

NO. 28907

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

HERMAN LEE KAOPUA, SR., Petitioner-Appellant
v.
STATE OF HAWAI'I, Respondent-Appellee

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2009 JAN 26 AM 9:35

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT
(S.P.P. NO. 06-1-0001 (FC-Cr. No. 01-1-0185))

ORDER DISMISSING APPEAL

(By: Recktenwald, C.J., Foley and Nakamura, JJ.)

Petitioner-Appellant Herman Lee Kaopua, Sr. (Kaopua) appeals from the "Order Denying Petitioner's Request for a Judgment by Default Filed on 10/23/07" filed on November 14, 2007 in the Circuit Court of the Fifth Circuit (circuit court).¹

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, this court lacks jurisdiction because there is no final appealable order or judgment.

Kaopua's Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner From Custody, filed on January 20, 2006, and Amend[ed] Petition to Set Aside or Correct Judgment or Release Petitioner From Custody, filed on February 27, 2006, were decided on November 24, 2006 by the Findings of Fact; Conclusions of Law; Order Denying Petitioner

¹ The Honorable Kathleen N.A. Watanabe presided.

Herman Kaopua, Sr.'s Rule 40 HRPP, Petition for Post-Conviction Relief (FOF/COL/Order) and became final on December 26, 2006.²

On July 11, 2007, Kaopua filed an Amendment Petition for Post-Conviction Relief Rule 40(e) HRPP (July 2007 Petition), which is a separate petition because his previous petitions could not be amended after the FOF/COL/Order became final.

On October 23, 2007, Kaopua filed a Default Rule 55(a)(e) HFCR and Rule 40(d) HRPP, in which Kaopua moved to default the family court for its failure to respond to and render judgment as to his July 2007 Petition. On November 14, 2007, the circuit court entered its Order Denying Petitioner's Request for a Judgment of Default Filed on 10/23/07. Kaopua filed a Notice of Appeal on December 19, 2007 that had a certificate of service dated December 4, 2007. Kaopua stated in his Notice of Appeal that he was appealing the "Order entered on November 14th, 2007."

"[A]n appeal from any judgment will be dismissed as premature if the judgment does not, on its face, either resolve all claims against all parties or contain the finding necessary for certification under HRCR 54(b)." Jenkins v. Cades Schutte, Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). The circuit court's denial of a default judgment is not a final order that disposes of the case. There is no final appealable order, and this court lacks appellate jurisdiction.

Therefore,

² December 24, 2006 fell on a Sunday, and Monday was Christmas Day and a holiday. Hawai'i Rules of Appellate Procedure Rule 26(a).

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

DATED: Honolulu, Hawai'i, January 26, 2009.

On the briefs:

Herman Lee Kaopua, Sr.
Petitioner-Appellant pro se.

Tracy Murakami,
Deputy Prosecuting Attorney,
County of Kauai
for Respondent-Appellee.



Chief Judge



Associate Judge



Associate Judge