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K. HAMAKADO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

NO. 29169

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAIIKEITH ELLIS MURAUSKAS, Plaintiff-Appellant, v.  
ELLEN LAVERNE GUSMAN, Defendant-Appellee.APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIV. NO. 07-1-1659)ORDER DENYING PLAINTIFF-APPELLANT KEITH MURAUSKAS'S  
DECEMBER 17, 2008 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), (3) the November 21, 2008 order denying Appellant Murauskas's November 17, 2008 motion to grant additional time to file a motion for reconsideration of the October 30, 2008 order of dismissal pursuant to HRAP Rule 40, (4) Appellant Murauskas's December 17, 2008 HRAP Rule 40 motion for reconsideration of the October 30, 2008 order of dismissal, and (5) the record, it appears that Appellant Murauskas's December 17, 2008 HRAP Rule 40 motion for reconsideration of the October 30, 2008 order of dismissal is untimely, unauthorized, and without merit.

Appellant Murauskas did not file his December 17, 2008 HRAP Rule 40 motion for reconsideration within ten days after the filing of the October 30, 2008 order of dismissal, as HRAP

Rule 40(a) requires. Therefore, Appellant Murauskas's December 17, 2008 HRAP Rule 40 motion for reconsideration of the October 30, 2008 order of dismissal is untimely.

HRAP Rule 40(e) authorizes only one motion for reconsideration. We have already denied Appellant Murauskas's November 17, 2008 motion to grant additional time to file a motion for reconsideration of the October 30, 2008 order of dismissal pursuant to HRAP Rule 40. Appellant Murauskas's December 17, 2008 HRAP Rule 40 motion for reconsideration of the October 30, 2008 order of dismissal is, in effect, a second HRAP Rule 40 motion for reconsideration. Therefore, HRAP Rule 40 does not authorize Appellant Murauskas's December 17, 2008 HRAP Rule 40 motion for reconsideration of the October 30, 2008 order of dismissal.

Finally, Appellant Murauskas's December 17, 2008 HRAP Rule 40 motion for reconsideration of the October 30, 2008 order of dismissal 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 "shall be taken in the manner . . . provided by the rules of the court." HRS § 641-1(c). Rule 58 of the Hawai'i Rules of Civil Procedure (HRCPP) 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).

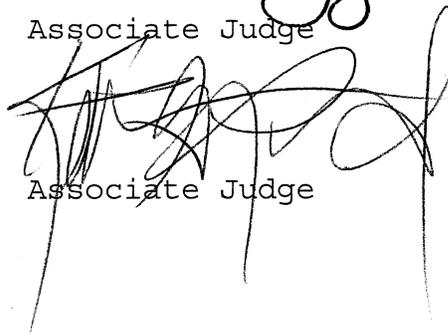
The appellate court clerk filed the record on appeal for this case on July 18, 2008, at which time the record on appeal did not contain an appealable final judgment. Therefore, on October 30, 2008, we correctly dismissed Appellant Murauskas's appeal for lack of appellate jurisdiction. Accordingly,

IT IS HEREBY ORDERED that Appellant Murauskas's December 17, 2008 HRAP Rule 40 motion for reconsideration of the October 30, 2008 order of dismissal is denied.

DATED: Honolulu, Hawai'i, December 23, 2008.

  
Daniel R. Foley  
Presiding Judge

  
Associate Judge

  
Associate Judge