

NO. 29184

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

IN THE MATTER OF THE GUARDIANSHIP OF EDITH M. CARLSMITH,  
Incapacitated Person

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT  
(FC-G NO. 03-1-0350)

ORDER DISMISSING APPEAL  
FOR LACK OF APPELLATE JURISDICTION  
(By: Recktenwald, C.J., Foley and Fujise, JJ.)

NORMA T. YARRA  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

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FILED

Upon review of the record for this case, it appears that we lack jurisdiction over the appeal that Respondent-Appellant Carl Duane Carlsmith (Appellant Duane Carlsmith) has asserted from the following three orders that Honorable Karen M. Radius has entered:

- (1) a May 2, 2008 "Order Denying Duane Carlsmith's Motion to Vacate (or, Alternatively, to Modify) Contempt Order, Bench Warrant, and Monetary Fines on Grounds They Are Void, Filed October 8, 2007";
- (2) a May 2, 2008 "Order Denying in Part and Granting in Part Duane Carlsmith's Motion to Dismiss Guardianship Case, Vacate Temporary Restraining Order, and Vacate Sanctions and Bench Warrant Issued Against Him on Grounds of Mootness, Filed October 8, 2007"; and
- (3) a January 23, 2004 "Order re Orders to Show Cause Filed December 11, 2003" that describes the rate at which a civil contempt fine could accrue against Appellant Duane Carlsmith.

As explained below, none of these three interlocutory orders is appealable under Hawaii Revised Statutes (HRS) § 571-54 (2006).

In family court cases "[a]n interested party aggrieved by any order or decree of the court may appeal to the intermediate appellate court for review of questions of law and fact upon the same terms and conditions as in other cases in the

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circuit court[.]" HRS § 571-54 (2006). HRS § 641-1(a) (1993 & Supp. 2007) authorizes appeals in circuit court cases from "final judgments, orders, or decrees[.]" 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). The supreme court has promulgated Rule 34 of the Hawai'i Probate Rules, which provides the manner in which an appeal is taken from a guardianship proceeding:

RULE 34. ENTRY OF JUDGMENT, INTERLOCUTORY ORDERS, APPEALS

(a) Entry of Judgment. All formal testacy orders, orders of intestacy and determination of heirs, orders establishing conservatorship and/or guardianship, and orders establishing protective arrangements shall be reduced to judgment and the judgment shall be filed with the clerk of the court. Such judgments shall be final and immediately appealable as provided by statute. Any other order that fully addresses all claims raised in a petition to which it relates, but that does not finally end the proceeding, may be certified for appeal in the manner provided by Rule 54(b) of the Hawai'i Rules of Civil Procedure.

(b) Interlocutory Orders. In order to appeal from any other order prior to the conclusion of the proceeding, the order must be certified for appeal in accordance with Section 641-1(b) of the Hawai'i Revised Statutes.

(c) Final Judgment Closing Proceeding. At the conclusion of the proceeding, a final judgment closing the proceeding shall be entered and filed with the clerk of the court, at which time all prior uncertified interlocutory orders shall become immediately appealable.

(d) Appeals. Final judgments as to all claims and parties, certified judgments, certified orders, and other orders appealable as provided by law may be appealed pursuant to the Hawai'i Rules of Appellate Procedure applicable to civil actions.

HPR Rule 34 (emphasis added).

The family court has not entered a final judgment pursuant to HPR Rule 34, nor has the family court certified any of the appealed orders for an appeal in the manner provided by Rule 54(b) of the Hawai'i Rules of Civil Procedure (HRCP) or HRS § 641-1(b) (1993 & Supp. 2007). None of the three appealed

orders fits within the classes of appealable orders under HPR Rule 34. Therefore, none of the appealed orders are eligible for appellate review.

The supreme court has held that an interlocutory sanction order satisfied the three requirements for appealability under the "collateral order doctrine" where "the order directed payment of the assessed sum and was immediately enforceable through contempt proceedings." Harada v. Ellis, 60 Haw. 467, 480, 591 P.2d 1060, 1070 (1979). However, the supreme court has further held that, where an interlocutory sanction order against a party does not specify the exact amount of the sanction, the interlocutory sanction order "fails to satisfy the strict prerequisites of the collateral order doctrine," and thus, "is not a final appealable order." Siangco v. Kasadate, 77 Hawai'i 157, 162, 883 P.2d 78, 83 (1994). The collateral order doctrine has three requirements:

In order to fall within the narrow ambit of the collateral order doctrine, the order must] [1] conclusively determine the disputed question, [2] resolve an important issue completely separate from the merits of the action, and [3] be effectively unreviewable on appeal from a final judgment.

