

NO. 29691

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

Guardianship of F.Y., an Incapacitated Person

Jean N. Nakamura
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2009 SEP 29 PM 1:27

FILED

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(GUARDIANSHIP NO. 05-1-0001)

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

Upon review of the record, it appears that we do not have jurisdiction over the appeal that Respondent-Appellant Velda M. Yamanaka (Appellant Yamanaka) has asserted from the Honorable Glenn S. Hara's February 2, 2009 order granting Conservator-Appellee Mark Eisenberg's petition for approval of accounting covering the period from June 28, 2006, through June 27, 2008 (the February 2, 2009 order), because the February 2, 2009 order is not an appealable judgment or appealable order pursuant to Hawaii Revised Statutes (HRS) § 641-1 (1993 & Supp. 2008) and Rule 34 of the Hawai'i 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). HPR Rule 34 generally requires the probate court to reduce an order to a separate judgment as a prerequisite for appealability:

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

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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 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). One exception to the requirement for a judgment is in HPR Rule 34(b), which authorizes an appeal if the probate court certifies an interlocutory order for appeal in accordance with HRS § 641-1(b). "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. An 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 76 Hawai'i at 119, 869 P.2d at 1338. "[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. Therefore, under HRS § 641-1 and HPR Rule 34, a probate court order is eligible

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for appellate review only if the probate court either

- (a) reduces the order to a separate judgment pursuant to HPR Rule 34(a),
- (b) certifies the order for appeal in the manner provided by Rule 54(b) of the Hawai'i Rules of Civil Procedure (HRCP) pursuant to HPR Rule 34(a), or
- (c) certifies the order for appeal in accordance with HRS § 641-1(b) pursuant to HPR Rule 34(b).

The probate court has not reduced the February 2, 2009 order to a separate judgment. The probate court has not certified the February 2, 2009 order for appeal in the manner provided by HRCP Rule 54(b). The probate court has not certified the February 2, 2009 order for appeal in accordance with HRS § 641-1(b).

Therefore, The February 2, 2009 order is not appealable pursuant to HRS § 641-1 and HPR Rule 34. Absent an appealable judgment or an appealable order, we lack appellate jurisdiction, and Appellant Yamanaka's appeal is premature. Therefore,

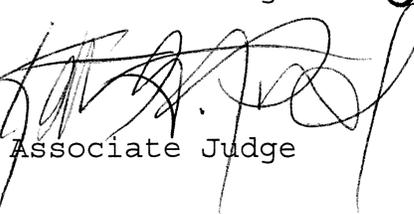
IT IS HEREBY ORDERED that appellate court case number 29691 is dismissed for lack of appellate jurisdiction.

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



Chief Judge


Associate Judge


Associate Judge