

NO. CAAP-13-00000072

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

WILLIAM W. REMMERS, JR., Plaintiff-Appellant,
v.
STATE OF HAWAI'I, DEPARTMENT OF PUBLIC SAFETY, et al.,
Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 12-1-2981-11)

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

Upon review of the record, it appears that we lack jurisdiction over this appeal that Plaintiff-Appellant William W. Remmers, Jr. (Appellant Remmers), has asserted from a January 28, 2013 "order" that the circuit court clerk entered in Civil No. 12-1-2981, the Honorable Patrick W. Border presiding, through which the circuit court clerk purports to have dismissed this case based on Appellant Remmers's failure to pay the circuit court filing fees. As explained below, the January 28, 2013 "order" is not eligible for appellate review in the absence of a

final judgment under Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2012) and Rule 58 of the Hawai'i Rules of Civil Procedure (HRCPP) under the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2012) 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 court." HRS § 641-1(c). The supreme court has promulgated HRCPP Rule 58, which specifically requires that "[e]very judgment shall be set forth on a separate document." (Emphasis added). Based on this requirement under HRCPP Rule 58, 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 HRCPP [Rule] 58[.]" Jenkins, 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 HRCPP [Rule] 54(b)." Id. "Thus, based on Jenkins and HRCPP Rule 58, an order is not appealable, even if it resolves all claims against the parties, until it has been reduced to a separate judgment." Carlisle v. One (1) Boat, 119 Hawai'i 245, 254, 195 P.3d 1177, 1186 (2008). 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, HRCPP [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). "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." Jenkins, 76 Hawai'i at 120, 869 P.2d at 1339 (footnote omitted).

The January 28, 2013 "order" is not a judgment. On April 2, 2013, the circuit court clerk filed the record on

appeal, which did not contain a final judgment. Absent an appealable final judgment, Appellant Remmers's appeal is premature and we lack jurisdiction over appellate court case number CAAP-13-0000072. Therefore,

IT IS HEREBY ORDERED that appellate court case number CAAP-13-0000072 is dismissed for lack of appellate jurisdiction.

IT IS FURTHER HEREBY ORDERED that all pending motions in appellate court case number CAAP-13-0000072 are denied as moot.

DATED: Honolulu, Hawai'i, June 7, 2013.

Chief Judge

Associate Judge

Associate Judge