

NO. 30024

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

WATERS OF LIFE LOCAL SCHOOL BOARD,
WATERS OF LIFE PUBLIC CHARTER SCHOOL,
RUDOLPH WEBSTER, CARRIE RUSS, and ROSE TORRES,
Plaintiffs-Appellees,

v.

CHARTER SCHOOL REVIEW PANEL,
CHARTER SCHOOL ADMINISTRATIVE OFFICE, BOARD OF EDUCATION
OF THE STATE OF HAWAII, DEPARTMENT OF EDUCATION OF THE
STATE OF HAWAII, and DOES 1-10, Defendants-Appellants

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 09-1-0225)

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

Upon review of the record, it appears that we lack jurisdiction over the appeal that Defendants-Appellants Charter School Review Panel, Charter School Administrative Office, Board of Education of the State of Hawaii, Department of Education of the State of Hawaii (the State Appellants), have asserted from the Honorable Glenn S. Hara's July 31, 2009 "Memorandum of Decision, Order, and Judgment" (the July 31, 2009 order), which is essentially an order, because the circuit court has not yet reduced the July 31, 2009 order to a separate judgment, as Rule 58 of the Hawaii Rules of Civil Procedure (HRCPP) requires under the supreme court's holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawaii 115, 119, 869 P.2d 1334, 1338 (1994).

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2008) authorizes appeals to the intermediate court of appeals 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). HRCP Rule 58 requires that "[e]very judgment shall be set forth on a separate document." HRCP Rule 58 (emphasis added). Based on HRCP Rule 58, the supreme court 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, 76 Hawai'i at 119, 869 P.2d at 1338 (emphasis added). In other words, "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, 21, 122 P.3d 809, 816 (2005) (citation omitted) (emphasis added). Furthermore,

if a judgment purports to be the final judgment in a case involving multiple claims or multiple parties, the judgment (a) must specifically identify the party or parties for and against whom the judgment is entered, and (b) must (i) identify the claims for which it is entered, and (ii) dismiss any claims not specifically identified[.]

Jenkins, 76 Hawai'i at 119, 869 P.2d at 1338 (emphases added).

For example: "Pursuant to the jury verdict entered on (date), judgment in the amount of \$_____ is hereby entered in favor of Plaintiff X and against Defendant Y upon counts I through IV of the complaint." A statement that declares "there are no other outstanding claims" is not a judgment. If the circuit court intends that claims other than those listed in the judgment language should be dismissed, it must say so: for example, "Defendant Y's counterclaim is dismissed," or "Judgment upon Defendant Y's counterclaim is entered in favor of Plaintiff/Counter-Defendant Z," or "all other claims, counterclaims, and cross-claims are dismissed."

Id. at 119-20 n.4, 869 P.2d at 1338-39 n.4 (emphasis added). "An appeal from an order that is not reduced to a judgment in favor

of 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).

Notwithstanding its title, the July 31, 2009 "Memorandum of Decision, Order, and Judgment" is an order, not a final judgment. The circuit court has not yet reduced the July 31, 2009 order to a separate judgment that (a) specifically identifies the count or counts in the complaint on which the circuit court intends to enter judgment and (b) enters judgment in favor of and against the appropriate parties. Absent an appealable final judgment, this appeal is premature and we lack appellate jurisdiction. Accordingly,

IT IS HEREBY ORDERED that appellate court case numbered 30024 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, December 23, 2009.

Chief Judge

Associate Judge

Associate Judge