

NO. 30381

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

UMEYO ISHIMOTO, et al., Plaintiffs-Appellees, v.  
STANLEY R. TSUJI, et al., Defendants-Appellants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIVIL NO. 01-1-1488)

ORDER GRANTING MAY 18, 2010 MOTION  
TO DISMISS APPEAL AND CROSS-APPEAL

(By: Nakamura, Chief Judge, Fujise and Leonard, JJ.)

Upon review of (1) Plaintiffs/Counterclaim-Defendants/Appellees/Cross-Appellees Umeyo Ishimoto and Umeyo Ishimoto Personal Representative of the Estate of Takeshi Ishimoto's (the Ishimoto Appellees) May 18, 2010 motion to dismiss this appeal, (2) the lack of any opposition thereto, and (3) the record, it appears that we lack jurisdiction over this appeal and cross-appeal from the Honorable Patrick W. Border's April 22, 2010 "Findings of Fact, Conclusions of Law, and Order Granting Motion for Partial Summary Judgment" Filed December 28, 2009" (the Interlocutory Order), because the circuit court has not yet reduced the Interlocutory Order) to a separate judgment, as Rule 58 of the Hawaii Rules of Civil Procedure (HRCPP) requires.

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2009) 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). The supreme court has promulgated HRCPP Rule 58, which specifically requires that "[e]very judgment shall be set forth on a separate document." HRCPP Rule 58 (emphasis added). Based on this requirement, the supreme court has held 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 HRCPP [Rule] 58[.]" Jenkins v. Cades Schutte Fleming

& Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). The separate judgment must "either resolve all claims against all parties or contain the finding necessary for certification under HRCP [Rule] 54(b)." Id. "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 Interlocutory Order) is not a judgment. Absent a separate, appealable judgment, this appeal and cross-appeal are premature and we lack appellate jurisdiction.

Therefore, IT IS HEREBY ORDERED that the Ishimoto Appellees' May 18, 2010 motion to dismiss Appeal No. 30381 granted. This appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, June 15, 2010.

Chief Judge

Associate Judge

Associate Judge