

NO. 29267

2008 NOV 18 PM 12:51

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

*Jean Kikumoto*  
~~NORMA T. YARA~~  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

KEOLA CHILDS, Trustee under that  
certain unrecorded Revocable Trust of Keola Childs,  
PHILLIP L. WATSON, III, CLARE H. WILSON and DOUGLAS D. TROXEL,  
Trustee of the Douglas D. Troxel Living Trust,  
Plaintiffs-Appellants,

v.

ALAN J. HARADA, WALTER HARADA,  
and KAREN FUKE, Co-Trustees under that  
certain Trust made by Junichiro Harada,  
dated April 21, 1981, MIKIE HARADA, et al.,  
Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT  
(CIVIL NO. 05-1-0122K)

ORDER DISMISSING APPEAL

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

Upon review of the record for this case, it appears that we lack jurisdiction over the appeal that Plaintiffs/Counterclaim-Defendants/Appellants Keola Childs, Trustee under that Certain unrecorded Revocable trust of Keola Childs, Philip L. Wilson III, Clare H. Wilson, and Douglas D. Troxel, Trustee of the Douglas D. Troxel Living Trust, have asserted from the Honorable Elizabeth A. Strance's June 16, 2008 "Findings of Fact, Conclusions of Law, and Order Granting Defendants Okayama's Motion for Summary Judgment Filed on 2/25/08" (the June 16, 2008 summary judgment order), because the circuit court has not reduced the June 16, 2008 summary judgment order to a separate judgment.

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2007) authorizes appeals 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). Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP) requires that "[e]very judgment shall be set forth on a separate document." Based on the separate document

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requirement under HRCF 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 HRCF [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 of 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.

The June 16, 2008 summary judgment order is not a judgment, but rather, the June 16, 2008 summary judgment order is an interlocutory order that resolves some of the parties' claims. Although the June 16, 2008 summary judgment order contains an express finding of no just reason for delay in the entry of a judgment pursuant to HRCF Rule 54(b), "a party cannot appeal from a circuit court order even though the order may contain [HRCF Rule] 54(b) certification language; the order must be reduced to a judgment and the [HRCF Rule] 54(b) certification language must be contained therein." Oppenheimer v. AIG Hawaii Ins. Co., 77 Hawai'i 88, 93, 881 P.2d 1234, 1239 (1994).

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

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

DATED: Honolulu, Hawai'i, November 18, 2008.

  
Daniel R. Foley  
Presiding Judge

  
Aunua Olu Fijina  
Associate Judge

  
Associate Judge