

NO. CAAP-14-0001054

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

MARLENE TIM SING, individually and as Next Friend to her
daughter, Makalika Tim Sing, a minor, DALE CORDERO, KALE TIM
SING, and LOKELANI TIM SING, Plaintiffs-Appellants,
v.
KONRAD K. MOSSMAN, HUIHUI LAVON KANAHELE-MOSSMAN, et al.,
Defendants-Appellees
(CIVIL NO. 05-1-0297)

KASSY ASTRANDE, individually and as Guardian Ad Litem of
MCKENZIE TIM SING, a minor, Plaintiffs-Appellees,
v.
COUNTY OF HAWAI'I, KONRAD K. MOSSMAN, et al.,
Defendants/Cross-Claim Plaintiffs/Cross-Claim
Defendants/Appellees
(CIVIL NO. 05-1-0413)

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT

ORDER GRANTING OCTOBER 16, 2014 MOTION TO
DISMISS APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Nakamura, Chief Judge, Fujise and Reifurth, JJ.)

Upon review of Defendant/Cross-Claim Plaintiff/Cross-
Claim Defendant/Appellee County of Hawaii's (Appellee County)
October 16, 2014 motion to dismiss appellate court case number
CAAP-14-0001054 for lack of appellate jurisdiction,

(2) Plaintiffs-Appellants Marlene Tim Sing, individually and as next friend to her daughter Makalika Tim Sing, a minor, and as personal representative for the Estate of Dale Kanani Tim Sing, deceased, Dale Cordero, Kale Tim Sing, and Lokelani Tim Sing's (collectively referred to as the Sing Appellants) October 27, 2014 memorandum in opposition to Appellee County's October 16, 2014 motion to dismiss, and (3) the record, it appears that we lack appellate jurisdiction over the Sing Appellants' appeal from the Honorable Glenn S. Hara's July 15, 2014 judgment, because the July 15, 2014 judgment does not satisfy the requirements for an appealable final judgment under Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2013), Rules 54 and 58 of the Hawai'i Rules of Civil Procedure (HRCPP), and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). Therefore, although Appellee County argues that we lack appellate jurisdiction due to the alleged untimeliness of the Sing Appellants' notice of appeal under Rule 4(a) of the Hawaii Rules of Appellate Procedure (HRAP), we conclude that we lack appellate jurisdiction for an entirely different reason, namely, because the July 15, 2014 judgment is not an appealable final judgment.

HRS § 641-1(a) authorizes appeals in civil matters from all final judgments, orders, or decrees of the circuit courts. We initially note that under HRS § 641-1(a) and the collateral order doctrine, even in the absence of a separate judgment we have "h[e]ld that an order enforcing a settlement agreement is a collateral order which is appealable." Cook v. Surety Life Insurance, Company, 79 Hawai'i 403, 408, 903 P.2d 708, 713 (App.

1995). Therefore, two antecedent orders were immediately appealable under HRS § 641-1(a) and the collateral order doctrine:

- (1) a November 15, 2011 order that, among other things, granted Appellee County's motion to enforce a settlement agreement; and
- (2) an April 11, 2012 order that, among other things, granted Defendant/Cross-Claim Plaintiff/Cross-Claim Defendant/Appellee Konrad K. Mossman's (Appellee Mossman) motion to enforce a settlement agreement, and Defendant/Cross-Claim Plaintiff/Cross-Claim Defendant/Appellee Huihui Lavon Kanahele-Mossman's (Appellee Kanahele-Mossman) joinder therein.

However, no party filed a notice of appeal within thirty days after entry of these two orders, as HRAP Rule 4(a)(1) requires for a timely appeal. Nevertheless, "[t]he failure to take an immediate appeal from a collateral order does not preclude review of the order on appeal from a final judgment." Hoopai v. Civil Service Commission, 106 Hawai'i 205, 215, 103 P.3d 365, 375 (2004) (citation omitted). The circuit court subsequently entered two HRCF Rule 54(b)-certified judgments on these two orders:

- (1) a December 14, 2011 judgment on the November 15, 2011 order, and
- (2) a May 3, 2012 judgment on the April 11, 2012 order.

However, neither the December 14, 2011 judgment nor the May 3, 2012 judgment satisfied the requirements for an appealable final judgment under HRS § 641-1(a), HRCF Rule 54(b), HRCF Rule 58, and the holding in Jenkins, because neither the December 14, 2011 judgment nor the May 3, 2012 judgment specifically identified the claims to which they applied.

Still later, the circuit court entered the July 15, 2014 judgment from which the Sing Appellants are appealing in this appeal.

