature and we lack jurisdiction. Therefore,

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

DATED: Honolulu, Hawai'i, June 2, 2008.


Daniel R. Foley
Presiding Judge


Craig W. Nakamura
Associate Judge


Associate Judge