

NO. 29668

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

LLOYD Y. ASATO, as Guardian of the
Property of A.K.H.K., a minor, Plaintiff/Appellee,

v.

LOUIS P. MENDONCA,
Defendant/Cross-Claim Plaintiff/Cross-Claim Defendant/Appellee

and

ESTHER K. KANAKANUI; RONALD P. KANAKANUI;
NELSON H. KINOSHITA, et al., Defendants/Appellees

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 00-1-0001)

ORDER DENYING JULY 21, 2009 MOTION TO DISMISS APPEAL
(By: Foley, Presiding Judge, Nakamura and Fujise, JJ.)

Upon review of (1) the July 21, 2009 motion by Defendant/Cross-Claim Plaintiff/Cross-Claim Defendant/Appellee Louis P. Mendonca (Appellee Mendonca) to dismiss this appeal for lack of appellate jurisdiction, (2) the July 27, 2009 memorandum by Appellants Keith K. Hiraoka and Roeca, Louie & Hiraoka, LLP (collectively the Hiraoka Appellants), in opposition to Appellee Mendonca's July 21, 2009 motion to dismiss this appeal, and (3) the record, it appears that we have jurisdiction over the Hiraoka Appellants' appeal from the Honorable Greg K. Nakamura's February 17, 2009 "Order Denying Keith K. Hiraoka and Roeca, Louie & Hiraoka's Motion to Withdraw as Counsel, Filed January 14, 2009" (the February 17, 2009 order), and, thus,

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Appellee Mendonca's July 21, 2009 motion to dismiss this appeal lacks merit.

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 (HRCP) requires that "[e]very judgment shall be set forth on a separate document." HRCP Rule 58. Based on this requirement under HRCP 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 HRCP [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 an appealable final judgment in this case, and the Hiraoka Appellants did not obtain leave of the circuit court for an interlocutory appeal pursuant to HRS § 641-1(b) (1993 & Supp. 2008). Therefore, according to Appellee Mendonca, the intermediate court of appeals should dismiss Attorney Hiraoka's appeal for lack of jurisdiction.

Nevertheless, it appears that the February 17, 2009 order is an appealable interlocutory order under the collateral order doctrine, which is an exception to the rule requiring a final judgment. "In order to fall within the narrow ambit of the collateral order doctrine, the order must [1] conclusively

determine the disputed question, [2] resolve an important issue completely separate from the merits of the action, and [3] be effectively unreviewable on appeal from a final judgment." Siangco v. Kasadate, 77 Hawai'i 157, 161, 883 P.2d 78, 82 (1994) (citations and internal quotation marks omitted) (original brackets). For example, the United States Court of Appeals for the Seventh Circuit has held that, "[b]ecause an order compelling a lawyer to work without prospect of compensation is unrelated to the merits of the dispute, cannot be rectified at the end of the case, and has a potential to cause significant hardship, we join the second circuit in holding that the order is immediately appealable as a collateral order." Fidelity National Title Insurance Company of New York v. Intercounty National Title Insurance Company, 310 F.3d 537, 539 (7th Cir. 2002) (citations omitted).

In the instant case, the February 17, 2009 order

- (1) conclusively determined the disputed question whether the Hiraoka Appellants could withdraw as counsel,
- (2) and, in so doing, resolved an important issue that is completely separate from the merits of any of the parties' claims in this litigation matter, and
- (3) is effectively unreviewable on appeal from a final judgment, because, if the parties would settle this case, then the circuit court would never enter a final judgment, and the Hiraoka Appellants' right to appeal from the order would be irretrievably lost.¹

¹ Although not directly on point, we have held that "orders imposing sanctions against attorneys are immediately appealable under the collateral (continued...)

Therefore, we hold that the February 17, 2009 order is appealable under HRS § 641-1(a) and the collateral order doctrine.

The Hiraoka Appellants filed their February 27, 2009 notice of appeal within thirty days after entry of the February 17, 2009 order, as Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP) requires. Therefore, the Hiraoka Appellants' appeal is timely. Accordingly,

IT IS HEREBY ORDERED that we have jurisdiction over the Hiraoka Appellants' appeal pursuant to HRS § 641-1(a) and the collateral order doctrine, and Appellee Mendonca's July 21, 2009 motion to dismiss this appeal is denied.

DATED: Honolulu, Hawai'i, August 4, 2009.


Presiding Judge


Associate Judge


Associate Judge

¹(...continued)

order doctrine." Schonleber v. A Reef Adventure, Inc., 97 Hawai'i 422, 426, 38 P.3d 590, 594 (App. 2001) (citation omitted). This holding is particularly instructive, because part of the rationale for allowing attorneys to assert an interlocutory appeal under the collateral order doctrine is that "if [attorneys were] required to await final judgment in the case, an attorney's right to appeal the order would be irretrievably lost if the parties decided to settle or not appeal." Siangco v. Kasadate, 77 Hawai'i 157, 161, 883 P.2d 78, 82, (1994) (citations omitted).