

NO. 29784

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

IN THE MATTER OF THE MALUHIA TRUST (Trust)  
APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT  
(TRUST NO. 07-1-0002)

K. HAMAKADO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2009 JUN 30 AM 8:02

FILED

ORDER DENYING JUNE 10, 2009 MOTION TO  
DISMISS APPEAL AND FOR ATTORNEYS' FEES AND COSTS  
(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon review of (1) Petitioner-Appellee James Angelo Pelosi's (Appellee Pelosi) June 10, 2009 motion to dismiss this appeal and for attorneys' fees and costs, (2) Respondent-Appellant Marcelle Loren's (Appellant Loren) June 22, 2009 (filed ex officio on July 19, 2009) memorandum in opposition to Appellee Pelosi's June 10, 2009 motion to dismiss this appeal and for attorneys' fees and costs, and (3) the record, it appears that we have jurisdiction over this appeal under the collateral order doctrine.

Appellee Pelosi argues that we should dismiss Appellant Loren's appeal from the Honorable Elizabeth A. Strance's March 17, 2009 minute order because "a minute order is not an appealable order." Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 321 n.3, 966 P.2d 631, 633 n.3 (1998) (emphasis added). However, following entry of Appellant Loren's April 16, 2009 notice of appeal, the Honorable Elizabeth A. Strance reduced the substance of the March 17, 2009 minute order to a June 8, 2009 written "Findings of Fact, Conclusions of Law and Order Granting Petitioner James Angelo Pelosi's Petition for Order to

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Show Cause Why Respondent Marcelle Loren Should Not Be Held in Contempt of Court" (hereinafter the June 8, 2009 sanction order), through which the probate court, among other things,

- expressly finds that Appellant Loren is in contempt of court for violating prior probate court orders,
- orders Appellant Loren to bring the balance of a trust bank account up to \$362,202.70 within fifteen days, and
- sanctions Appellant Loren by directing that Appellant Loren shall forthwith pay Appellee Pelosi's attorneys' fees in the amount of \$20,924.41 and costs in the amount of \$349.42 that Appellee Pelosi incurred as a result of having to move the court for relief.

Unlike the March 17, 2009 minute order, the June 8, 2009 sanction order contains the full signature of the presiding judge.

Appellant Loren's April 16, 2009 notice of appeals is premature as to the June 8, 2009 sanction order. Nevertheless, under Rule 4(a)(2) of the Hawai'i Rules of Appellate Procedure (HRAP), "[i]f a notice of appeal is filed after announcement of a decision but before entry of the judgment or order, such notice shall be considered as filed immediately after the time the judgment or order becomes final for the purpose of appeal." HRAP Rule 4(a)(2). Appellant Loren filed her April 16, 2009 notice of appeal after the probate court's March 17, 2009 announcement of its decision through the March 17, 2009 minute order, but before entry of the June 8, 2009 sanction order. Therefore, pursuant to HRAP Rule 4(a)(2), Appellant Loren's April 16, 2009 notice of appeal applies to the June 8, 2009 sanction order. Pursuant to HRAP Rule 3(c)(2), the fact that Appellant Loren's April 16, 2009

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notice of appeal incorrectly refers to the March 17, 2009 minute order rather than the June 8, 2009 sanction order does not invalidate Appellant Loren's April 16, 2009 notice of appeal.<sup>1</sup>

An interlocutory sanction order satisfies the three requirements for appealability under the "collateral order doctrine" if "the order directed payment of the assessed sum and was immediately enforceable through contempt proceedings."

Harada v. Ellis, 60 Haw. 467, 480, 591 P.2d 1060, 1070 (1979).

The June 8, 2009 sanction order

- (1) conclusively determines the disputed question whether Appellant Loren has violated prior orders, and, thus, is in contempt of court,
- (2) resolves the important issue regarding Appellant Loren's contempt of court, which is completely separate from the merits of the action, and
- (3) is effectively unreviewable on appeal from a final judgment because the probate court has sanctioned Appellant Loren in a specific amount of money and ordered Appellant Loren to take certain action within fifteen days, and, thus, Appellant Loren is in immediate jeopardy of being found in further contempt of court if Appellant Loren does not comply with the June 8, 2009 sanction order.

Therefore, the June 8, 2009 sanction order is immediately appealable.

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<sup>1</sup> Rule 3(c)(2) of the Hawai'i Rules of Appellate Procedure (HRAP) states that "[a]n appeal shall not be dismissed for informality of form or title of the notice of appeal." HRAP Rule 3(c)(2) (emphasis added). Hawai'i appellate courts have generally held that, "a mistake in designating the judgment . . . should not result in [the] loss of the appeal as long as the intention to appeal from a specific judgment can be fairly inferred from the notice and the appellee is not misled by the mistake." State v. Graybeard, 93 Hawai'i 513, 516, 6 P.3d 385, 388 (App. 2000) (internal quotation marks omitted) (quoting City & County v. Midkiff, 57 Haw. 273, 275-76, 554 P.2d 233, 235 (1976) (quoting 9 Moore's Federal Practice § 203.18 (1975))); City & County v. Midkiff, 57 Haw. 273, 275-76, 554 P.2d 233, 235 (1976); Ek v. Boggs, 102 Hawai'i 289, 294, 75 P.3d 1180, 1185 (2003); In re Brandon, 113 Hawai'i 154, 155, 149 P.3d 806, 807 (App. 2006); contra Chun v. Board of Trustees of the Employees' Retirement System of the State of Hawai'i, 92 Hawai'i 432, 448, 992 P.2d 127, 143 (2000).

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Accordingly, IT IS HEREBY ORDERED that Appellee Pelosi's June 10, 2009 motion to dismiss this appeal and for attorneys' fees and costs is denied.

DATED: Honolulu, Hawai'i, June 30, 2009.

  
Daniel R. Foley  
Presiding Judge

  
Associate Judge

  
Associate Judge