

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 29451

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'IHOWARD HOFELICH dba H ISABELLE MCGARRY TRUST MARCH 19, 1971,
Plaintiff-Appellant,

v.

STATE OF HAWAI'I, et al., Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 07-1-0133K)ORDER DISMISSING APPEAL
FOR LACK OF APPELLATE JURISDICTION
(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon review of the record, it appears that we lack jurisdiction over this appeal that Plaintiff-Appellant Howard Hofelich dba H. Isabelle McGarry Trust of March 19, 1971 (Appellant Hofelich) has asserted from the Honorable Elizabeth A. Strance's October 7, 2008 "AMENDED ORDER GRANTING DEFENDANT STATE OF CALIFORNIA'S MOTION TO DISMISS SEPTEMBER 28, 2007 and ENTRY OF FINAL JUDGMENT IN FAVOR OF THE STATE OF CALIFORNIA" (the October 7, 2008 amended dismissal order) because the circuit court has not reduced the October 7, 2008 amended dismissal order to a separate judgment document, as Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP) requires under the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

Hawaii Revised Statutes (HRS) HRS § 641-1(a) (1993 & Supp. 2007) authorizes appeals to the intermediate court of appeals from "final judgments, orders, or decrees[.]" (Emphasis added). 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 of Hawai'i has promulgated HRCP Rule 58, which specifically requires that "[e]very judgment shall be set forth on a separate document." (Emphasis added). Based on this requirement, the Supreme Court of Hawai'i has held that "[a]n appeal may be taken . . . only after the orders have been

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reduced to a judgment and the judgment has been entered in favor of and against the appropriate parties pursuant to HRCP [Rule] 58[.]" Jenkins, 76 Hawai'i at 119, 869 P.2d at 1338. The separate judgment must "either resolve all claims against all parties or contain the finding necessary for certification under HRCP [Rule] 54(b)." Id. "An appeal from an order that is not reduced to a judgment in favor 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 (footnote omitted). Consequently, "an order disposing of a circuit court case is appealable when the order is reduced to a separate judgment." Alford v. City and Count of Honolulu, 109 Hawai'i 14, 20, 122 P.3d 809, 815 (2005) (citation omitted) (emphasis added). For example, the Supreme Court of Hawai'i has explained that, "[a]lthough RCCH [Rule] 12(q) [(regarding dismissal for want of prosecution)] does not mention the necessity of filing a separate document, HRCP [Rule] 58, as amended in 1990, expressly requires that 'every judgment be set forth on a separate document.'" Price v. Obayashi Hawaii Corporation, 81 Hawai'i 171, 176, 914 P.2d 1364, 1369 (1996) (Emphasis added).

In the instant case, the October 7, 2008 amended dismissal order dismisses Appellant Hofelich's complaint only as to Defendant-Appellee State of California. Furthermore, the circuit court has not reduced the October 7, 2008 amended dismissal order to a separate judgment, as HRCP Rule 58 requires under the holding in Jenkins. Although the October 7, 2008 amended dismissal additionally purports to enter judgment, the circuit court has not entered judgment on a separate judgment document, as HRCP Rule 58 specifically requires. Furthermore, although the October 7, 2008 amended dismissal order contains a finding of no just reason for delay in the entry of judgment pursuant to HRCP Rule 54(b), the Supreme Court of Hawai'i has explained that "a party cannot appeal from a circuit court order even though the order may contain [HRCP Rule] 54(b) certification language; the order must be reduced to a judgment and the [HRCP Rule] 54(b) certification language must be contained therein." Oppenheimer v. AIG Hawaii Ins. Co., 77 Hawai'i 88, 93, 881 P.2d

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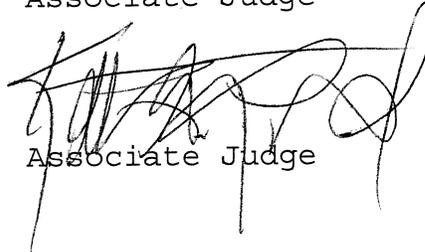
1234, 1239 (1994). Absent an appealable separate judgment, this appeal is premature and we lack jurisdiction. Therefore,

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

DATED: Honolulu, Hawai'i, March 3, 2009.


Daniel R. Foley
Presiding Judge


Anna De Jijin
Associate Judge


Associate Judge