NO. CAAP-17-0000253

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

IN THE MATTER OF THE ESTATE OF
MRS. JOANNA LAU SULLIVAN aka
MRS. JOANNA NGIT CHO LAU SULLIVAN,
Deceased.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(LP. NO. 15-1-0698)

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Fujise, Presiding Judge, Leonard and Reifurth, JJ.)

Upon review of the record in CAAP-17-0000253, it appears that we lack appellate jurisdiction. Respondent-Appellant Colleen Sullivan (Appellant) appeals from the Judgment on Order Denying Petition to Appoint a Special Administrator, Filed November 3, 2016, filed on February 27, 2017 in the Circuit Court of the First Circuit.

Generally, in probate proceedings "Appellate review, including the right to appellate review, interlocutory appeal, provisions as to time, manner, notice, appeal bond, stays, scope of review, record on appeal, briefs, arguments and power of the appellate court, is governed by the Hawaiʻi rules of appellate procedure and the Hawaiʻi rules of civil procedure." HRS § 560:1-308.

The Judgment on Order Denying Petition to Appoint a Special Administrator, Filed November 3, 2016 states that it is a final judgment. However, it is not a final judgment that closed the entire probate proceeding. Thus, there is no final judgment pursuant to Rule 34(c) of the Hawaiʻi Probate Rules.[1] "Appeals shall be allowed in civil matters from all final judgments, orders, or decrees of circuit and district courts and the land court to the intermediate appellate court, subject to chapter 602." HRS § 641-1(a). Since final judgment within the meaning of HPR Rule 34(c) was not entered, there is no final judgment appealable pursuant to HRS § 641-1(a).

Pursuant to HPR Rule 34(a), the Order Denying Petition to Appoint a Special Administrator, Filed November 3, 2016 may be certified pursuant to HRCP Rule 54(b) or certified in accordance with HRS § 641-1(b) as an appeal from an interlocutory order, pursuant to HPR Rule 34(b). The finding necessary for certification under HRCP Rule 54(b) is "an express determination that there is no just reason for delay . . . for the entry of

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[1] HPR Rule 34 states:

> RULE 34. ENTRY OF JUDGMENT, INTERLOCUTORY ORDERS, APPEALS
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> (a) Entry of Judgment. All formal testacy orders, orders of intestacy and determination of heirs, orders establishing conservatorship and/or guardianship, and orders establishing protective arrangements shall be reduced to judgment and the judgment shall be filed with the clerk of the court. Such judgments shall be final and immediately appealable as provided by statute. Any other order that fully addresses all claims raised in a petition to which it relates, but that does not finally end the proceeding, may be certified for appeal in the manner provided by Rule 54(b) of the Hawai'i Rules of Civil Procedure.
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> (b) Interlocutory Orders. In order to appeal from any other order prior to the conclusion of the proceeding, the order must be certified for appeal in accordance with Section 641-1(b) of the Hawai'i Revised Statutes.
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> (c) Final Judgment Closing Proceeding. At the conclusion of the proceeding, a final judgment closing the proceeding shall be entered and filed with the clerk of the court, at which time all prior uncertified interlocutory orders shall become immediately appealable.
>
> (d) Appeals. Final judgments as to all claims and parties, certified judgments, certified orders, and other orders appealable as provided by law may be appealed pursuant to the Hawai'i Rules of Appellate Procedure applicable to civil actions.

judgment." HRCP Rule 54(b). "If a judgment purports to be certified under HRCP Rule 54(b), the necessary finding of no just reason for delay must be included in the judgment." Jenkins v. Cades Schutte, 76 Hawaiʻi 115, 120, 869 P.2d 1334, 1339 (1994) (internal citation omitted).

The Judgment on Order Denying Petition to Appoint a Special Administrator, Filed November 3, 2016 does not contain an express determination that there is no just reason for delay. Therefore, the judgment is not properly certified pursuant to HRCP Rule 54(b).

"Following the analogy of the appointment of a receiver, an order appointing a temporary administrator is to be regarded as interlocutory and not appealable." Estate of Lutteds, 22 Haw. 712, 714 (1915). Thus, an order appointing a special administrator is not a final and appealable order. Id. "Orders appointing, removing, refusing to appoint, or refusing to remove receivers are generally deemed to be interlocutory and hence not appealable unless the statute authorizes an appeal." Id. Therefore, an order refusing to appoint a special administrator is also interlocutory and not appealable unless certified pursuant to HRS § 641-1(b). "HRS § 641-1(b) allows an appeal of an interlocutory judgment, decree, or order but only (1) upon application and (2) the circuit court's determination that the appeal would result in the speedy termination of the litigation." TBS Pacific Inc. v. Tamura, 5 Haw. App. 222, 226, 686 P.2d 37, 42 (1984). If a party requests an interlocutory appeal pursuant to HRS § 641-1(b), "the trial court shall carefully consider the matter of whether it thinks an interlocutory appeal will more speedily determine the litigation, if it so concludes, will set forth, in the order allowing the appeal its reasons for that conclusion." Mason v. Water Resources Int'l, 67 Haw. 510, 512, 694 P.2d 388, 389 (1985).

The record on appeal does not indicate that a party requested an interlocutory appeal from the denial of appointment of a Special Administrator. Even if a party did, neither the Order Denying Petition to Appoint a Special Administrator, Filed November 3, 2016 nor the Judgment on Order Denying Petition to Appoint a Special Administrator, Filed November 3, 2016 concluded that an interlocutory appeal will more speedily determine the litigation and the reasons for that conclusion. Therefore, the requirements of HRS § 641-1(b) were not satisfied.

Absent an appealable final judgment or order in this case, the appeal is premature, and this court lacks appellate jurisdiction. When the court determines that it lacks jurisdiction, the only appropriate remedy is dismissal of the appellate case:

> [J]urisdiction is the base requirement for any court considering and resolving an appeal or original action. Appellate courts, upon determining that they lack jurisdiction shall not require anything other than a dismissal of the appeal or action. Without jurisdiction, a court is not in a position to consider the case further.
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> Thus, appellate courts have an obligation to insure that they have jurisdiction to hear and determine each case. The lack of subject matter jurisdiction can never be waived by any party at any time. Accordingly, when we perceive a jurisdictional defect in an appeal, we must, sua sponte, dismiss that appeal.

Housing Fin. and Dev. Corp. v. Castle, 79 Hawaiʻi 64, 76, 898 P.2d 576, 588 (1995) (citations, internal quotation marks, some brackets and ellipsis points omitted; emphasis added).

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

DATED: Honolulu, Hawaiʻi, June 29, 2017.

Presiding Judge

Associate Judge

Associate Judge