"An appeal from any judgment will be dismissed as premature if the judgment does not, on its face, either resolve all claims against all parties or contain the finding necessary for certification under HRCP [Rule] 54(b)." Jenkins, 76 Hawai'i at 119, 869 P.2d at 1338. Under Jenkins, the appellate court should be able to discern from the face of the judgment, by itself, how the circuit court resolved every single claim to which that judgment applies, without having to search the record to verify that prior orders and stipulations resolved claims. The judgment must, on its face, contain appropriate language that either enters judgment on or dismisses those claims. Although HRCP Rule 54(b) authorizes a circuit court to certify a judgment as to fewer than all claims or parties,

the power of a lower court to enter a certification of finality is limited to only those cases where (1) more than one claim for relief is presented or multiple parties (at least three) are involved, . . . and (2) the judgment entered completely disposes of at least one claim or all of the claims by or against at least one party.

Elliot Megdal and Associates v. Daio USA Corporation, 87 Hawai'i 129, 133, 952 P.2d 886, 890 (App. 1998) (citations omitted; emphasis added). An HRCP Rule 54(b)-certified judgment "must be a 'judgment' in the sense that it is a decision upon a cognizable claim for relief, and it must be 'final' in the sense that it is an ultimate disposition of an individual claim entered in the court of a multiple claims action." Elliot Megdal and Associates v. Daio USA Corporation, 87 Hawai'i at 135, 952 P.2d at 892 (citation and some internal quotation marks omitted; emphases

added). For example, a "circuit court's order awarding attorneys' fees and costs may not be certified as a final judgment, pursuant to HRCF Rule 54(b), because such an order is not a final decision with respect to a claim for relief."

Fujimoto v. Au, 95 Hawai'i 116, 136 n.16, 19 P.3d 699, 719 n.16 (2001) (citation and internal quotation marks omitted).

Furthermore, with respect to each specifically identified claim that the circuit court intends to adjudicate as to any specifically identified party through an HRCF Rule 54(b)-certified judgment, the HRCF Rule 54(b)-certified judgment must (similar to a final judgment as to all claims), on its face, either enter judgment on or dismiss that claim. Jenkins, 76 Hawai'i at 119, 869 P.2d at 1338.

The July 15, 2014 judgment is certified under HRAP Rule 54(b), but, the July 15, 2014 judgment does not enter judgment on or dismiss any specifically identified claim. Instead, the July 15, 2014 judgment purports to enter in favor of Appellee Mossman, Appellee Kanahele-Mossman, Appellee County, and Plaintiff-Appellee Kassy Astrande and against the Sing Appellants as to prior orders, such as

- the November 15, 2011 order,
- the April 11, 2012 order,
- a March 29, 2011 order awarding costs to Appellee Mossman, Appellee Kanahele-Mossman, and Appellee County, and
- an October 30, 2013 order and a November 27, 2013 order through which the circuit court allocated the settlement proceeds among the various Sing Appellants.

A judgment document should not enter judgment on orders, but,

instead, the judgment should enter judgment on or dismiss specifically identified claims. The only references in the July 15, 2014 judgment that specifically identify claims are on pages 4-6 of the July 15, 2014 judgment that merely refer to Count 1, Count 2 and Count 3 of the Sing Appellants' second amended complaint and various cross-claims without either expressly entering judgment on or dismissing those specifically identified claims. The language in the July 15, 2014 judgment does not, on its face, either enter judgment on or dismiss any specifically identified claims. The July 15, 2014 judgment contains descriptive statements that certain cross-claims "are considered to be discharged" and "were extinguished by operation of law" through prior orders of the circuit court, but the only way that an appellate court could verify whether those statements are accurate would be to search the record on appeal for the relevant orders, despite that such a search is supposed to be completely unnecessary under the holding in Jenkins. The July 15, 2014 judgment does not utilize any operative language that, on its face, actually enters judgment on or dismisses those cross-claims.

Without entering judgment on or dismissing any specifically identified claim as to specifically identified parties, the HRCP Rule 54(b)-certified July 15, 2014 judgment does not satisfy the requirements for an appealable judgment under HRS § 641-1(a), HRCP Rule 54(b), HRCP Rule 58, and the holding in Jenkins. Absent an appealable final judgment that either enters judgment on or dismisses specifically identified

claims, we lack appellate jurisdiction and the Sing Appellants' appeal is premature. Therefore,

IT IS HEREBY ORDERED AND DECREED that Appellee County's October 16, 2014 motion to dismiss appellate court case number CAAP-14-0001054 for lack of appellate jurisdiction is granted, and appellate court case number CAAP-14-0001054 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, January 9, 2015.

Chief Judge

Associate Judge

Associate Judge