NO. CAAP-11-0000071

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

JOHN F. DAGRES and JUDITH FITZGERALD,
Appellants-Appellees,

v.

COUNTY OF HAWAIʻI PLANNING DEPARTMENT and
BOBBY JEAN LEITHHEAD-TODD, DIRECTOR OF THE
PLANNING DEPARTMENT OF THE COUNTY OF HAWAIʻI, Appellees-
Appellants,

and

COUNTY OF HAWAIʻI, BOARD OF APPEALS; and
HAWAIʻI CONFERENCE FOUNDATION, a Hawaiʻi non-profit corporation,
Appellees-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 10-01-133K)

ORDER DENYING APRIL 21, 2011 MOTION TO
DISMISS APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Nakamura, Chief Judge, Foley and Fujise, JJ.)

Upon review of Appellants-Appellees John F. Dagres and Judith Fitzgerald's (Appellees) April 21, 2011 motion to dismiss appellate court case number CAAP-11-0000071 for lack of jurisdiction, (2) Appellees-Appellants County of Hawaiʻi Planning

Department and Bobby Jean Leithead-Todd, Director of the Planning Department of the County of Hawai‘i's (the County of Hawai‘i Appellants) April 29, 2011 memorandum in opposition to Appellees' April 21, 2011 motion to dismiss appellate court case number CAAP-11-0000071 for lack of jurisdiction, (3) Appellee-Appellee County of Hawai‘i Board of Appeals' May 2, 2011 statement of no position as to Appellees' April 21, 2011 motion to dismiss appellate court case number CAAP-11-0000071 for lack of jurisdiction, (4) the Honorable Ronald Ibarra's subsequent entry of a final judgment in this case on May 2, 2011, pursuant to Rule 72(k) of the Hawai‘i Rules of Civil Procedure (HRCP) and (5) the record, it appears that we have jurisdiction over this appeal pursuant to Hawaii Revised Statutes (HRS) § 91-15 (1993), HRS § 602-57(1) (Supp. 2010) and HRS § 641-1(a) (1993 & Supp. 2010).

"Review of any final judgment of the circuit court under this chapter shall be governed by chapter 602." HRS § 91-15. 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). 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). Appeals under HRS § 641-1 "shall be taken in the manner . . . provided by the rules of the court." HRS § 641-

1(c). HRCP Rule 72(k)[1] requires that, upon a circuit court's determination of an administrative appeal, "the court having jurisdiction shall enter judgment." HRCP Rule 72(k). We apply the separate judgment document rule set forth in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai‘i 115, 869 P.2d 1334 (1994), to an administrative appeal before a circuit court. See, e.g., Raquinio v. Nakanelua, 77 Hawai‘i 499, 500, 889 P.2d 76, 77 (App. 1995). Under the separate judgment document rule, "[a]n appeal may be taken from circuit court orders resolving claims against parties 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, 76 Hawai‘i 115, 119, 869 P.2d 1334, 1338 (1994). 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).

On May 2, 2011, the circuit court entered a final judgment in this case pursuant to HRCP Rule 72(k) that appears to resolve all claims in this case. The County of Hawai‘i Appellants' February 7, 2011 notice of appeal was premature, but

[1] Rule 81(e) of the Hawai‘i Rules of Civil Procedure requires that the Hawai‘i Rules of Civil Procedure "shall apply to any proceedings in a circuit court pursuant to appeal to the circuit court from a governmental official or body (other than a court), except as otherwise provided in Rule 72."

Rule 4(a)(2) of the Hawai‘i Rules of Appellate Procedure authorizes a premature appeal under the circumstances of this case. Therefore,

IT IS HEREBY ORDERED that Appellees' April 21, 2011 motion to dismiss Appeal No. CAAP-11-0000071 for lack of jurisdiction is denied.

DATED: Honolulu, Hawai‘i, May 31, 2011.

Chief Judge

Associate Judge

Associate Judge