

NO. 29494

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

DAVID KERSH, Plaintiff-Appellant,

v.

FRANCIS T. O'BRIEN and RANDALL CHAR,
Jointly and Severally, Defendants-Appellees

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

2009 MAY 27 AM 8:35

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 06-1-2208)

ORDER GRANTING May 4, 2009 MOTION TO DISMISS APPEAL
(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon review of (1) Defendants-Appellees Francis T. O'Brien and Randall Y. K. Char's (Appellees O'Brien and Char) May 4, 2009 motion to dismiss this appeal for lack of appellate jurisdiction, (2) Plaintiff-Appellant David Kersh's (Appellant Kersh) May 12, 2009 memorandum in opposition to Appellees O'Brien and Char's May 4, 2009 motion to dismiss this appeal, and (3) the record in this case, it appears that we lack jurisdiction over Appellant Kersh's appeal from the Honorable Victoria S. Marks's November 12, 2008 "Order Denying Plaintiff's Motion to Disqualify This Court, Filed June 10, 2008[,] and Plaintiff's Amended Motion to Disqualify This Court and to Set Aside the Dismissal of This Case, Filed September 2, 2008" (the November 12, 2008 interlocutory order), because the circuit court has not yet entered a separate, final judgment that resolves all claims in this case.

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2008) authorizes appeals to the intermediate court of 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. 2008). Rule 58 of the Hawai'i Rules of Civil Procedure (HRCPP) requires that "[e]very judgment shall be set forth on a separate document." HRCPP Rule 58. Based on this requirement under HRCPP 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 HRCPP [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 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). For example, the supreme court has held that, "[a]lthough RCCH [Rule] 12(q) [(regarding dismissal for want of prosecution)] does not mention the necessity of filing a separate document, HRCPP [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). The circuit court has not yet entered a final judgment in this case. The November 12, 2008 interlocutory order is not eligible for appellate review until a party in this case asserts a timely appeal from a final judgment that resolves the parties' claims. Ueoka v Szymanski, 107

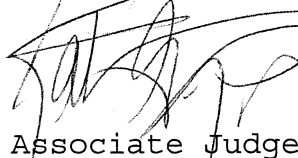
Hawai'i 386, 396, 114 P.3d 892, 902 (2005) ("An appeal from a final judgment brings up for review all interlocutory orders not appealable directly as of right which deal with issues in the case." (Citation and internal quotation marks omitted)). Absent an appealable final judgment, Appellant Kersh's appeal is premature and we lack jurisdiction. Therefore,

IT IS HEREBY ORDERED that Appellees O'Brien and Char's May 4, 2009 motion to dismiss this appeal is granted, and this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, May 27, 2009.


Presiding Judge


Associate Judge


Associate Judge