

NO. 29871

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

H. ISABELLE MCGARRY TRUST OF MARCH 19, 1971,
Plaintiff-Appellant,

v.

ROBERT HOFELICH and ANN MARIE HOFELICH,
Defendants-Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(S.P. NO. 97-0004K)

ORDER DISMISSING APPEAL FOR LACK OF JURISDICTION
(By: Nakamura, Chief Judge, Watanabe and Leonard, JJ.)

On February 28, 1997, the H. Isabelle McGarry Trust of March 19, 1971 (McGarry Trust) initiated a special civil proceeding (S.P. No. 97-004k) in the Circuit Court of the Third Circuit (circuit court) by filing, pursuant to Hawaii Revised Statutes (HRS) § 636C-3 (1993)¹, an exemplified foreign judgment from the state of California in favor of the McGarry Trust and against Robert Hofelich, also known as Robert H. Hofelich and Howard Hofelich (Howard), and Anna Marie Hofelich (Anna)

¹ HRS § 636C-3, which is part of HRS chapter 636C, entitled the "Uniform Enforcement of Foreign Judgments Act," provides:

Filing and status of foreign judgments. A copy of any exemplified foreign judgment may be filed in the office of the clerk of the appropriate court of this State. The clerk shall treat the foreign judgment in the same manner as a judgment of a court of this State. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a court of this State, including establishing a lien, and may be enforced or satisfied in like manner.

The term "foreign judgment" is defined in HRS § 636C-2 (1993) as "any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this State."

(collectively, the Hofeliches) for the amount of \$39,464.35. Attached to the exemplified foreign judgment was an affidavit by Mark McShane (McShane), attesting that he was the trustee for the McGarry Trust.

Thereafter, the McGarry Trust pursued post-judgment proceedings for the purpose of executing the exemplified California judgment against the Hofeliches' assets in Hawai'i. On February 26, 1999, the circuit court entered a second amended writ of execution that applied to, among other items, a commercial boat that the Hofeliches allegedly owned. A dispute then arose as to who owned the boat, and South Pacific Scuba Tours, Inc., Jeff Bowden, and Bonnie Bowden (Intervenors) were allowed to intervene to assert their alleged interests in the boat.

On July 28, 2009, the circuit court² entered "Final Judgment" "in favor of Judgment-Creditors H. Isabelle McGarry Trust of March 19, 1971; Intervenors South Pacific Scuba Tours, Inc., Jeff Bowden, and Bonnie Bowden" (July 28, 2009 Judgment)." Curiously, Howard, who was a defendant in the exemplified California judgment in favor of the McGarry Trust, now appeals, pro se, for the McGarry Trust, claiming to be the trustee of the McGarry Trust.

The July 28, 2009 Judgment is flawed in that it enters judgment in favor of all the parties to the Intervenors' complaint in intervention, without identifying the claim or

² The Honorable Elizabeth A. Strance presided.

claims on which the judgment is being entered or the party or parties against whom the judgment is being entered, as required by Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). Accordingly, the July 28, 2009 is not an appealable judgment and we lack jurisdiction to consider this appeal.

We note moreover that although Howard, acting pro se, unilaterally claims in his notice of appeal that he is the trustee of the McGarry Trust, the record on appeal shows that, as long as attorneys represented the McGarry Trust in this consolidated case, McShane was the trustee of record for the McGarry Trust. Howard has not shown that he has standing to assert an appeal on behalf of the McGarry Trust.

IT IS HEREBY ORDERED that this appeal is dismissed for lack of jurisdiction.

DATED: Honolulu, Hawai'i, November 3, 2009.

Chief Judge

Associate Judge

Associate Judge