

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 29568

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

RICHARD B. RAPOZO, Plaintiff-Appellant, v
BRUCE S. AMES, Defendant-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 08-1-1362)

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 Plaintiff-Appellant Richard B. Rapozo (Appellant Rapozo) asserted from the Honorable Victoria S. Marks's January 7, 2009 "Order Denying Plaintiff's Motion for Summary Judgment as a Matter of Law Filed October 21, 2008" (the January 7, 2009 summary judgment order) because the circuit court has not yet entered a final judgment in this case.

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2008) 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). Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP) requires that "[e]very judgment shall be set forth on a separate document." 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

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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.

The January 7, 2009 summary judgment order is not a judgment, but rather, the January 7, 2009 summary judgment order is an interlocutory order that is not independently appealable. On March 9, 2009, the appellate court clerk filed the record on appeal for appellate court case number 29568, 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 this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, May 1, 2009.


Daniel R. Foley
Presiding Judge


Associate Judge

Associate Judge