

NO. CAAP-11-0000496

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

KEITH MURAUSKAS,
Plaintiff-Appellant,
v.
DEPARTMENT OF PUBLIC SAFETY, STATE OF HAWAI'I,
Defendant-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 09-1-1272-06)

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

Upon review of the record, it appears that this court does not have jurisdiction over Plaintiff-Appellant Keith Murauskas's (Appellant) appeal from the Honorable Edwin C. Nacino's July 12, 2011 "Order Denying Plaintiff's Second Ex Parte Motion to Order the Defendant to Allow Murauskas Access to the Court" (the July 12, 2011 interlocutory order), because the July 12, 2011 interlocutory order is not independently appealable, and the circuit court has not yet entered an appealable final

judgment on all claims pursuant to Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP).

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2010) authorizes appeals to the intermediate court of appeals only from final judgments, orders, or decrees. Appeals under HRS § 641-1 "shall be taken in the manner . . . provided by the rules of court." HRS § 641-1(c). HRCP Rule 58 requires that "[e]very judgment shall be set forth on a separate document." Based on HRCP Rule 58, the Supreme Court of Hawai'i holds "[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). "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 record on appeal for appellate court case number CAAP-11-0000496 was filed on August 15, 2011, and the circuit court has not yet entered a separate judgment in this case. Absent a separate judgment, the July 12, 2011 interlocutory order is not eligible for appellate review.

Although exceptions to the final judgment requirement exist under the Forgay v. Conrad, 47 U.S. 201 (1848), doctrine (the Forgay doctrine), the collateral order doctrine, and HRS § 641-1(b), the July 12, 2011 interlocutory order does not satisfy the requirements for appealability under the Forgay

doctrine, the collateral order doctrine, and HRS § 641-1(b). See Ciesla v. Reddish, 78 Hawai'i 18, 20, 889 P.2d 702, 704 (1995) (regarding the two requirements for appealability under the Forgay doctrine); Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 322, 966 P.2d 631, 634 (1998) (regarding the three requirements for appealability under the collateral order doctrine); HRS § 641-1(b) (regarding the requirements for an appeal from an interlocutory order). Therefore, the July 12, 2011 interlocutory order is not an appealable order.

Absent an appealable separate judgment, Appellant's appeal is premature, and we lack appellate jurisdiction over Appeal No. CAAP-11-0000496.

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

DATED: Honolulu, Hawai'i, September 15, 2011.

Chief Judge

Associate Judge

Associate Judge