

NO. 29431

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

IN THE MATTER OF THE PROTECTION OF THE
PROPERTY OF JANE DOE, An Incapacitated Person

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(GUARDIANSHIP NO. 95-0151)

ORDER DISMISSING APPEAL
FOR LACK OF APPELLATE JURISDICTION

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

Upon review of the record for this case, it appears that we lack jurisdiction over the appeal that Petitioner-Appellant Pepe Malepeai (Appellant Pepe Malepeai) has asserted from the Honorable Colleen K. Hirai's apparent denial of Appellant Pepe Malepeai's December 13, 2007 petition to terminate the guardianship of Jane Doe, because the probate court has not reduced its disposition of this petition to a separate, written judgment, as Rule 34(a) of the Hawaii Probate Rules (HPR) and Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & 2007) require for an appeal from the final disposition of a petition in a probate court guardianship proceeding.

HRS § 641-1(a) authorizes appeals in circuit court cases 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). The supreme court has promulgated HPR Rule 34, which provides the

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CLERK, APPELLATE COURT
STATE OF HAWAII

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manner in which an appeal is taken from the disposition of a petition in a guardianship proceeding:

RULE 34. ENTRY OF JUDGMENT, INTERLOCUTORY ORDERS, APPEALS

(a) Entry of Judgment. All formal testacy orders, orders of intestacy and determination of heirs, orders establishing conservatorship and/or guardianship, and orders establishing protective arrangements shall be reduced to judgment and the judgment shall be filed with the clerk of the court. Such judgments shall be final and immediately appealable as provided by statute. Any other order that fully addresses all claims raised in a petition to which it relates, but that does not finally end the proceeding, may be certified for appeal in the manner provided by Rule 54(b) of the Hawai'i Rules of Civil Procedure.

(b) Interlocutory Orders. In order to appeal from any other order prior to the conclusion of the proceeding, the order must be certified for appeal in accordance with Section 641-1(b) of the Hawai'i Revised Statutes.

(c) Final Judgment Closing Proceeding. At the conclusion of the proceeding, a final judgment closing the proceeding shall be entered and filed with the clerk of the court, at which time all prior uncertified interlocutory orders shall become immediately appealable.

(d) Appeals. Final judgments as to all claims and parties, certified judgments, certified orders, and other orders appealable as provided by law may be appealed pursuant to the Hawai'i Rules of Appellate Procedure applicable to civil actions.

HPR Rule 34 (emphases added).

Although the probate court appears to have issued minutes on September 5, 2008, that explain that the probate court denied Appellant Pepe Malepeai's December 13, 2007 petition to terminate the guardianship of Jane Doe, and, thus, ended the proceeding for that particular petition, the supreme court has noted under analogous circumstances that "a minute order is not an appealable order." Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 321 n.3, 966 P.2d 631, 633 n.3 (1998) (emphasis added). More importantly, however, Appellant

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Pepe Malepeai's appeal from the probate court's disposition of Appellant Pepe Malepeai's December 13, 2007 petition is premature because the probate court has not reduced the probate court's disposition of Appellant Pepe Malepeai's December 13, 2007 petition to a separate, final judgment that is certified in the manner provided by Rule 54(b) of the Hawai'i Rules of Civil Procedure (HRCP), as HPR Rule 34(a) requires.

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

IT IS HEREBY ORDERED that this appeal in appellate court case number 29431 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, February 18, 2009.


Presiding Judge


Associate Judge


Associate Judge