NOS. 29973 and 29989

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

No. 29973
MARK J. BENNETT, Attorney General
of the State of Hawaiʻi, Petitioner-Appellee,
v.
FRANK DE GIACOMO, Respondent-Appellant
and
ANIMAL CARE FOUNDATION, INC., Respondent-Appellee,

and

No. 29989
MARK J. BENNETT, Attorney General
of the State of Hawaiʻi, Petitioner-Appellee,
v.
FRANK DE GIACOMO, Respondent-Appellant
and
ANIMAL CARE FOUNDATION, INC., Respondent-Appellee,

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P. 09-1-0208)

ORDER GRANTING NOVEMBER 3, 2009 MOTION TO
DISMISS APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Nakamura, Chief Judge, Watanabe and Fujise, JJ.)

Upon review of (1) the October 28, 2009 order consolidating appellate court case numbers 29973 and 29989 under appellate court case number 29989, (2) the November 3, 2009 motion by Petitioner-Appellee Mark J. Bennett (Appellee Bennett) to dismiss appellate court case number 29989 for lack of appellate jurisdiction, (3) the lack of opposition by Respondent-Appellee Frank De Giacomo (Appellant De Giacomo) to Appellee Bennett's November 3, 2009 motion to dismiss appellate court case number 29989 for lack of appellate jurisdiction, and (4) the record, it appears that we do not have jurisdiction over

Appellant De Giacomo's appeal from the Honorable Victoria S. Mark's August 5, 2009 "Order Granting Petition for Order Enforcing Attorney General Subpoena No. 2009-027 and for Order to Show Cause" (the August 5, 2009 interlocutory order) because the August 5, 2009 interlocutory order is not an independently appealable order, and, additionally, it appears that this appeal is moot.

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 Hawaiʻi 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 Hawaiʻi 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 Hawaiʻi 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). The circuit court has not yet reduced the August 5, 2009 interlocutory order to a separate judgment in this case. Absent a separate judgment, the August 5, 2009 interlocutory order is not eligible for appellate review.

Although exceptions to the final judgment requirement exist under Forgay v. Conrad, 47 U.S. 201 (1848), (the Forgay doctrine), the collateral order doctrine, and HRS § 641-1(b), the August 5, 2009 interlocutory order does not satisfy the requirements for appealability under the Forgay doctrine, the collateral order doctrine, and HRS § 641-1(b). See Ciesla v. Reddish, 78 Hawaiʻi 18, 20, 889 P.2d 702, 704 (1995) (regarding the two requirements for appealability under the Forgay doctrine); Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawaiʻi 319, 322, 966 P.2d 631, 634 (1998) (regarding the three requirements for appealability under the collateral order doctrine); and HRS § 641-1(b) (regarding the requirements for an appeal from an interlocutory order). Consequently, Appellant De Giacomo's appeal is premature, and we lack appellate jurisdiction over appellate court case number 29989.

We additionally note that "[m]ootness is an issue of subject matter jurisdiction[,]" Doe v. Doe, 120 Hawaiʻi 149, 164, 202 P.3d 610, 625 (App. 2009), and "[a]n appellate court has . . . an independent obligation to ensure jurisdiction over each case and to dismiss the appeal sua sponte if a jurisdictional defect exits." State v. Graybeard, 93 Hawaiʻi 513, 516, 6 P.3d 385, 388 (App. 2000) (citation omitted).

> A case is moot if it has lost its character as a present, live controversy of the kind that must exist if courts are to avoid advisory opinions on abstract propositions of law. The rule is one of the prudential rules of judicial self-governance founded in concern about the proper - and properly limited - role of the courts in a democratic society. We have said the suit must remain alive throughout the course of litigation to the moment

> of final appellate disposition to escape the mootness bar. . . . Simply put, a case is moot if the reviewing court can no longer grant effective relief.

Kahoʻohanohano v. State, 114 Hawaiʻi 302, 332, 162 P.3d 696, 726 (2007) (citations, internal quotation marks, and brackets omitted; emphasis added). Appellee Bennett's purpose for initiating this proceeding was to compel Appellant De Giacomo to comply with a subpoena, and Appellee Bennett has demonstrated that Appellant De Giacomo has already complied with the subpoena. Consequently, we can no longer grant effective relief, and this appeal is moot. Accordingly,

IT IS HEREBY ORDERED that Appellee Bennett's November 3, 2009 motion to dismiss appellate court case number 29989 for lack of appellate jurisdiction is granted, and appellate court case number 29989 is dismissed.

DATED: Honolulu, Hawaiʻi, December 11, 2009.

Chief Judge

Associate Judge

Associate Judge