Id. at 161, 883 P.2d at 82 (citations and internal quotation marks omitted; brackets in original). The sanction order in Siangco failed to satisfy all three requirements of the collateral order doctrine:

First, the circuit court's order did not fully and finally dispose of the sanctions issue because it did not specify the amount of the Siangcos' attorney's fees that Kasadate would have to pay, but merely identified in general terms the

activities that would be reimbursable. Because the circuit court will have to revisit the issue to set the exact amount of the fees owed the Siangcos, the sanctions order is interlocutory. . . .

Second, we see no reason why Kasadate would be unable to obtain effective review of the sanctions order following entry of the final judgment in this case. . . .

The sanctions in this case were imposed against Kasadate. As an aggrieved party, he can obtain review of the sanctions order by appealing from the final judgment. . . . Thus, in our view, postponing consideration of the order until after final judgment will not jeopardize Kasadate's right to effective review on appeal.

Id. (citations omitted; emphases added).

Similarly in the instant case, none of the three appealed orders specifies the exact amount of the total civil contempt sanction fine that Appellant Duane Carlsmith owes. In the January 23, 2004 civil contempt sanction order,<sup>1</sup> the family court merely provides the rate at which the family court might sanction Appellant Duane Carlsmith (i.e., \$10,000.00 for each day of noncompliance with the family court's orders), but the January 23, 2004 civil contempt sanction order does not set and

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<sup>1</sup> With respect to the January 23, 2004 "Order re Orders to Show Cause Filed December 11, 2003" (the January 23, 2004 civil contempt sanction order), in the parties' previous appellate case number 27569, the supreme court specifically referred to several interlocutory orders, including the "January 23, 2004 Order re: Orders to Show Cause Filed December 11, 2003 finding Respondents in civil contempt of court[,] "In re Guardianship of Carlsmith, 113 Hawai'i 211, 222, 151 P.3d 692, 703 (2006) (as amended on January 24, 2007), when the supreme court explained that "[n]one of these orders fit within the classes of appealable orders under HPR Rule 34 and HRS § 641-1(b)." Id. at 223, 151 P.3d at 704. Assuming, arguendo, the January 23, 2004 civil contempt sanction order was appealable, Appellant Duane Carlsmith did not file his May 30, 2008 notice of appeal within thirty days after entry of the January 23, 2004 civil contempt sanction order, as Rule 4(a)(1) of the Hawaii Rules of Appellate Procedure (HRAP) requires for a timely appeal. Therefore, Appellant Duane Carlsmith cannot appeal directly from the January 23, 2008 civil contempt sanction order.

impose an exact total amount of a civil contempt sanction fine against Appellant Duane Carlsmith. The two May 2, 2008 orders deny Appellant Duane Carlsmith's request to set aside the January 23, 2004 civil contempt sanction order, but they do not set and impose an exact total amount of a civil contempt sanction fine against Appellant Duane Carlsmith. Consequently, the family court will have to revisit the issue in order to set the exact total amount of the civil contempt sanction fine against Appellant Duane Carlsmith. None of the appealed orders conclusively determines and resolves the collateral issue of the civil contempt sanction fine against Appellant Duane Carlsmith. Furthermore, because the family court has not yet set the exact total amount of the civil contempt sanction fine, Appellant Duane Carlsmith has suffered no irreparable harm, and when the family court eventually enters a final judgment pursuant to HPR Rule 34, Appellant Duane Carlsmith, "[a]s an aggrieved party, . . . can obtain review of the sanctions order by appealing from the final judgment." Siangco, 77 Hawai'i at 161, 883 P.2d at 82; cf. Ueoka v Szymanski, 107 Hawai'i 386, 396, 114 P.3d 892, 902 (2005) ("An appeal from a final judgment brings up for review all interlocutory orders not appealable directly as of right which deal with issues in the case.") (Citation and internal quotation marks omitted). Therefore, the collateral order doctrine does not apply to the three appealed orders.

Absent an appealable order or judgment, this appeal is premature and must be dismissed for lack of appellate jurisdiction. Accordingly,

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

DATED: Honolulu, Hawai'i, October 29, 2008.

*Mun Reed*

Chief Judge

*Daniel R. Foley*

Associate Judge

*Alexander M. Zimm*

Associate Judge