

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 28972

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

WILLARD MAX IMAMOTO, Plaintiff-Appellant,

v.

UNIVERSITY OF HAWAII, DAVID MCCLAIN,
JAMES GAINES, CARL WILLIAM VOGEL, GILLIAN SASAKI,
ROY TAKEKAWA, MARK TOLES, DR. NOLEEN ANDRADE, ALLEN CATTS,
DR. PETER GARRETT, DR. DENIS MEE LEE, DR. JAMES W. PEARCE,
DR. KUO, and JAY MADDOCK, Defendants-Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 07-1-1266)

ORDER DISMISSING APPEAL
FOR LACK OF APPELLATE JURISDICTION

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

Upon review of the record in this case, it appears that we lack jurisdiction over the appeal that Plaintiff-Appellant Willard Max Imamoto (Appellant Imamoto) asserted from the Honorable Bert I. Ayabe's January 4, 2008 "Order Granting Defendants University of Hawaii, David McClain, James Gaines, Carl-Wilhelm Vogel and Naleen Andrade's Motion to Dismiss Complaint" (the January 4, 2008 dismissal order), because the circuit court has not yet entered an appealable final judgment in this case.

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2007) authorizes appeals to the intermediate court of appeals from "final judgments, orders, or decrees[.]" (Emphasis added). Appeals under HRS § 641-1 (1993 & Supp. 2007) "shall be taken in the manner . . . provided by the rules of the court." HRS § 641-1(c) (1993 & Supp. 2007). Rule 58 of the Hawaii Rules of Civil Procedure (HRCP) requires that "[e]very judgment shall be set forth on a separate document." HRCP Rule 58. Based on this

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CLERK, APPELLATE COURTS
STATE OF HAWAII

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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 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). 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). The circuit court has not yet entered a final judgment in this case, and, thus, the January 4, 2008 dismissal order is not an appealable final order.

Absent an appealable final judgment, Appellant Imamoto'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 9, 2008.

Mano A. Delgado
Chief Judge

Corinne K. A. Watanelle
Associate Judge

Craig H. Nakamura
Associate Judge