

NO. 29190

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

ALEXANDER & BALDWIN, Plaintiff-Appellee,

v.

HEIRS and/or Assigns of MAIKAULA,  
HEIRS and/or Assigns of PAUPAU,  
HEIRS and/or Assigns of ALULILILII,  
HEIRS and/or Assigns of MIRIAM ILALAOLE,  
HEIRS and/or Assigns of KAANE,  
HEIRS and/or Assigns of KINOULU,  
HEIRS and/or Assigns of KAMAI,  
HEIRS and/or Assigns of KEALOHA KAUAHALELAU,  
HEIRS and/or Assigns of JOHN PAKA;  
and ALL WHOM IT MAY CONCERN, Defendants-Appellees,

and

PALANI VAUGHAN, JR., Defendant-Appellant.

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT  
(CIVIL NO. 05-1-0105)

ORDER DENYING PLAINTIFF-APPELLEE

ALEXANDER & BALDWIN, INC'S, JULY 28, 2008 MOTION TO DISMISS

(By: Watanabe, Presiding Judge, Foley and Fujise, JJ.)

Upon review of (1) Plaintiff-Appellee Alexander & Baldwin, Inc.'s (Appellee Alexander & Baldwin), July 28, 2008 motion to dismiss Defendant-Appellant Palani Vaughan, Jr.'s (Appellant Vaughan) appeal from the Honorable Kathleen N. A. Watanabe's June 3, 2008 final judgment, (2) Appellant Vaughan's lack of written opposition to Appellee Alexander & Baldwin's July 28, 2008 motion to dismiss, and (3) the record, we decline to grant Appellee Alexander & Baldwin's July 28, 2008 motion to dismiss the appeal.

It appears that Appellant Vaughan has attempted to assert an appeal by way of a letter, dated May 22, 2008, from Appellant Vaughan to the Honorable Kathleen N. A. Watanabe, in which Appellant Vaughan purports to assert a "motion" for an

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appeal from the circuit court's summary judgment ruling that resulted in the entry of the June 3, 2008 judgment. Appellee Alexander & Baldwin argues that Appellant Vaughan's May 22, 2008 letter was not sufficient to invoke appellate jurisdiction because Appellant Vaughan

- filed the May 22, 2008 letter prior to entry of the June 3, 2008 judgment,
- did not entitle that May 22, 2008 letter as a "notice of appeal," and
- did not comply with the requirements under Rule 3(c) of the Hawai'i Rules of Appellate Procedure (HRAP) for a notice of appeal.

With respect to the timing of the appeal, Hawai'i Rule of Appellate Procedure (HRAP) Rule 4(a)(2) authorizes a premature notice of appeal under the circumstances in this case. With respect to the formal requirements of a notice of appeal, HRAP Rule 3(c)(2) states that "[a]n appeal shall not be dismissed for informality of form or title of the notice of appeal." HRAP Rule 3(c)(2) (emphasis added). Hawai'i appellate courts have generally held that, "a mistake in designating the judgment . . . should not result in [the] loss of the appeal as long as the intention to appeal from a specific judgment can be fairly inferred from the notice and the appellee is not misled by the mistake." State v. Graybeard, 93 Hawai'i 513, 516, 6 P.3d 385, 388 (App. 2000) (internal quotation marks omitted) (quoting City & County v. Midkiff, 57 Haw. 273, 275-76, 554 P.2d 233, 235 (1976) (quoting 9 Moore's Federal Practice § 203.18 (1975))); City & County v. Midkiff, 57 Haw. 273, 275-76, 554 P.2d 233, 235 (1976); Ek v. Boggs, 102 Hawai'i 289, 294, 75 P.3d 1180, 1185 (2003); In re Brandon, 113 Hawai'i 154, 155, 149 P.3d 806, 807 (App. 2006); contra Chun v. Board of Trustees of the Employees' Retirement System of the State of Hawai'i, 92 Hawai'i 432, 448, 992 P.2d 127, 143 (2000). Although Appellant Vaughan's May 22, 2008 letter was not entitled "notice of appeal," the Supreme

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Court of Hawai'i has held that a motion for leave to appeal in forma pauperis constituted a "notice of appeal":

The filing of the motion for leave to appeal in forma pauperis in the present case satisfied the requirement of a notice of appeal by putting both the trial court and the opposing party on notice of Appellant's intent to appeal. The fact that the notice of appeal was not in a more conventional form is not shown to have prejudiced Appellee in any way. Indeed, the parties and the trial court, by proceeding with the motion for leave to appeal in forma pauperis, demonstrated their mutual assumption that Appellant's right of appeal had not been foreclosed. Our present determination merely confirms this.

Kalauli v. Lum, 57 Haw. 168, 170, 552 P.2d 355, 356 (1976); see also State v. Erwin, 57 Haw. 268, 269, 554 P.2d 236, 237-38 (1976) (Where an appellant failed to file a document entitled "notice of appeal" in a criminal case, the appellant's "motion for leave to appeal in forma pauperis and the [appellant's] motion to enlarge time for filing notice of appeal . . . fulfilled the requirements of the form of a notice of appeal . . . and would constitute notices of appeal[.]"). In light of the foregoing authorities, we decline to dismiss Appellant Vaughan's appeal based on the purported insufficiency of Appellant Vaughan's notice of appeal. Therefore,

IT IS HEREBY ORDERED that Appellee Alexander & Baldwin's July 28, 2008 motion to dismiss this appeal is denied.

DATED: Honolulu, Hawai'i, August 13, 2008.

*Corinne K.A. Watanabe*

Presiding Judge

*Daniel R. Foley*

Associate Judge

*Alexander M. Quinn*

Associate Judge