

NO. CAAP-17-0000024

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

FRANK MICHAEL FERNANDEZ, aka FRANK M. FERNANDEZ
and FRANK FERNANDEZ and JANIS FERNANDEZ,
Appellants-Appellants,

and
EXODUS BAIL BONDS,
Appellant-Appellee,

vs.

DIRECTOR, STATE OF HAWAI'I, DEPARTMENT OF
COMMERCE AND CONSUMER AFFAIRS, and
COMMISSIONER, STATE OF HAWAI'I, DEPARTMENT OF INSURANCE,
Appellees-Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 16-1-0734)

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

Upon review of the record, it appears that we lack jurisdiction over this appeal by Frank Michael Fernandez, aka Frank M. Fernandez and Frank Fernandez (**Frank**), and Janis Fernandez (**Janis**) (collectively, **Appellants**) because the Circuit Court of the First Circuit¹ (**circuit court**) has not reduced its dispositive rulings on substantive claims to a separate, final judgment, as Hawaii Revised Statutes (**HRS**)

¹ The Honorable Rhonda A. Nishimura presided.

§ 641-1(a) (2016) and Rule 58 of the Hawai'i Rules of Appellate Procedure (**HRCP**) require for an appeal from a civil, circuit-court case, under the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

When a circuit court adjudicates an appeal from an administrative agency order, "[r]eview of any final judgment of the circuit court or, if applicable, the environmental court, under this chapter shall be governed by chapter 602." HRS § 91-15 (Supp. 2016). This court has jurisdiction "[t]o hear and determine appeals from any court or agency when appeals are allowed by law[.]" HRS § 602-57(1) (2016). Under Hawai'i law, "[a]ppeals shall be allowed in civil matters from all final judgments, orders, or decrees of circuit . . . courts[.]" HRS § 641-1(a) (2016). Appeals under HRS § 641-1 "shall be taken in the manner . . . provided by the rules of court." HRS § 641-1(c) (2016).

HRCP Rule 58 requires that "[e]very judgment shall be set forth on a separate document." Based on this requirement, 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 HRCP [Rule] 58[.]" Jenkins, 76 Hawai'i at 119, 869 P.2d at 1338 (emphasis added). "Thus, based on Jenkins and HRCP 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). HRCP Rule 72(k)² similarly requires that, upon a circuit court's adjudication of an administrative appeal, "the court having jurisdiction shall enter

² HRCP Rule 81(e) 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."

judgment."

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.").

When interpreting the requirements for a judgment under the separate document rule, the Supreme Court of Hawai'i noted that

[i]f we do not require a judgment that resolves on its face all of the issues in the case, the burden of searching the often voluminous circuit court record to verify assertions of jurisdiction is cast upon this court. Neither the parties nor counsel have a right to cast upon this court the burden of searching a voluminous record for evidence of finality[.]

Jenkins, 76 Hawai'i at 119, 869 P.2d at 1338 (emphasis in original). "[A]n 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 (emphasis in original).

The December 13, 2016 Final Judgment is not final and appealable because it does not enter a judgment as to Respondent/Appellant/Appellee Exodus Bail Bonds, LLC.

"If the judgment resolves fewer than all claims against all parties or reserves any claim for later action by the court, an appeal may be taken only if the judgment contains the language necessary for certification, under HRCP [Rule] 54(b)" including "the necessary finding of no just reason for delay." Jenkins, 76 Hawai'i at 119-20, 869 P.2d 1338-39. However, the Final Judgment is not HRCP Rule 54(b)-certified.

While exceptions to the final judgment requirement exist under Forgay v. Conrad, 47 U.S. 201 (1848) (the Forgay doctrine), the collateral-order doctrine, and HRS § 641-1(b), none of these exceptions applies. See Ciesla v. Reddish, 78 Hawai'i 18, 20, 889 P.2d 702, 704 (1995) ; Abrams v. Cades, Schutte, Fleming & Wright, 88 Hawai'i 319, 322, 966 P.2d 631, 634 (1998); HRS § 641-1(b).

Absent an appealable, final judgment or order, this court lacks jurisdiction over the appeal.

Therefore, IT IS HEREBY ORDERED that Appeal No. CAAP-17-0000024 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i,

Presiding Judge

Associate Judge

Associate Judge