

NO. 29631

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

RONALD ALAN OBER,
Plaintiff/Counterclaim Defendant/Appellee

v.

ERIC AARON LIGHTER, Defendant-Appellant,

and

JOAN ELIZABETH PRESCOTT, nka JOAN PRESCOTT-LIGHTER,
as Trustee of Credit Bureau International Trust;
PRESTON A. GIMA, HAWAIIAN COLONY HOTEL CORPORATION,
CREDIT BUREAU INTERNATIONAL INC., UNITED STATES OF AMERICA,
INTERNAL REVENUE SERVICE, DOE DEFENDANTS 1-10;
Defendants-Appellees

ERIC AARON LIGHTER,
Defendant/Counterclaim-Plaintiff/
Third-Party Plaintiff/Appellant,

v.

ENVER W. PAINTER, JR., Third-Party Defendant

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 06-1-0330)

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 Defendant-Appellant Eric Aaron Lighter (Appellant Lighter) asserted in Civil No. 06-1-0330, the Honorable Glenn S. Hara presiding, from the December 10, 2008 "Garnishee Order from Civil No. 99-217" (the December 10, 2008 garnishee order) and the December 11, 2008 "Amended Garnishee Order from Civil No. 99-217" (the December 11,

FILED
E.J. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2009 MAY 28 AM 9:03

FILED

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

2008 amended garnishee order), because the circuit court has not yet entered a final judgment in this case, and these two documents are not appealable orders 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 (HRCPP) requires that "[e]very judgment shall be set forth on a separate document." Based on the separate document 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). The circuit court has not entered a final judgment that resolves all of the parties' claims in this case.

The supreme court has held that a post-judgment garnishee order that directs a garnishee to immediately pay a judgment debtor's money to a judgment creditor "is immediately appealable pursuant to the Forgay rule[,]" despite the existence of other "unresolved garnishment matters[.]" Ditto v. McCurdy, 90 Hawai'i, 345, 351, 978 P.2d 783, 789 (1999). However, the record on appeal does not contain the original December 10, 2008 garnishee order. Furthermore, neither the December 10, 2008 garnishee order nor the December 11, 2008 amended garnishee order contains the original signature of the presiding judge, the

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

Honorable Glenn S. Hara, in his capacity as the presiding judge in Civil No. 06-1-330.

With respect to each of these two documents, someone apparently took photocopies of a November 28, 2008 garnishee order and a December 11, 2008 garnishee order from a separate case, Civil No. 99-217, attached caption pages referring to Civil No. 06-1-220, and then filed these two documents on December 10 and 11, 2009, respectively, in Civil No. 06-1-330, without the original signature of the presiding judge in Civil No. 06-1-330. With respect to the form of circuit court orders, Rule 23 of the Rules of the Circuit Courts of the State of Hawai'i (HRCC) requires that, after the parties have had an opportunity to propose the form of an order to the presiding judge, "the court shall proceed to settle the . . . order." Implicit within HRCC Rule 23, is that the circuit court has not settled a proposed written order until a circuit court judge has signed the written order. See also, HRS § 603-14(d) (1993) ("Any decision, order decree, judgment, or any other document requiring the signature of a circuit judge, in any cause or proceeding whatsoever in a circuit court, may be signed without, as well as within, the boundaries of the circuit in which the court is situated."). Thus, for example, an unsigned document such as "a minute order is not an appealable order." Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 321 n.3, 966 P.2d 631, 633 n.3 (1998) (emphasis added). The presiding judge in this case did not, in his capacity as the presiding judge in Civil No. 06-1-330, settle either the December 10, 2008 garnishee order or the December 11,

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

2008 amended garnishee order by signing either of these documents. Therefore, neither the December 10, 2008 garnishee order nor the December 11, 2008 amended garnishee order is an order of the circuit court in Civil No. 06-1-330, much less an appealable order pursuant to HRS § 641-1(a).

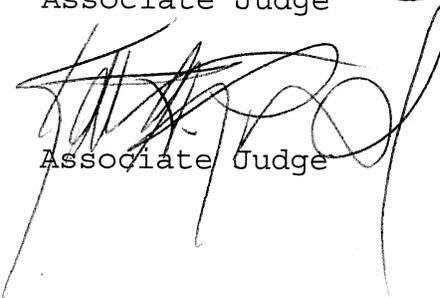
Absent an appealable final order or judgment, this appeal is premature and must be dismissed for lack of appellate jurisdiction. Accordingly,

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

DATED: Honolulu, Hawai'i, May 28, 2009.


Daniel R. Foley
Presiding Judge


Associate Judge


Associate Judge