NO. CAAP-12-0000141

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

DESIREE HOEWAʻA-FONTANILLA, Plaintiff-Appellee, v.
FELIPE BARROGA, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
(DC-CIVIL NO. 11-1-0362)

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

Upon review of the record, it appears that we lack jurisdiction over the appeal that Defendant-Appellant Felipe Barroga (Appellant Barroga) has asserted from the Honorable Blaine J. Kobayashi's March 23, 2012 "Findings of Fact, Conclusions of Law, Decision and Order Denying Defendant Felipe Barroga's Motion to Set Aside Default Judgment Filed December 7, 2011" (the March 23, 2012 interlocutory order), because the March 23, 2012 order is not an appealable final order pursuant to Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2011).

> Pursuant to HRS § 641-1(a) (1993), appeals are allowed in civil matters from all final judgments, orders, or decrees of circuit and district courts. In district court cases, a judgment includes any order from which an appeal lies. . . . A final order means an order ending the proceeding, leaving nothing further to be accomplished. . . . When a written judgment, order, or decree ends the litigation by fully deciding all rights and liabilities of all parties, leaving nothing further to be adjudicated, the judgment, order, or decree is final and appealable.

Casumpang v. ILWU, Local 142, 91 Hawaiʻi 425, 426, 984 P.2d 1251, 1252 (1999) (citations, internal quotation marks, and footnote omitted; emphases added). The separate judgment document rule under Rule 58 of the Hawaiʻi Rules of Civil Procedure (HRCP) and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawaiʻi 115, 869 P.2d 1334 (1994) is

> not applicable to district court cases. Consequently, an order that fully disposes of an action in the district court may be final and appealable without the entry of judgment on a separate document, as long as the appealed order ends the litigation by fully deciding the rights and liabilities of all parties and leaves nothing further to be adjudicated.

Casumpang v. ILWU, Local 142, 91 Hawaiʻi at 427, 984 P.2d at 1253 (emphases added). In addition, "[a] post-judgment order is an appealable final order under HRS § 641-1(a) if the order ends the proceedings, leaving nothing further to be accomplished." Ditto v. McCurdy, 103 Hawaiʻi 153, 157, 80 P.3d 974, 978 (2003) (citation omitted).

At first glance, Appellant Barroga's appeal from the March 23, 2012 interlocutory order might appear to be an appeal from a post-judgment order, because Rule 55(c) of the District Court Rules of Civil Procedure (DCRCP) provides that, "[f]or good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)." Furthermore,

(a) DCRCP Rule 60(b) expressly authorizes relief "from a final judgment, order, or proceeding[,]"

(b) under analogous circumstances in a circuit court, "[a]n order denying a motion for post-judgment relief under HRCP [Rule] 60(b) is an appealable final order under HRS § 641-1(a)" (Ditto v. McCurdy, 103 Hawaiʻi at 160, 80 P.3d at 981 (citation omitted), and

(c) the March 23, 2012 interlocutory order denied Appellant Barroga's motion to set aside the district court clerk's July 5, 2011 notation in the district court minutes that the district court intended to enter a default judgment in favor of Plaintiff-Appellee Desiree Hoewaʻa Fontanilla (Appellee Fontanilla).

However, the district court specifically noted in finding of fact number 7 in the March 23, 2012 interlocutory order that, to date, Appellee Fontanilla had not filed a written judgment in this case. The actual document that Appellant Barroga was attempting to set aside was the district court clerk's July 5, 2011 notation in the district court minutes that the district court intended to enter a default judgment in favor of Appellee Fontanilla. The district court clerk's notations in the district court minutes do not constitute an independently appealable order or judgment.

Absent an appealable judgment or appealable order, the March 23, 2012 interlocutory order does not qualify as an appealable post-judgment order disposing of a DCRCP Rule 60(b) post-judgment motion to set aside a judgment. In a district court case, "[f]or good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)." DCRCP Rule 55(c). Nevertheless, "Rule 60(b) . . . applies only to motions attacking final, appealable orders[.]" United States v.

Martin, 226 F.3d 1042, 1048 n.8 (9th Cir. 2000) (emphases added). "The standard test for whether a judgment is 'final' for Rule 60(b) purposes is usually stated to be whether the judgment is sufficiently 'final' to be appealed." 12 James Wm. Moore et al., Moore's Federal Practice § 60.23, at 81-82 (3d ed. 2009) (footnote omitted). Therefore, under analogous circumstances in circuit court cases, the Supreme Court of Hawaiʻi has acknowledged that "a motion for reconsideration, pursuant to HRCP Rule 60(b), is authorized only in situations involving final judgments." Cho v. State, 115 Hawaiʻi at 382, 168 P.3d at 26 (citations and internal quotation marks omitted); Crown Properties, Inc. v. Financial Security Life Insurance Co., Ltd., 6 Haw. App. at 112, 712 P.2d at 509 ("A Rule 60(b), HRCP, motion is authorized only in situations involving final judgments."); Tradewinds Hotel, Inc. v. Cochrane, 8 Haw. App. at 262, 799 P.2d at 65 ("Rule 60(b) applies to motions seeking to amend final orders in the nature of judgments."). Without an appealable judgment or an appealable order, "relief pursuant to HRCP Rule 60(b) was not available[.]" Cho v. State, 115 Hawaiʻi at 383, 382, 168 P.3d at 27.

In the instant case, the district court has not yet entered a written final order or written final judgment that is independently appealable under HRS § 641-1(a) and the holding in Casumpang v. ILWU, Local 142, 91 Hawaiʻi at 427, 984 P.2d at 1253. Therefore, the March 23, 2012 interlocutory order is not an appealable post-judgment order that resolves a DCRCP Rule 60(b) motion for post-judgment relief, but, instead, the

March 23, 2012 interlocutory order is merely a prejudgment, interlocutory order that will become eligible for appellate review by way of a timely appeal from a future written final order or written final judgment that formally ends this case by resolving all of the parties' claims. Cf. Ueoka v Szymanski, 107 Hawaiʻi 386, 396, 114 P.3d 892, 902 (2005) ("An appeal from a final judgment brings up for review all interlocutory orders not appealable directly as of right which deal with issues in the case." (Citation and internal quotation marks omitted)). Absent an appealable final order or appealable final judgment, Appellant Barroga's appeal is premature and we lack appellate jurisdiction. Therefore,

IT IS HEREBY ORDERED that Appeal No. CAAP-12-0000141 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawaiʻi, August 23, 2012.

Presiding Judge

Associate Judge

Associate Judge