

NO. 29169

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

KEITH ELLIS MURAUSKAS, Plaintiff-Appellant,
ELLEN LAVERNE GUSMAN, Defendant-Appellee.

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIV. NO. 07-1-1659)

ORDER DENYING THE NOVEMBER 17, 2008
MOTION TO GRANT ADDITIONAL TIME TO FILE
AN HRAP RULE 40 MOTION FOR RECONSIDERATION
(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon review of (1) the October 30, 2008 order dismissing this appeal for lack of jurisdiction, (2) Plaintiff-Appellant Keith Murauskas's (Appellant Murauskas) November 17, 2008 motion to grant additional time to file a motion for reconsideration of the October 30, 2008 order of dismissal pursuant to Rule 40 of the Hawai'i Rules of Appellate Procedure (HRAP), and (3) the record, it appears that Appellant Murauskas's November 17, 2008 HRAP Rule 40 motion lacks merit.

It appears that Appellant Murauskas, as a pro se prisoner, tendered his November 17, 2008 HRAP Rule 40 motion to prison officials for mailing on November 10, 2008. Therefore, we initially note that Appellant Murauskas's November 17, 2008 HRAP Rule 40 motion appears to be timely pursuant to HRAP Rule 40(a) and the holding in Setala v. J.C. Penney Company, 97 Hawai'i 484, 485, 40 P.3d 886, 887 (2002).

However, Appellant Murauskas's November 17, 2008 HRAP Rule 40 motion lacks merit. As already explained in the October 30, 2008 order of dismissal, 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

Hawai'i Rules of Civil Procedure (HRCP) requires that "[e]very judgment shall be set forth on a separate document.". Based on this requirement, 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).

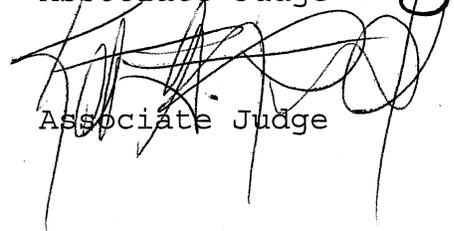
The appellate court clerk filed the record on appeal for this case on July 18, 2008, at which time the record on appeal did not contain an appealable final judgment. Therefore, on October 30, 2008, we correctly dismissed Appellant Murauskas's appeal for lack of appellate jurisdiction. Accordingly,

IT IS HEREBY ORDERED that Appellant Murauskas's November 17, 2008 HRAP Rule 40 motion is denied.

DATED: Honolulu, Hawai'i, November 21, 2008.


Daniel R. Foley
Presiding Judge


Associate Judge


Associate Judge