

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29767

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

CALVIN NAKAGAWA, Petitioner-Appellee, v.
PENNI SKATES IRWIN, Respondent-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P. NO. 09-1-0007)

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

Upon review of the record, it appears that we lack jurisdiction over the appeal that Respondent Penni Skates Irwin (Appellant Irwin) has asserted from the Honorable Karl S. Sakamoto's March 11, 2009 findings of fact, conclusions of law, and order granting Petitioner-Appellee Calvin Nakagawa's petition for an order expunging a nonconsensual common law lien pursuant to Hawaii Revised Statutes (HRS) Chapter 507D (the March 11, 2009 order granting Appellee Nakagawa's HRS Chapter 507D petition for an order expunging a nonconsensual common law lien), because the circuit court has not yet reduced the March 11, 2009 order granting Appellee Nakagawa's HRS Chapter 507D petition to a separate judgment.

HRS § 641-1(a) (1993 & Supp. 2008) authorizes appeals to the intermediate court of appeals from a circuit court's 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). HRS § 507D-7 (2006) indicates that proceedings pursuant to HRS Chapter 507D conclude with the entry of a judgment. See HRS § 507D-7(a) (2006) (Providing that an award of money damages "shall be made in the form of a joint and several judgment[.]"). More importantly, however, Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP) specifically 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

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2009 SEP 24 AM 7:51

FILED

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 HRCP [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

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, 21, 122 P.3d 809, 816 (2005) (citation omitted). For example, the supreme court has held that, "[a]lthough RCCH [Rule] 12(q) [(regarding dismissal for want of prosecution)] does not mention the necessity of filing a separate document, HRCP [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). "An appeal from an order that is not reduced to a judgment in favor of or against the party by the time the record is filed in the supreme court will be dismissed." Jenkins, 76 Hawai'i at 120, 869 P.2d at 1339.

When the appellate court clerk filed the record on appeal for appellate court case number 29767 on June 12, 2009, the circuit court had not reduced the March 11, 2009 order granting Appellee Nakagawa's HRS Chapter 507D petition for an order expunging a nonconsensual common law lien to a separate judgment, as HRCP Rule 58 requires under the holding in Jenkins.

Granted, the supreme court has held that an order expunging a lis pendens is immediately appealable as a final order under the collateral order doctrine when the order expunging the lis pendens does not address the merits of the underlying claims. Lathrop v. Sakatani, 111 Hawai'i 307, 311 n.8, 141 P.3d 480, 484 n.8 (2006) ("An order expunging a lis pendens is immediately appealable as a final order under the collateral order doctrine."); Knauer v. Foote, 101 Hawai'i 81, 85, 63 P.3d 389, 393 (2003) ("We hold that an order expunging a lis pendens is a collateral order, and thus this court has

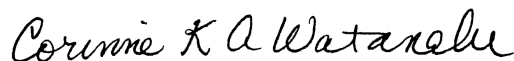
jurisdiction over this appeal."). However, the instant case is distinguishable from Lathrop and Knauer] because the appealed order in the instant case, i.e., the March 11, 2009 order granting Appellee Nakagawa's HRS Chapter 507D petition for an order expunging a nonconsensual common law lien, relates directly to the merits of Appellee Nakagawa's HRS Chapter 507D petition for an order expunging a nonconsensual common law lien, and, thus, the appealed order in the instant case does not resolve an issue that is completely separate from the merits of the action, as the collateral order doctrine requires. Therefore, the collateral order doctrine does not apply to the March 11, 2009 order granting Appellee Nakagawa's HRS Chapter 507D petition for an order expunging a nonconsensual common law lien. Absent an appealable separate judgment, the intermediate court of appeals lacks appellate jurisdiction, and Appellant Irwin's appeal is premature. Accordingly,

IT IS HEREBY ORDERED that appellate court case number 29767 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, September 24, 2009.



Chief Judge



Associate Judge



Associate Judge