

NO. CAAP-14-0001029

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

ONEWEST BANK, FSB, Plaintiff-Appellee,

v.

WARREN ROBERT WEGESEND SR.; THELLDINE LINMOE WEGESEND,  
Defendants-Appellants,

and

FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver  
for Washington MUTUAL BANK and MILILANI TOWN ASSOCIATION,  
Defendants-Appellees,

and

JOHN DOES 1-50, JANE DOES 1-50,  
DOE PARTNERSHIPS 1-50, DOE CORPORATIONS 1-50,  
DOE ENTITIES 1-50, and DOE GOVERNMENTAL UNITS 1-50, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIVIL NO. 13-1-0909-03)

**ORDER GRANTING MOTION TO DISMISS APPEAL**

(By: Nakamura, C.J., Leonard, Ginoza, JJ.)

Upon consideration of the Motion to Dismiss Appeal filed on July 27, 2015 by Plaintiff-Appellee OneWest Bank, FSB (OneWest Bank), the papers in support, the record, and no opposition having been filed, it appears that:

(1) On July 31, 2014, Defendants-Appellants Warren Robert Wegesend Sr. and Thelldine Linmoe Wegesend (Appellants), through counsel Robert Lee Stone (Counsel), filed a Notice of Appeal stating the appeal was from:

1. This Court's Order of July 9, 2013: "Findings of Fact, Conclusions of Law, and Order Granting Plaintiff OneWest Bank, FSB's Motion for Summary Judgment Against Defendants Warren Robert Wegesend Sr., Thelldine Linmoe Wegesend, Federal Deposit Insurance Corporation, as Receiver for Washington Mutual Bank, and Mililani Town Association, for

an Order for Interlocutory Decree of Foreclosure and for Entry of Final Judgment Pursuant to Haw. R. Civ. P. 54(b), and

2. This Court's "Judgment" Order of July 9, 2013.

There are no such documents in the record on appeal and in fact no documents were filed in the Circuit Court of the First Circuit (circuit court) on July 9, 2013 (or July 9, 2014);

(2) It appears that a hearing was held in the circuit court on July 9, 2014 regarding OneWest Bank's motion for summary judgment, and that the following day, July 10, 2014, a minute order was issued indicating that the circuit court would grant OneWest Bank's motion.<sup>1</sup> Appellants subsequently filed their notice of appeal on July 31, 2014, but the circuit court had not yet entered an appealable written order or judgment. Appellants assert that an order granting a decree of foreclosure and a judgment were entered by the circuit court on September 11, 2014;

(3) On September 24, 2014, the record on appeal was filed, but the record does not contain the purported September 11, 2014 order granting a decree of foreclosure or the September 11, 2014 judgment from which Appellants now apparently assert their appeal;

(4) On January 16, 2015, this court entered an "Order to Show Cause Why the Appeal Should Not be Dismissed for Lack of Jurisdiction and Why the Appellants' Attorney Should Not Be Sanctioned" (Show Cause Order), stating that without the September 11, 2014 judgment and order in the record on appeal, it appeared that the court might lack appellate jurisdiction;

(5) The Show Cause Order gave Appellants notice that they (a) failed to ensure that the record on appeal was

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<sup>1</sup> Hawaii appellate courts have consistently held that minute orders are not appealable orders. See Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 321 n.3, 966 P.2d 631, 633 n.3 (1998) ("[A] minute order is not an appealable order."); State v. English, 68 Haw. 46, 52, 705 P.2d 12, 16 (1985) ("Though the substance of the court's decision is captured in the minutes of court proceedings kept by the clerk who attended the hearing, they do not substitute for the requisite written document; they are merely 'prepared for [the court's] own use.' RCCH Rule 27." (footnote omitted)).

sufficient for appellate review in violation of Rule 11(a) of the Hawai'i Rules of Appellate Procedure (HRAP); and (b) failed to file the Civil Appeals Docketing Statement as required by HRAP Rule 3.1;

(6) The Show Cause Order required Appellants to: move the circuit court pursuant to HRAP Rule 10(e)(2)(B) to supplement the record on appeal with the circuit court's September 11, 2014 judgment and order; to show cause why this court should not dismiss the case for lack of appellate jurisdiction or for failure to file a Civil Appeals Docketing Statement; and for Counsel to show cause why this court should not impose sanctions on him;

(7) On February 4, 2015, as a result of Appellants' failure to comply with the Show Cause Order, this court issued an order dismissing the appeal and sanctioning Appellants' Counsel;

(8) On February 16, 2015, Appellants filed a Motion for Reconsideration of the dismissal order;

(9) On March 10, 2015, this court entered an "Order (1) Granting in Part and Denying in Part the February 16, 2015 Motion for Reconsideration and (2) Additional Sanction Issued to Robert Stone," which *inter alia* reinstated the appeal and allowed Appellants ten (10) days to file a motion in the circuit court to supplement the record with the September 11, 2014 judgment and order pursuant to HRAP Rule 10(e)(2)(B);

(10) On July 27, 2015, OneWest Bank filed the instant Motion, requesting an order dismissing the appeal and sanctioning Counsel for repeated failure to follow appellate rules and this court's orders. OneWest Bank contends, and Appellants do not dispute, that Appellants filed an untimely Renewed Motion to Supplement the Record on Appeal in the circuit court. On July 7, 2015, the circuit court entered a minute order denying Appellants' untimely motion because it did not comply with the deadline ordered by this court;

(11) Without the September 11, 2014 judgment being part of the record on appeal, we lack appellate jurisdiction in this

case. See Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 869 P.2d 1334 (1994); Hawaii Revised Statutes § 667-51(a)(1) (Supp. 2014).

Therefore, IT IS HEREBY ORDERED that the motion to dismiss the appeal is granted and this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, August 13, 2015.

Chief Judge

Associate Judge

Associate Judge