

NO. 29394

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

GLADYS BOLES, HERK BOLTON, HARRIET S. BOLTON, KEVIN CAMPBELL,  
C. PAUL CHISENA, BERTHA B. CHISENA, LENA B. COOK, JEWELL COX,  
et al., for themselves and all others similarly situated,  
Plaintiffs-Appellees,

v.

CLYDE ENGLE, Defendant-Appellant,

and

NATIONAL DEVELOPMENT COMPANY, INC. and SUNSTATES CORPORATION,  
Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT  
(S.P. NO. 06-1-0078)

ORDER DISMISSING APPEAL  
FOR LACK OF APPELLATE JURISDICTION

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

Upon review of the record on appeal, it appears that we lack jurisdiction over Defendant-Appellant Clyde Engle's (Appellant Engle) appeal from the Honorable Joseph E. Cardoza's September 5, 2008 post-judgment "Order Granting, in Part, and Denying, in Part, Defendant/Judgment Debtor Clyde Engle's Motion for Finding of Compliance with Court's Examination and Discovery Orders and for Dismissal" (the September 5, 2008 post-judgment order).

This appeal arises out of a special proceeding that Plaintiffs-Appellees Gladys Boles, Herk Bolton, Harriet S. Bolton, Kevin Campbell, C. Paul Chisena, Bertha B. Chisena, Lena B. Cook, Jewell Cox, Ruth Cox, Steven W. Karks, W.D. Darks, Ruby Darks, Patricia K. Fuller, Joseph A. Fuller, Doug Gentile, Barbara Kenedy, Glennella Key, Thomas A. Krukow, Judith M. Krukow, Herman L. Rogers, Mary M. Rogers, James Waddey, Immogene Waddey, Don G. Ward, Bette M. Ward (the Appellees) initiated by filing an exemplified foreign judgment pursuant to Hawaii Revised Statutes (HRS) § 636C-3 (1993). Under these circumstances, the

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exemplified foreign judgment "has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a court of this State, including establishing a lien, and may be enforced or satisfied in like manner." HRS § 636C-3 (1993). Therefore, Appellant Engle is asserting an appeal from a post-judgment order. HRS § 641-1(a) (1993 & Supp. 2007) authorizes appeals from final judgments, orders, or decrees. "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). Although a separate judgment is usually necessary for appealability under HRS § 641-1(a) (1993 & Supp. 2007), HRCP Rule 58 and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994), "the separate judgment requirement articulated in Jenkins is inapposite in the post-judgment context." Ditto v. McCurdy, 103 Hawai'i at 158, 80 P.3d at 979. For example, "[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). "Correlatively, a[ post-judgment] order is not final [and appealable] if the rights of a party involved remain undetermined or if the matter is retained for further action." Id. at 157, 80 P.3d at 978 (citation and internal quotation marks omitted).

Appellant Engle seeks appellate review of several post-judgment orders by way of an appeal from a particular post-judgment order, namely, the September 5, 2008 post-judgment order, which granted in part and denied in part Appellant Engle's August 13, 2008 post-judgment motion for a finding of compliance with the circuit court's examination and discovery orders and for dismissal. However, the September 5, 2008 post-judgment order has not finally ended this particular post-judgment proceeding against Appellant Engle. In fact, the circuit court specifically notes in the September 5, 2008 post-judgment order that this post-judgment proceeding against Appellant Engle is not dismissed, and that nothing in the

September 5, 2008 post-judgment order shall be construed to prohibit the Appellees from pursuing further examinations and further discovery from Appellant Engle in this ongoing post-judgment proceeding. Furthermore, through a separate September 5, 2008 "Order Granting Plaintiffs' Motion to Set Trial Date," the circuit court has apparently scheduled this post-judgment proceeding for a trial on a future date, namely July 13, 2009. Although the September 5, 2008 post-judgment order appears to resolve some of the past discovery issues, the circuit court has indicated in the September 5, 2008 post-judgment order that further discovery is still possible. Under analogous circumstances in pretrial proceedings, the supreme court has specifically "h[e]ld that there is no appellate jurisdiction over interlocutory appeals from discovery orders[.]" Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 323, 966 P.2d 631, 635 (1998); State v. Ames, 71 Haw. 304, 306-07, 788 P.2d 1281, 1283 (1990) (holding that the State had no right to appeal interlocutory discovery orders). Appellant Engle may seek appellate review of interlocutory orders (such as the September 5, 2008 post-judgment order) within this particular post-judgment proceeding only when the circuit court enters a post-judgment order that finally determines this particular post-judgment proceeding.

Absent a post-judgment order that finally determines a particular post-judgment proceeding, Appellant Engle's appeal from the September 5, 2008 post-judgment order is premature, and, thus, we lack jurisdiction over this appeal.<sup>1</sup> Accordingly,

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<sup>1</sup> In the July 10, 2008 dismissal order in Appellant Engle's related appeal in appellate court case number 29095, the intermediate court of appeals has already explained why Appellant Engle's appeal from the October 19, 2007 "Order Denying Defendant Clyde Engle's Motion for Relief from Judgment and for a Stay of Proceedings" (the October 19, 2007 post-judgment order) and the March 5, 2008 "Order Denying Defendant Clyde Engle's Corrected Rules 59 and 60 Motion for Relief from Post-Judgment Order and For a Stay of Proceedings Pursuant to Rule 62 Filed on October 31, 2007" was not timely. Therefore, we need not repeat why Appellant Engle's appeal from these two particular post-judgment orders is not timely.

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

IT IS HEREBY ORDERED that this appeal in appellate court case number 29394 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, February 5, 2009.

*Courne KA Watanabe*

Presiding Judge

*Daniel R. Foley*

Associate Judge

*Ausa Olu Irija*

Associate Judge