

NO. 30018

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

In the Matter of the Arbitration Between  
UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO,  
Union-Appellant,

and

STATE OF HAWAII, DEPARTMENT OF EDUCATION,  
HAWAII PUBLIC CHARTER SCHOOL, WAI'ALAE SCHOOL (2007-050),  
Employer-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(S.P. NO. 07-1-0422)

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

Upon review of the record, it appears that we do not have jurisdiction over this appeal that Union-Appellant United Public Workers, AFSCME, Local 646, AFL-CIO (Appellant UPW), has asserted from the Honorable Sabrina S. McKenna's August 4, 2009 "Order Denying UPW's Motion for Relief from Order and from Arbitration Award as to State of Hawaii Department of Education" (August 4, 2009 order) because the August 4, 2009 order is not an appealable final order pursuant to Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2008) or HRS § 658A-28 (Supp. 2008).

Appellant UPW asserts that the August 4, 2009 order an order denying a motion for relief under Rule 60(b) of the Hawaii Rules of Civil Procedure (HRCP) and therefore, "is an appealable final order under HRS § 641-1(a)." Ditto v. McCurdy, 103 Hawaii 153, 160, 80 P.3d 974, 981 (2003) (citation omitted). However, under analogous circumstances, the Hawaii appellate courts have explained that a motion for relief "pursuant to HRCP Rule 60(b) is authorized only in situations involving final judgments." Cho v. State, 115 Hawaii 373, 382, 168 P.3d 17, 26 (2007) (citations and internal quotation marks omitted); Crown Properties, Inc. v.

Financial Security Life Insurance Co., Ltd., 6 Haw. App. 105, 112, 712 P.2d 504, 509 (1985) ("A Rule 60(b), HRCF, motion is authorized only in situations involving final judgments."); Tradewinds Hotel, Inc. v. Cochrane, 8 Haw. App. 256, 262, 799 P.2d 60, 65 (1990) ("Rule 60(b) applies to motions seeking to amend final orders in the nature of judgments."). In this context, a judgment "includes a decree and any order from which an appeal lies." HRCF Rule 54(a). Nevertheless, without an appealable judgment or order in the instant case, "relief pursuant to HRCF Rule 60(b) [i]s not available[.]" Cho, 115 Hawai'i at 383, 382, 168 P.3d at 27.

It is uncontested that the circuit court has not yet entered a final judgment in this case that is appealable pursuant to HRS § 641-1(a) (1993 & Supp. 2008), HRCF Rule 58, and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 869 P.2d 1334 (1994). Although Appellant UPW asserts that the August 4, 2009 order, is an appealable final order, "an order is not final if the rights of a party involved remain undetermined or if the matter is retained for further action." Cho, 115 Hawai'i at 383, 382, 168 P.3d at 27 (citation and internal quotation marks omitted). We have already held in the appellate court case numbered 29092 that the March 18, 2008 interlocutory order is not an appealable final order under HRS § 658A-28 (Supp. 2008). Absent the entry of an appealable final judgment or order, "any . . . order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." HRCF Rule 54(b). Thus, in the August 4, 2009 order the circuit court correctly concluded that HRCF Rule 60(b) did not apply to Appellant UPW's June 30, 2009 motion for relief from the March 18, 2008 interlocutory order. The August 4, 2009 order is not an order denying a motion for post-judgment relief under HRCF Rule 60(b), but, rather, it is an interlocutory order that will be eligible for appellate review only by way of a timely appeal from an appealable final judgment or order. Cf.

Ueoka v Szymanski, 107 Hawai'i 386, 396, 114 P.3d 892, 902 (2005) ("An appeal from a final judgment brings up for review all interlocutory orders not appealable directly as of right which deal with issues in the case." (Citation and internal quotation marks omitted)). Absent an appealable final judgment or order, we lack jurisdiction over this appeal. Accordingly,

IT IS HEREBY ORDERED that appellate court case number 30018 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, December 29, 2009.

Chief Judge

Associate Judge

Associate Judge