

NO. 29643

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

ANDY MARTIN, Plaintiff-Appellant,

v.

LINDA LINGLE, in her official capacity
as governor of the State of Hawai'i, DR. CHIYOME FUKINO,
in her official capacity as Director of the Department of Health,
Defendants-Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 08-1-2147)

ORDER DISMISSING APPEAL
FOR LACK OF APPELLATE JURISDICTION
(By: Foley, Acting C.J., Nakamura and Fujise, JJ.)

Upon review of the record, it appears that we lack jurisdiction over this appeal that Plaintiff-Appellant Andy Martin (Appellant Martin) has asserted from the Honorable Bert I. Ayabe's January 12, 2009 "Order Granting Motion to Dismiss Complaint for Declaratory Judgment" (the January 12, 2009 dismissal order) and January 27, 2009 "Order Denying Motion for Reconsideration of Court's Order of November 19, 2008," (the January 27, 2009 order denying reconsideration), because the circuit court has not reduced these orders to a separate judgment pursuant to Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP).

Hawaii Revised Statutes (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 . . . provided by the rules of the court." HRS § 641-1(c). The supreme court has promulgated HRCP Rule 58, which specifically requires that "[e]very judgment shall be set

JANE KUYAMA
CLERK, APPELLATE COURT
STATE OF HAWAII

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forth on a separate document." HRCF Rule 58 (emphasis added). Based on this requirement under HRCF Rule 58, 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 HRCF [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i at 119, 869 P.2d at 1338. The separate judgment must "either resolve all claims against all parties or contain the finding necessary for certification under HRCF [Rule] 54(b)." Id. "An appeal from an order that is not reduced to a judgment in favor 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 (footnote omitted). Consequently, "an order disposing of a circuit court case is appealable when the order is reduced to a separate judgment." Alford v. City and Count of Honolulu, 109 Hawai'i 14, 20, 122 P.3d 809, 815 (2005) (citation omitted) (emphasis added). For example, the supreme court has explained that, "[a]lthough RCCH [Rule] 12(q) [(regarding dismissal for want of prosecution)] does not mention the necessity of filing a separate document, HRCF [Rule] 58, as amended in 1990, expressly requires that 'every judgment be set forth on a separate document.'" Price v. Obayashi Hawaii Corporation, 81 Hawai'i 171, 176, 914 P.2d 1364, 1369 (1996) (emphases added). Therefore, absent the entry of a final judgment, neither the January 12, 2009 dismissal order nor the January 27, 2009 order denying reconsideration is eligible for appellate review. On April 14, 2009, the appellate court clerk filed the record on appeal for appellate court case number 29643, at which time the

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record on appeal did not contain a separate final judgment that resolved all claims against all parties. Therefore, Appellant Martin's 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, June 9, 2009.


Acting Chief Judge


Associate Judge


Associate Judge