

NO. 29665

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

E.M. RIMANDO
JENK. APPELLATE COURTS
STATE OF HAWAII

2009 JUL 14 AM 7:47

FILED

The Estate of CLARENCE AURAL JONES, JR., Deceased

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(PROBATE NO. 06-1-0772)

ORDER DISMISSING APPEAL
FOR LACK OF APPELLATE JURISDICTION

(By: Watanabe, Acting Chief Judge, Nakamura and Leonard, JJ.)

Upon review of the record, it appears that we do not have jurisdiction over the appeal that Petitioner-Appellant Virginia R. Jones (Appellant Jones) has asserted from the Honorable Colleen K. Hirai's January 28, 2009 "Judgment Regarding Order Granting Virginia R. Jones' Petition to Take Elective Share" (the January 28, 2009 judgment) pursuant to Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2008) and Rule 34 of the Hawaii Probate Rules (HPR).

HRS § 641-1(a) 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). The Supreme Court of Hawaii has promulgated HPR Rule 34, which generally requires the entry of a judgment for an appeal:

RULE 34. ENTRY OF JUDGMENT, INTERLOCUTORY ORDERS, APPEALS

(a) Entry of Judgment. All formal testacy orders, orders of intestacy and determination of heirs, orders establishing conservatorship and/or guardianship, and orders establishing protective arrangements shall be reduced to judgment and the judgment shall be filed with the clerk of the court. Such judgments shall be final and immediately appealable as provided by statute. Any other order that fully addresses all claims raised in a petition to which it

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relates, but that does not finally end the proceeding, may be certified for appeal in the manner provided by Rule 54(b) of the Hawai'i Rules of Civil Procedure.

(b) Interlocutory Orders. In order to appeal from any other order prior to the conclusion of the proceeding, the order must be certified for appeal in accordance with Section 641-1(b) of the Hawai'i Revised Statutes.

(c) Final Judgment Closing Proceeding. At the conclusion of the proceeding, a final judgment closing the proceeding shall be entered and filed with the clerk of the court, at which time all prior uncertified interlocutory orders shall become immediately appealable.

(d) Appeals. Final judgments as to all claims and parties, certified judgments, certified orders, and other orders appealable as provided by law may be appealed pursuant to the Hawai'i Rules of Appellate Procedure applicable to civil actions.

HPR Rule 34 (emphases added). "Rule 34 is written to conform probate practice to the policy against piecemeal appeals, see, e.g., Jenkins v. Cades Schutte Fleming & Wright, 76 Haw. 115, 869 P.2d 1334, 1994 Haw. LEXIS 19 (1994)." Commentary to HPR Rule 34. Under the holding in Jenkins v. Cades Schutte Fleming & Wright, "[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 v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). "[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. "[A] party cannot appeal from a circuit court order even though the order may contain [HRCP Rule] 54(b) certification language; the order must be reduced to a judgment and the [HRCP Rule] 54(b) certification language must be

contained therein." Oppenheimer v. AIG Hawaii Ins. Co., 77 Hawai'i 88, 93, 881 P.2d 1234, 1239 (1994) (emphasis added).

The January 28, 2009 judgment does not qualify as an appealable judgment under subsections (a), (b) and (c) of HPR Rule 34. The January 28, 2009 judgment does not belong to the category of judgments resulting directly from formal testacy orders, orders of intestacy and determination of heirs, orders establishing conservatorship and/or guardianship, or orders establishing protective arrangements, as HPR Rule 34(a) requires. The January 28, 2008 judgment does not contain an express finding of no just reason for delay in the entry of a final judgment, and, thus, the January 28, 2008 judgment is not certified in the manner provided by HRCPC Rule 54(b), as HPR Rule 34(a) requires for a judgment that does not close a probate proceeding. The probate court has not certified the January 28, 2009 judgment or any of the related interlocutory orders for appeal in accordance with HRS § 641-1(b) (1993 & Supp. 2008), as HPR Rule 34(b) requires. Finally, the January 28, 2009 judgment does not appear to close this probate proceeding, as HPR Rule 34(c) requires. Therefore, January 28, 2009 judgment is not eligible for appellate review pursuant to HRS § 641-1 and HPR Rule 34. Absent an appealable judgment or an appealable order, this appeal is premature and we lack appellate jurisdiction. Accordingly,

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

DATED: Honolulu, Hawai'i, July 14, 2009.

Corinne K A Watanabe

Acting Chief Judge

Craig W. Nakamura

Associate Judge

[Signature]

Associate Judge