

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29227

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

DAVID KERSH, Plaintiff-Appellant,

v.

FRANCIS T. O'BRIEN and RANDALL Y.K. CHAR,  
Jointly and severally, Defendants-AppelleesAPPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIV. NO. 06-1-2208)NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2008 SEP 29 PM 12:01

FILED

ORDER GRANTING SEPTEMBER 17, 2008 MOTION TO DISMISS APPEAL  
(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon review of (1) Defendants-Appellees Francis T. O'Brien and Randall Y. K. Char's (Appellees O'Brien and Char) September 17, 2008 motion to dismiss this appeal for lack of appellate jurisdiction, and (2) the record in this case, it appears that we lack jurisdiction over Plaintiff-Appellant David Kersh's (Appellant Kersh) appeal from the Honorable Victoria S. Marks's June 26, 2008 "Order Granting Plaintiff's Motion to Set Aside Dismissal of Case for Alleged Non-Payment of Fee and Granting Defendants' Motions to Dismiss and/or for Summary Judgment" (the June 26, 2008 dismissal order), because the circuit court has not yet reduced the June 26, 2008 dismissal order to a separate judgment.

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 under HRCPP Rule 58, 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 HRCPP [Rule] 58[.]" Jenkins v. Cades Schutte Fleming

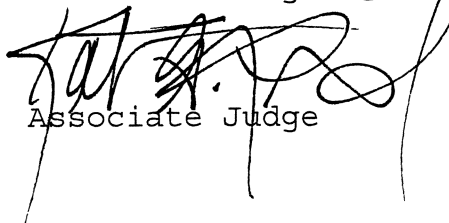
& Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). "An appeal from an order that is not reduced to a judgment in favor or against the party by the time the record is filed in the supreme court will be dismissed." Id. at 120, 869 P.2d at 1339 (footnote omitted). Consequently, "an order disposing of a circuit court case is appealable when the order is reduced to a separate judgment." Alford v. City and Count of Honolulu, 109 Hawai'i 14, 20, 122 P.3d 809, 815 (2005) (citation omitted). For example, the supreme court has held that, "[a]lthough RCCH [Rule] 12(q) [(regarding dismissal for want of prosecution)] does not mention the necessity of filing a separate document, HRCF [Rule] 58, as amended in 1990, expressly requires that 'every judgment be set forth on a separate document.'" Price v. Obayashi Hawaii Corporation, 81 Hawai'i 171, 176, 914 P.2d 1364, 1369 (1996). The circuit court has not yet entered a final judgment in this case, and, thus, the June 26, 2008 dismissal order is not eligible for appellate review. Absent an appealable final judgment, Appellant Kersh's appeal is premature and we lack jurisdiction. Therefore,

IT IS HEREBY ORDERED that Appellees O'Brien and Char's September 17, 2008 motion to dismiss this appeal is granted, and this appeal is dismissed for lack of appellate jurisdiction.

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

  
Presiding Judge

  
Associate Judge

  
Associate Judge