

NO. CAAP-16-0000309

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

DONALD B. MARKS, Plaintiff-Appellant,
v.
DEPARTMENT OF PUBLIC SAFETY;
SHARI L. KIMOTO, Mainland/FDC Branch Administrator;
JOHN IOANE, Mainland/FDC Branch Contract Monitor; et al.,
Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 14-1-1801)

ORDER
DISMISSING APPELLATE COURT CASE NUMBER CAAP-16-0000309
FOR LACK OF APPELLATE JURISDICTION
AND
DISMISSING AS MOOT ALL PENDING MOTIONS
(By: Foley, Presiding Judge, Reifurth and Ginoza, JJ.)

Upon review of the records in CAAP-16-0000309, it appears this court lacks appellate jurisdiction. Plaintiff-Appellant Donald B. Marks (Appellant), pro se, appeals from the "Order Denying Plaintiff's Motion for a Temporary Order and Preliminary Injunction (Filed November 4, 2015)," filed on March 4, 2016 in the Circuit Court of the First Circuit.

HRS § 641-1(a) (1993 & Supp. 2015) authorizes 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). Rule 58 of the Hawai'i Rules of Civil Procedure (HRCPP) requires that "[e]very judgment shall be set forth on a separate document." HRCPP Rule 58. Based on this

requirement under HRCF Rule 58, the Supreme Court of Hawai'i 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 HRCF [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). "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).

The Circuit Court has not yet entered a final judgment in the case. Therefore, absent a final judgment, the March 4, 2016 "Order Denying Plaintiff's Motion for a Temporary Order and Preliminary Injunction (Filed November 4, 2015)" is not yet appealable. Furthermore, the order is not independently appealable under (1) the collateral order doctrine, (2) the Forgay doctrine, or (3) HRS § 641-1(b) (1993 & Supp. 2015). Therefore, this court lacks appellate jurisdiction over the appeal.

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

IT IS FURTHER HEREBY ORDERED that all pending motions in appellate court case number CAAP-16-0000309 are dismissed as moot.

DATED: Honolulu, Hawai'i, June 9, 2016.

Presiding Judge

Associate Judge

Associate Judge