

NO. 29428

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

CITY AND COUNTY OF HONOLULU, Plaintiff-Appellee, v.
JAMES M. SMITH and ROBERT H. LEE, Defendants-Appellants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 08-1-0192)

ORDER DISMISSING APPEAL
FOR LACK OF APPELLATE JURISDICTION
(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 Defendants-Appellees James M. Smith (Appellant Smith) and Robert H. Lee (Appellant Lee) have asserted from the Honorable Victoria S. Marks's September 22, 2008 "Order Regarding Joint Submission of Cross-Motions for Summary Judgment Filed July 28, 2008" (the September 22, 2008 summary judgment order) because the circuit court has not reduced the September 22, 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 requirement under HRCP 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 HRCP [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.

KHAMAKADO
CLERK, APPELLATE COURT
STATE OF HAWAII

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The September 22, 2008 summary judgment order is not a judgment, but rather, the September 22, 2008 summary judgment order is an interlocutory order that resolves Plaintiff-Appellee City and County of Honolulu's complaint for declaratory relief against Appellant Smith and Appellant Lee. On December 19, 2008, the appellate court clerk filed the record on appeal for appellate court case number 29428, at which time the record of appeal still did not include a separate judgment in favor of and against the appropriate parties pursuant to HRCF Rule 58.

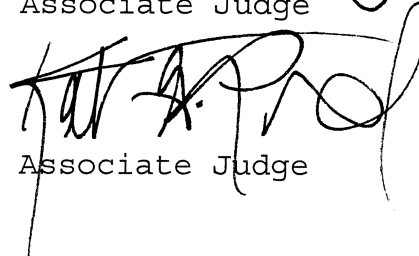
Absent an appealable final judgment, this appeal is premature and must be dismissed for lack of appellate jurisdiction.

Accordingly, IT IS HEREBY ORDERED that appellate court case number 29428 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, February 24, 2009.


Presiding Judge


Associate Judge


Associate Judge