

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29867

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAIILILLIAN M. JONES, M.D., Plaintiff/Counterclaim-
Defendant/Appellant,

v.

UNIVERSITY OF HAWAII, HAWAII RESIDENCY PROGRAM, INC.,
NALEEN ANDRADE, M.D., COURTENAY MATSU, M.D., D. CHRISTIAN
DERAUF, M.D., TERRY LEE, M.D., and IQBAL AHMED, M.D.,
Defendants/Counterclaim Plaintiffs/AppelleesAPPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 08-1-0071)ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Watanabe, Acting C.J., Foley and Fujise, JJ.)

Upon review of the record in this case, it appears that we lack jurisdiction over the appeal that Plaintiff/Counterclaim-Defendant/Appellant Lillian M. Jones, M.D. (Appellant Dr. Jones), has asserted from the following two interlocutory summary judgment orders that Honorable Victoria S. Marks entered on May 1, 2009 (the two May 1, 2009 interlocutory summary judgment orders):

- (1) the May 1, 2009 "Order Granting Individual Defendants Naleen Andrade, M.D. Courtenay Matsu, M.D., and D. Christian Derauf, M.D.'s Motion for Summary Judgment as to All Claims Against Them in Their Individual Capacities', Filed on September 25, 2008," and
- (2) the May 1, 2009 "Order Granting Defendants Hawaii Residency Programs, Inc., Naleen Andrade, M.D., Courtenay Matsu, M.D. [,] and D. Christian Derauf, M.D.'s [,] Motion for Partial Summary Judgment as to the Statute of Limitations, Filed on March 30, 2009."

KHAMAKADU
CLERK, APPELLATE COURTS
STATE OF HAWAII

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As explained below, the circuit court has not reduced the two May 1, 2009 interlocutory summary judgment orders to a separate, appealable final judgment, and, thus, Appellant Dr. Jones's appeal is premature.

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2008) authorizes appeals to the intermediate court of appeals only 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). Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP) requires that "[e]very judgment shall be set forth on a separate document." HRCP Rule 58. Based on HRCP Rule 58, the Supreme Court of Hawai'i 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). "An appeal from an order that is not reduced to a judgment in favor 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 (footnote omitted). Thus, "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, 20, 122 P.3d 809, 815 (2005) (citation omitted) (emphasis added).

The circuit court has not yet entered a separate final judgment that resolves all of the claims in this case.

Therefore, absent an exception to the general rule requiring a

final judgment for an appeal, Appellant Dr. Jones's appeal is premature, and we lack appellate jurisdiction.

Although exceptions to the final judgment requirement exist under the Forgay doctrine and the collateral order doctrine, the two May 1, 2009 interlocutory summary judgment orders do not satisfy all of the requirements for appealability under the Forgay doctrine or the collateral order doctrine. See Ciesla v. Reddish, 78 Hawai'i 18, 20, 889 P.2d 702, 704 (1995) (regarding the two requirements for appealability under the Forgay doctrine and Forgay v. Conrad, 47 U.S. 201 (1848)) and Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 322, 966 P.2d 631, 634 (1998) (regarding the three requirements for appealability under the collateral order doctrine). Among other things, the two May 1, 2009 interlocutory summary judgment orders do not require the immediate execution of a command that property be delivered to Appellant Dr. Jones's adversary, as the Forgay doctrine requires, and, furthermore, the two May 1, 2009 interlocutory summary judgment orders relate directly to the merits of Appellant Dr. Jones's claims in this case, and, thus, they do not qualify as collateral orders.

Finally, the circuit court has not certified the two May 1, 2009 interlocutory summary judgment orders for an interlocutory appeal pursuant to HRS § 641-1(b). Therefore, the two May 1, 2009 interlocutory summary judgment orders are not appealable pursuant to HRS § 641-1(b).

Absent a separate, appealable, final judgment, Appellant Dr. Jones's appeal is premature and we lack appellate

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jurisdiction. Accordingly,

IT IS HEREBY ORDERED that appellate court case number 29867 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, September 1, 2009.

Corinne K A Uotakahe

Acting Chief Judge

Daniel R. Foley

Associate Judge

Auna Dru Jijim

Associate Judge