

NO. CAAP-16-0000101

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

ALLEN VIDAL, Appellant-Appellant,
v.
BOARD OF TRUSTEES OF THE EMPLOYEES' RETIREMENT SYSTEM
OF THE STATE OF HAWAII, Appellee-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 15-1-2073)

ORDER
DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
AND
DISMISSING AS MOOT ALL PENDING MOTIONS
(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon review of the record in CAAP-16-0000101, it appears that this court lacks appellate jurisdiction. "[A]ppeals shall be allowed in civil matters from all final judgments, orders, or decrees of circuit . . . courts[.]" HRS § 641-1(a) (1993 & Supp. 2015). 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." HRCF 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 HRCF [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 HRCF 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); Bailey v. DuVauchelle, 135 Hawai'i 482, 489, 353 P.3d 1024, 1031 (2015). "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).

"Upon determination of the appeal the court having jurisdiction shall enter judgment. Such judgment shall be reviewable, or final, as may be provided by law." HRCF Rule 72(k). Therefore, 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. 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."). An order granting or denying a motion for summary judgment is not a judgment within

the meaning of HRCP Rule 58. Bank of Honolulu, N.A. v. Anderson, 3 Haw. App. 545, 548, 654 P.2d 1370, 1373 (1982). Here, the "Order Denying Appellant's Motion for Summary Judgment, Filed December 7, 2015," and "Order Denying Appellant's Motion to Require Appellee(s) - State of Hawaii Employees' Retirement System to Provide Complete Records for This Case," did not adjudicate Appellant's claim. There is no judgment in the record on appeal that satisfies HRCP Rule 58. Therefore, the appeal is premature.

IT IS HEREBY ORDERED that the appeal is dismissed for lack of appellate jurisdiction.

IT IS FURTHER ORDERED that all pending motions are dismissed as moot.

DATED: Honolulu, Hawai'i, May 10, 2016.

Presiding Judge

Associate Judge

Associate Judge