

NO. CAAP-13-0004001

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

ROBERT D. FERRIS TRUST, Appellant-Appellant  
v.  
PLANNING COMMISSION OF THE COUNTY OF KAUA'I,  
COUNTY OF KAUA'I PLANNING DEPARTMENT and COUNTY OF KAUAI,  
Appellees-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT  
(CIVIL NO. 12-1-0349)

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

Upon review of the record in this case, it appears that we lack appellate jurisdiction over the appeal that Appellant-Appellant Robert D. Ferris Trust (Appellant Ferris) has asserted from the Honorable Randal G.B. Valenciano's September 16, 2013 "Findings of Fact, Conclusions of Law; Decision and Order" (hereinafter the September 16, 2013 order), because the circuit court has not reduced the September 16, 2013 order to a separate judgment, as Rules 58 and 72(k) of the Hawai'i Rules of Civil Procedure (HRCP) require in an administrative appeal from a circuit court pursuant to Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2013).

"Review of any final judgment of the circuit court under this chapter shall be governed by chapter 602." HRS § 91-15 (1993). 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) (Supp. 2013). Under HRS § 641-1(a), "[a]ppeals shall be allowed in civil matters from all final judgments, orders, or decrees of circuit . . . courts[.]" Appeals under HRS § 641-1 "shall be taken in the manner . . . provided by the rules of court." HRS § 641-1(c). Rule 58 of the Hawai'i Rules of Civil Procedure (HRCPP) requires that "[e]very judgment shall be set forth on a separate document." Based on this requirement under HRCPP Rule 58, the Supreme Court of Hawai'i has held that "[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 HRCPP [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994) (emphasis added). "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). "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).

Although the instant case involves an administrative appeal, HRCPP Rule 72(k)<sup>1</sup> similarly requires that, upon a circuit court's adjudication of an administrative appeal, "the court having jurisdiction shall enter judgment." HRCPP Rule 72(k). The separate judgment document rule under the holding in Jenkins applies to a secondary appeal from a circuit court order that adjudicates an administrative appeal. See, e.g., Raquinio v.

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<sup>1</sup> Rule 81(e) of the Hawai'i Rules of Civil Procedure (HRCPP) 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."

Nakanelua, 77 Hawai'i 499, 500, 889 P.2d 76, 77 (App. 1995) ("We conclude . . . that the requirements for appealability set forth in Jenkins apply to appeals from circuit court orders deciding appeals from orders entered by the Director of Labor and Industrial Relations."). Therefore, where a circuit court failed to reduce dispositive orders in an administrative appeal to a separate judgment, we dismissed the appeal for lack of jurisdiction:

In Raquinio's case, the requirements of HRCF Rules 58 and 72(k) and Jenkins apply and have not been satisfied. Therefore, Raquinio's appeal is premature, and we do not have appellate jurisdiction.

Accordingly, this appeal is dismissed for lack of appellate jurisdiction.

Id.

Likewise in the instant administrative appeal, the requirements of HRCF Rule 58, HRCF Rule 72(k) and Jenkins apply, and the circuit court has not reduced the September 16, 2013 order to a separate judgment that, on its face, enters judgment in favor of and against the appropriate parties. On December 13, 2013, the record on appeal for appellate court case number CAAP-13-0004001 was filed, and the record on appeal does not contain a separate judgment. Absent an appealable final judgment, Appellant Ferris's appeal is premature and we lack appellate jurisdiction.

Therefore, IT IS HEREBY ORDERED that appellate court case number CAAP-13-0004001 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, March 10, 2014.

Presiding Judge

Associate Judge

Associate Judge