

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29532

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

In the Matter of the SHARON M.Y. YOUNG
REVOCABLE LIVING TRUST AGREEMENT dated April 28, 1995

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(TRUST NO. 05-1-0001)

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 do not have jurisdiction over the appeal that Petitioner-Appellant Mark W. S. Young (Appellant Young) has asserted from the following three orders that the Honorable Colleen K. Hirai entered on December 2, 2008 (the three December 2, 2008 orders):

- (1) "Order Granting in Part and Continuing in Part Trustee's Petition for Instructions";
- (2) "Order Denying Beneficiary Mark W. S. Young's Petition to Remove Trustee; and
- (3) "Order Denying Petition to Terminate the Sharon M. Y. Young Revocable Living Trust Dated April 28, 1995[,] and Amendments and Distribute Assets of Trust[.]"

The three December 2, 2008 orders are interlocutory orders that are not independently appealable pursuant to Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2008) and Rule 34 of the Hawaii Probate Rules (HPR).

HRS § 641-1(a) is the law that 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. 2008). The Supreme Court of Hawaii has promulgated HPR Rule 34, which generally requires the entry of a judgment for an appeal:

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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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 (emphasis added). One exception to the requirement for a judgment is in HPR Rule 34(b), which authorizes an appeal if the probate court certifies an interlocutory order for appeal in accordance with HRS § 641-1(b) (1993 & Supp. 2008). Nevertheless, "Rule 34 is written to conform probate practice to the policy against piecemeal appeals, see, e.g., Jenkins v. Cades Schutte Fleming & Wright, 76 Haw. 115, 869 P.2d 1334, 1994 Haw. LEXIS 19 (1994)." Commentary to HPR Rule 34. Under the holding in Jenkins, "[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 [Hawai'i Rules of Civil Procedure (HRCP) Rule] 58[.]" Jenkins, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). "[A]n appeal from any judgment will be dismissed as premature if the judgment does not, on its face, either resolve all claims against all parties or contain the finding necessary for certification under HRCP [Rule] 54(b)." Id. Therefore, under HRS § 641-1 (1993 & Supp. 2008) and HPR Rule 34, a probate court order is eligible

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for appellate review only if the probate court either

- (a) reduces the order to a separate judgment pursuant to HPR Rule 34(a),
- (b) certifies the order for appeal in the manner provided by Rule 54(b) of the HRCP pursuant to HPR Rule 34(a), or
- (c) certifies the order for appeal in accordance with HRS § 641-1(b) pursuant to HPR Rule 34(b).

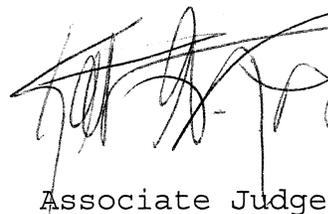
The probate court has not reduced the three December 3, 2008 order to a separate judgment. The probate court has not certified the three December 2, 2008 orders for appeal in the manner provided by HRCP Rule 54(b). The probate court has not certified the three December 2, 2008 orders for appeal in accordance with HRS § 641-1(b). Therefore, the three December 2, 2008 orders are not eligible for appellate review pursuant to HRS § 641-1(a) and HPR Rule 34. Absent an appealable judgment or an appealable order, this appeal is premature and we lack appellate jurisdiction.

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

DATED: Honolulu, Hawai'i, April 8, 2009.


Presiding Judge


Associate Judge


Associate Judge