

NO. 29214

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

JOSEPH A. SYLVESTER and FRANCES LEE MOREY-SYLVESTER  
Plaintiffs-Appellees,

v.

TINA YOUNG, Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF THE FIFTH CIRCUIT  
(CIVIL NO. RC-KO-03-1-0030)

ORDER DISMISSING APPEAL  
FOR LACK OF APPELLATE JURISDICTION  
(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon review of the record, it appears that we do not have jurisdiction over the appeal that Defendant-Appellant Tina Young (Appellant Young) has asserted from the Honorable Trudy Senda's May 19, 2008 oral announcement denying Appellant Young's May 5, 2008 motion to set aside and vacate the October 12, 2004 judgment in favor of Plaintiffs-Appellees Joseph A. Sylvester and Frances Lee Morey-Sylvester pursuant to Rule 60(b) of the District Court Rules of Civil Procedure (DCRCP).

Pursuant to Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2007),

appeals are allowed in civil matters from all final judgments, orders, or decrees of circuit and district courts. In district court cases, a judgment includes any order from which an appeal lies. A final order means an order ending the proceeding, leaving nothing further to be accomplished. When a written judgment, order, or decree ends the litigation by fully deciding all rights and liabilities of all parties, leaving nothing further to be adjudicated, the judgment, order, or decree is final and appealable.

Casumpang v. ILWU, Local 142, 91 Hawai'i 425, 426, 984 P.2d 1251, 1252 (1999) (citations, internal quotation marks, and footnote omitted) (emphases added). The separate judgment document rule under Rule 58 of the Hawai'i Rules of Appellate Procedure (HRCP)

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and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 869 P.2d 1334 (1994) is

not applicable to district court cases. Consequently, an order that fully disposes of an action in the district court may be final and appealable without the entry of judgment on a separate document, as long as the appealed order ends the litigation by fully deciding the rights and liabilities of all parties and leaves nothing further to be adjudicated.

Casumpang v. ILWU, Local 142, 91 Hawai'i at 427, 984 P.2d at 1253 (emphases added). Appellant Young is appealing from the district court's post-judgment adjudication of Appellant Young's May 5, 2008 DCRCP Rule 60(b) motion to set aside and vacate the October 12, 2008 judgment. "A post-judgment order is an appealable final order under HRS § 641-1(a) if the order ends the proceedings, leaving nothing further to be accomplished." Ditto v. McCurdy, 103 Hawai'i 153, 157, 80 P.3d 974, 978 (2003) (citation omitted). For example, under analogous circumstances in civil circuit court cases, "[a]n order denying a motion for post-judgment relief under HRCP [Rule] 60(b) is an appealable final order under HRS § 641-1(a)." Ditto v. McCurdy, 103 Hawai'i at 160, 80 P.3d at 981 (citation omitted). Similarly in civil district court cases, an order denying a motion for post-judgment relief under DCRCP Rule 60(b) is an appealable final order under HRS § 641-1(a).

However, the district court has not yet entered a written order that reflects the district court's announcement that the district court intends to deny Appellant Young's May 5, 2008 DCRCP Rule 60(b) motion to set aside and vacate the October 12, 2004 judgment. Under the Hawai'i Rules of Appellate Procedure (HRAP), an order of a trial court is not "entered," for the purpose of an appeal, until "it is filed in the office of the

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clerk of the court." HRAP Rule 4(a)(5). Therefore, Appellant Young's appeal is premature.

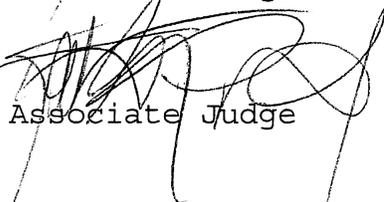
Absent a written order that finally determines Appellant Young's May 5, 2008 DCRCP Rule 60(b) motion to set aside and vacate the October 12, 2008 judgment, we lack appellate jurisdiction under HRS § 641-1(a). Accordingly,

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

DATED: Honolulu, Hawai'i, October 16, 2008.

  
Presiding Judge

  
Associate Judge

  
Associate Judge