

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29838

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

RALPH KALEO NAITO, Individually, and as Conservator and Guardian
of GENEVIEVE FERNANDEZ NAITO, Plaintiff-Appellee,

v.

SYDNEY ANTONE NAITO, PAT LELIA MULVEY,
RAND E. MULVEY, JR., EDNA MAY NAITO, and MATALIMA JANICE NAITO,
Defendants-Appellants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 07-1-2387)

ORDER DISMISSING APPEAL
FOR LACK OF APPELLATE JURISDICTION
(By: Watanabe, Presiding Judge, Fujise and Leonard, JJ.)

Upon review of the record for this case, it appears that we lack jurisdiction over the appeal that Defendants-Appellants Sydney Antone Naito, Pat Lelia Mulvey, Rand E. Mulvey, Jr., Edna May Naito, and Matalima Janice Naito have asserted from the Honorable Rom A. Trader's April 21, 2009 order granting Plaintiff-Appellee Ralph Kaleo Naito's motion for certification pursuant to Rule 54 of the Hawai'i Rules of Civil Procedure (HRCP), because the circuit court has not reduced its dispositive ruling to a separate judgment, as HRCP Rule 58 requires under 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 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(c). HRCP

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CLERK, APPELLATE COURTS
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Rule 58 requires that "[e]very judgment shall be set forth on a separate document." HRCP Rule 58. Based on the separate document 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, 76 Hawai'i at 119, 869 P.2d at 1338.

[I]f 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. "[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. Furthermore, "[a]n 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." Id. at 120, 869 P.2d at 1339.

The April 21, 2009 order is not a judgment, but rather, the April 21, 2009 order is an interlocutory order granting Defendant-Appellee Ralph Kaleo Naito's motion for HRCP Rule 54(b) certification. The circuit court has not reduced its dispositive ruling to a separate judgment. Although the April 21, 2009 order contains an express finding of no just reason for delay in the entry of a judgment pursuant to HRCP Rule 54(b), "a party cannot appeal from a circuit court order even though the order may

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contain [HRCF Rule] 54(b) certification language; the order must be reduced to a [separate] judgment and the [HRCF Rule] 54(b) certification language must be contained therein." Oppenheimer v. AIG Hawaii Ins. Co., 77 Hawai'i 88, 93, 881 P.2d 1234, 1239 (1994). Absent an appealable separate judgment, this appeal is premature and must be dismissed for lack of appellate jurisdiction. Accordingly,

IT IS HEREBY ORDERED that appellate court case number 29838 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, September 23, 2009.


Presiding Judge


Associate Judge


Associate Judge