

NO. 29678

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

PETE MUÑOZ and CONNIE MUÑOZ, Plaintiffs-Appellants, v.
YOSHIMI HATA, SANAE HATA, et al., Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CIVIL NO. 07-1-0541)

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

Upon review of the record, it appears that we lack jurisdiction over the appeal that Plaintiffs-Appellants Pete Munoz and Connie Munoz (the Munoz Appellants) have asserted from the Honorable Shackley F. Raffetto's February 24, 2009 judgment because the February 24, 2009 judgment does not satisfy the requirements for an appealable final judgment under Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP) and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2008) 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). HRCP Rule 58 requires that "[e]very judgment shall be set forth on a separate document." HRCP Rule 58. Based on HRCP Rule 58, the supreme court holds 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

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HRCP [Rule] 58[.] " Jenkins, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). Furthermore,

if a judgment purports to be the final judgment in a case involving multiple claims or multiple parties, the judgment (a) must specifically identify the party or parties for and against whom the judgment is entered, and (b) must (i) identify the claims for which it is entered, and (ii) dismiss any claims not specifically identified[.]

Id. (emphases added). "[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.

Although the Munoz Appellants asserted two separate and distinct causes of action in their complaint, the February 24, 2009 judgment does not specifically identify the claim or claims on which the circuit court is entering judgment. For example, if the circuit court intended to enter judgment on all of the Munoz Appellants' claims, then the February 24, 2009 judgment should have specifically entered judgment on "all" of the Munoz Appellants' claims. If the circuit court intended to dismiss some or all of the Munoz Appellants' claims, then the February 24, 2009 judgment should have contained operative language that expressly dismissed a specifically identified claim or "all" of the Munoz Appellants' claims. Although the February 24, 2009 judgment contains a statement that declares there are no other claims or parties remaining in this action, the supreme court has explained that

[a] statement that declares "there are no other outstanding claims" is not a judgment. If the circuit court intends that claims other than those listed in the judgment language should be dismissed, it must say so: for example,

"Defendant Y's counterclaim is dismissed," or "Judgment upon Defendant Y's counterclaim is entered in favor of Plaintiff/Counter-Defendant Z," or "all other claims, counterclaims, and cross-claims are dismissed."

Id. at 120 n.4, 869 P.2d at 1339 n.4 (emphases added).

Consequently, the February 24, 2009 judgment is not an appealable judgment under HRS § 641-1(a), HRCP Rule 58, and the holding in Jenkins.

Absent an appealable final judgment, the Munoz Appellants' appeal is premature and we lack appellate jurisdiction over appellate court case number 29678.

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

DATED: Honolulu, Hawai'i, July 13, 2009.

Corinne K A Watanabe

Acting Chief Judge

Craig W Nakamura

Associate Judge

[Signature]

Associate Judge