

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29632

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

ROBERT W. WALTER, Plaintiff-Appellant,

v.

RICHARD C. DRAYSON, Individually; ELIZABETH WALTER,  
Individually; KAREN TEMPLE, Attorney at Law LLLC;  
KAREN TEMPLE, Attorney at Law LLLC, dba BODDEN &  
TEMPLE; BODDEN & TEMPLE, LLC; and KAREN M. TEMPLE  
aka KAREN M. GRANT TEMPLE aka KAREN M. GRANT,  
Individually; DOE LAW CORPORATION #1; JOHN DOE #1  
or JANE DOE #1, Defendants-Appellees,

and

EUGENE C. ROCK, Nominal Defendant-Appellee  
or, Alternatively, Defendant-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT  
(CIVIL NO. 08-1-0594)

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 lack jurisdiction over this appeal that Plaintiff-Appellant Robert W. Walter (Appellant Robert Walter) has asserted from the Honorable Joseph E. Cardoza's January 9, 2009 "Consolidated Order Granting Defendants' Motions to Dismiss," (the January 9, 2009 dismissal order), because the January 9, 2009 dismissal order was not an independently appealable order under Hawaii Revised Statutes (HRS) HRS § 641-1(a) (1993 & Supp. 2008) from which Appellant Walter could assert an appeal pursuant to Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP).

HRS § 641-1(a) 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 . . .

E.M. RIMANDO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

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provided by the rules of the court." HRS § 641-1(c). The Supreme Court of Hawai'i has promulgated Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP), which specifically requires that "[e]very judgment shall be set forth on a separate document." Based on this requirement, 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[.]" Absent the entry of a final judgment, the January 9, 2009 dismissal order was not eligible for appellate review. As a result, Appellant Robert Walter's February 12, 2009 notice of appeal from the January 9, 2009 was jurisdictionally defective, and, thus, "d[id] not transfer jurisdiction from the trial court to the appellate court." State v. Ontiveros, 82 Hawai'i 446, 449, 923 P.2d 388, 391 (1996).

We also note that the January 9, 2009 dismissal order did not resolve all of the parties' claims in this case. With the entry of a March 4, 2009 summary judgment order that resolved the parties' remaining claims, the circuit court entered a March 4, 2009 judgment that resolved all of the parties' claims in this case.

We recognize that "[i]f a notice of appeal is filed after announcement of a decision but before entry of the judgment or order, such notice shall be considered as filed immediately after the time the judgment or order becomes final for the purpose of appeal." HRAP Rule 4(a)(2) (emphasis added). However, at the time when Appellant Robert Walter filed his February 12, 2009 notice of appeal from the January 9, 2009

dismissal order, the circuit court had neither announced nor entered the March 4, 2009 judgment. When analyzing a similar provision in HRAP Rule 4(b)(4) authorizing certain premature appeals in criminal matters, the supreme court has explained that, prior to any announcement of the court's intent to enter a final judgment or order, a premature

notice of appeal constitutes a legal nullity because, at the time of filing, there was neither an oral decision nor a written order from which to appeal. While we treat an appeal as timely where a defendant has filed his or her notice of appeal after the court has announced an oral decision but before the entry of a written order or judgment, see HRAP [Rule] 4(b), we cannot do so where the court has rendered no decision whatsoever.

Grattafiori v. State, 79 Hawai'i 10, 14, 897 P.2d 937, 941 (1995) (emphasis added).

Therefore, Appellant Robert Walter's February 12, 2009 notice of appeal did not function as a valid premature notice of appeal from the subsequent March 4, 2009 judgment pursuant to HRAP Rule 4(a)(2). No subsequent notice of appeal has been filed. Consequently, the intermediate court of appeals is without jurisdiction to address the merits of Appellant Robert Walter's appeal.

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

DATED: Honolulu, Hawai'i, May 29, 2009.

  
Presiding Judge

  
Associate Judge

  
Associate Judge