

NO. CAAP-13-0000197

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

CATHERINE I. CASTRO, Petitioner/Appellant-Appellant,
v.
STATE OF HAWAI'I, EMPLOYEES' RETIREMENT SYSTEM, DIANA Y. NHAM,
Respondents/Appellees-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 12-1-2175)

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

Upon review of the record on appeal, it appears that we lack jurisdiction over the secondary agency appeal by Petitioner-Appellant-Appellant Catherine I. Castro (Appellant).

The intermediate court of appeals has jurisdiction "[t]o hear and determine appeals from any court or agency when appeals are allowed by law[.]" HRS § 602-57(1) (Supp. 2011). The law provides that "[a]ppeals shall be allowed in civil

matters from all final judgments, orders, or decrees of circuit . . . courts[.]" HRS § 641-1(a) (1993 & Supp. 2011). Appeals under HRS § 641-1 "shall be taken in the manner . . . provided by the rules of court." HRS § 641-1(c). Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP) requires that "[e]very judgment shall be set forth on a separate document." HRCP Rule 58. Based on this requirement under HRCP Rule 58, the Supreme Court of Hawai'i 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 HRCP [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). "Thus, based on Jenkins and HRCP Rule 58, an order is not appealable, even if it resolves all claims against the parties, until it has been reduced to a separate judgment." Carlisle v. One (1) Boat, 119 Hawai'i 245, 254, 195 P.3d 1177, 1186 (2008). "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." Jenkins, 76 Hawai'i 119, 869 P.2d 1338.

Appellant appealed from an Order Affirming Final Decision of the Board of Trustees of the Employees' Retirement System of the State of Hawai'i and Dismissing Appeal, filed on February 22, 2013.¹ The record on appeal does not contain a separate final judgment, as required by Jenkins.

Therefore,

¹ The Honorable Rhonda A. Nishimura presided.

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

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

DATED: Honolulu, Hawai'i, June 26, 2013.

Chief Judge

Associate Judge

Associate Judge