

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29585

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

HARVEY N. ING, ATTORNEY-IN-FACT FOR IRENE TAKAHAMA,
Plaintiff-Appellee,

v.

ELIZABETH FISHER, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 1RC08-1-5970)

ORDER DISMISSING APPEAL
FOR LACK OF APPELLATE JURISDICTION
(By: Foley, Presiding J., Fujise and Leonard, JJ.)

Upon review of the record, it appears that we do not have jurisdiction over the appeal that Defendant-Appellant Elizabeth Fisher (Appellant Fisher) has asserted from the Honorable Hilary B. Gangnes's December 15, 2008 "Order Denying Defendant's Motion to Dismiss Under Rule 41(b), or in the Alternative, Motion to Set Aside Judgment under Rule 60(b), Filed November 24, 2008" (the December 15, 2008 interlocutory order), as well as six other rulings that the district court made prior to December 15, 2008.

Appellant Fisher is asserting her appeal pursuant to Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2008), which authorizes appeals "in civil matters from all final judgments, orders, or decrees of . . . district courts . . . to the intermediate appellate court[.]" 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 has promulgated Rule 4(a)(1) of the Hawai'i Rules of Appellate

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Procedure (HRAP), which requires that "the notice of appeal shall be filed within 30 days after entry of the judgment or appealable order." Pursuant to the thirty-day time period under HRAP Rule 4(a)(1) for filing a notice of appeal, Appellant Fisher's January 14, 2009 notice of appeal is not timely as to all of the rulings that the district court made prior to December 15, 2008. Appellant Fisher's January 14, 2009 notice of appeal is timely only as to the December 15, 2008 interlocutory order.

However, the December 15, 2008 interlocutory order is not an appealable final order, as HRS § 641-1(a) requires.

Pursuant to HRS § 641-1(a) (1993), appeals are allowed in civil matters from all final judgments, orders, or decrees of circuit and district courts. In district court cases, a judgment includes any order from which an appeal lies. A final order means an order ending the proceeding, leaving nothing further to be accomplished. When a written judgment, order, or decree ends the litigation by fully deciding all rights and liabilities of all parties, leaving nothing further to be adjudicated, the judgment, order, or decree is final and appealable.

Casumpang v. ILWU, Local 142, 91 Hawai'i 425, 426, 984 P.2d 1251, 1252 (1999) (citations, internal quotation marks, and footnote omitted) (emphases added). The requirement of a separate judgment under HRCP Rule 58 and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 869 P.2d 1334 (1994), is "not applicable to district court cases." Casumpang, 91 Hawai'i at 427, 984 P.2d at 1253. Nevertheless, HRS § 641-1(a) requires the entry of a final judgment or final order that ends the entire proceeding, leaving nothing further to be accomplished.

The district court has not yet entered a final order or final judgment on Plaintiff-Appellee Harvey N. Ing's (Appellee Ing) remaining claim for breach-of-lease money damages. The

December 15, 2008 interlocutory order did not end the proceedings in this district court case, but, rather, the December 15, 2008 interlocutory order merely denied Appellant Fisher's November 24, 2008 motion to dismiss Appellant Ing's complaint pursuant to Rule 41(b) District Court Rules of Civil Procedure (DCRCP) and to set aside the October 9, 2008 judgment for possession pursuant to DCRCP Rule 60(b). The district court case is still pending.

Granted, with respect to circuit court cases, the supreme court has held that "[a]n order denying a motion for post-judgment relief under HRCP [Rule] 60(b) is an appealable final order under HRS § 641-1(a)." Ditto v. McCurdy, 103 Hawai'i 153, 160, 80 P.3d 974, 981 (2003) (citation omitted). However, "a motion for reconsideration, pursuant to HRCP Rule 60(b), is authorized only in situations involving final judgments." Cho v. State, 115 Hawai'i 373, 382, 168 P.3d 17, 26 (2007) (citations and internal quotation marks omitted); Crown Properties, Inc. v. Financial Security Life Insurance Co., Ltd., 6 Haw. App. 105, 112, 712 P.2d 504, 509 (1985) ("A Rule 60(b), HRCP, motion is authorized only in situations involving final judgments."); Tradewinds Hotel, Inc. v. Cochrane, 8 Haw. App. 256, 262, 799 P.2d 60, 65 (1990) ("Rule 60(b) applies to motions seeking to amend final orders in the nature of judgments."). Without the entry of a judgment, "relief pursuant to HRCP Rule 60(b) was not available[.]" Cho v. State, 115 Hawai'i at 383, 382, 168 P.3d at 27. Therefore, absent a final judgment or final order in this case, the December 15, 2008 interlocutory order does not qualify as appealable post-judgment order denying a post-judgment DCRCP

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Rule 60(b) motion to set aside a judgment. As an interlocutory order, the December 15, 2008 interlocutory order is eligible for appellate review only by way of a timely appeal from a future final order or final judgment that ends the proceedings in the district court, leaving nothing further to be accomplished. See, e.g., 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)).

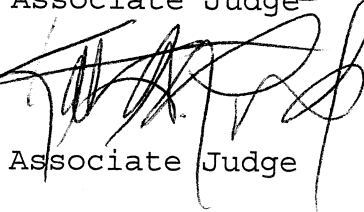
Absent an appealable final judgment or final order, this appeal is premature and we lack appellate jurisdiction.

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

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


Presiding Judge


Associate Judge


Associate Judge