

NO. 29627

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

CAROL A. BROWN, M.D., and  
CAROL A. BROWN, M.D., INC.,  
Plaintiffs-Appellees,

NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2009 MAY 22 AM 8:27

FILED

v.

HAWAII MEDICAL SERVICE ASSOCIATION,  
a mutual benefit society; and ALAN VAN ETTEN, Arbitrator,  
Defendants-Appellants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIVIL NO. 08-1-0288)

ORDER DISMISSING THIS 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 the appeal that Plaintiffs-Appellants Carol A. Brown, M.D., and Carol A. Brown, M.D., Inc.'s (the Brown Appellants), have asserted from the Honorable Glenn J. Kim's January 14, 2009 judgment in favor of Defendant-Appellee Hawaii Medical Service Association (Appellee HMSA), because the January 14, 2009 judgment does not satisfy the requirements for an appealable final judgment under Rule 58 of the Hawaii Rules of Civil Procedure (HRCP) and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

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). HRCP Rule 58 requires that

"[e]very judgment shall be set forth on a separate document." The supreme court 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, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

[I]f a judgment purports to be the final judgment in a case involving multiple claims or multiple parties, the judgment (a) must specifically identify the party or parties for and against whom the judgment is entered, and (b) must (i) identify the claims for which it is entered, and (ii) dismiss any claims not specifically identified[.]

Id. (emphases added). "[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.

Although the Brown Appellants asserted multiple claims, the January 14, 2009 judgment does not specifically identify the claims on which the circuit court is entering judgment. Furthermore, the January 14, 2009 judgment neither refers to nor resolves the Brown Appellants' claims against Defendant-Appellee Alan Van Etten. Although the January 14, 2009 judgment contains a statement that the judgment resolves all claims between the parties and no other claims remain, the supreme court has explained that

[a] statement that declares "there are no other outstanding claims" is not a judgment. If the circuit court intends that claims other than those listed in the judgment language should be dismissed, it must say so: for example, "Defendant Y's counterclaim is dismissed," or "Judgment upon Defendant Y's counterclaim is entered in favor of Plaintiff/Counter-Defendant Z," or "all other claims, counterclaims, and cross-claims are dismissed."

Id. at 120 n.4, 869 P.2d at 1339 n.4 (emphases added).

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

Consequently, the January 14, 2009 judgment is not an appealable judgment under HRS § 641-1(a), HRCF Rule 58, and the holding in Jenkins.

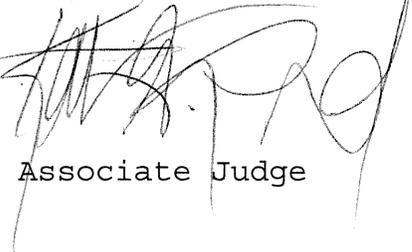
Absent an appealable final judgment, the Brown Appellants' appeal is premature and we lack appellate jurisdiction.

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

DATED: Honolulu, Hawai'i, May 22, 2009.

  
Daniel R. Foley  
Presiding Judge

  
Associate Judge

  
Associate Judge