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EMERSON
CLERK, APPELLATE COURTS
STATE OF HAWAII

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 GRANTING THE OCTOBER 5, 2009 MOTION TO
RECONSIDER THE SEPTEMBER 23, 2009 DISMISSAL ORDER
PURSUANT TO RULE 40 OF THE HAWAII RULES OF APPELLATE PROCEDURE
(By: Watanabe, Presiding Judge, Fujise and Leonard, JJ.)

Upon review of (1) the September 23, 2009 order dismissing appellate court case number 29838 for lack of jurisdiction, (2) the October 5, 2009 motion by Defendants-Appellants Sydney Antone Naito, Pat Lelia Mulvey, Rand E. Mulvey, Jr., Edna May Naito, and Matalima Janice Naito (the Appellants) for reconsideration of the September 23, 2009 dismissal order pursuant to Rule 40 of the Hawaii Rules of Appellate Procedure (HRAP), and (3) the record, it appears that the Appellants' October 5, 2009 HRAP Rule 40 motion for reconsideration of the September 23, 2009 dismissal order has merit. We entered the September 23, 2009 dismissal order because the Appellants purported to be appealing from an interlocutory order, and yet the Appellants failed to refer to any judgment in the record that was appealable pursuant to Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2008), Rule 58 of the Hawaii Rules of Civil Procedure (HRCPP) and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawaii 115, 119, 869 P.2d 1334, 1338 (1994). In the Appellants' October 5, 2009 HRAP Rule 40 motion

for reconsideration of the September 23, 2009 dismissal order, the Appellants refer, for the first time, to a June 15, 2009 "Partial Final Judgment Revesting Title to Genevieve Fernandez Naito" (the June 15, 2009 HRCF Rule 54(b)-certified judgment) that the circuit court certified for appeal pursuant to HRCF Rule 54(b) and entered before the appellate court clerk filed the record on appeal for appellate court case number 29838 on July 20, 2009. In light of the existence of the June 15, 2009 HRCF Rule 54(b)-certified judgment in the record on appeal,

IT IS HEREBY ORDERED that the Appellants' October 5, 2009 HRAP Rule 40 motion for reconsideration of the September 23, 2009 dismissal order is granted, and, thus, the September 23, 2009 order dismissing appellate court case number 29838 is vacated. The Appellants have already filed their opening brief on September 30, 2009, and, thus, the answering brief shall be filed within forty days after entry of this order. The reply brief shall be filed in accordance with HRAP Rule 28. After the parties have filed their appellate briefs, the intermediate court of appeals will review the merits of appellate court case number 29838.

DATED: Honolulu, Hawai'i, October 9, 2009.

Corinne K A Wetanabe

Presiding Judge

Alice Awa Fujino

Associate Judge

[Signature]

Associate Judge