

NO. 30183

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

MARSHALL MARTINEZ, Plaintiff-Appellant v.
JOHN E. TAM, et al., Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 09-1-0441)

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that we lack jurisdiction over this appeal that Plaintiff-Appellant Marshall Martinez (Appellant Martinez) has asserted from the Honorable Derrick H.M. Chan's October 23, 2009 "Order Granting Defendants State of Hawai'i's Motion to Dismiss Complaint Filed on February 23, 2009" (the October 23, 2009 dismissal order), because the circuit court has not reduced the October 23, 2009 dismissal order to a separate judgment that resolves all claims in this case pursuant to Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP).

Hawai'i 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 specifically required that "[e]very judgment shall be set forth on a separate document." HRCP 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 HRCP [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i at 119, 869 P.2d at 1338. 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). Consequently, "an order disposing of a circuit court case is appealable when the order is reduced to a separate judgment." Alford v. City and Count of Honolulu, 109 Hawai'i 14, 20, 122 P.3d 809, 815 (2005) (citation omitted) (emphasis added). For example, the supreme court has explained that, "[a]lthough RCCH [Rule] 12(q) [(regarding dismissal for want of prosecution)] does not mention the necessity of filing a separate document, HRCF [Rule] 58, as amended in 1990, expressly requires that 'every judgment be set forth on a separate document.'" Price v. Obayashi Hawaii Corporation, 81 Hawai'i 171, 176, 914 P.2d 1364, 1369 (1996) (emphases added).

The October 23, 2009 dismissal order is not a judgment, but, instead, it is an interlocutory order. On January 19, 2010, the appellate court clerk filed the record on appeal for appellate court case number 30183, at which time the record on appeal did not contain a separate judgment that resolves all claims in this case. Absent a separate, appealable judgment, Appellant Martinez's appeal is premature and we lack appellate jurisdiction. Therefore,

IT IS HEREBY ORDERED that appellate court case number 30183 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, April 26, 2010.

Chief Judge

Associate Judge

Associate Judge