

**Electronically Filed
Intermediate Court of Appeals
CAAP-18-0000046
07-JAN-2019
08:21 AM**

NO. CAAP-18-0000046

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

CRAIG A. GOMES, Claimant-Appellant/Appellant,
v.
HAWAIIAN ELECTRIC CO., INC.,
Employer-Appellee/Appellee,
and
ADMINISTRATOR, DISABILITY COMPENSATION
DIVISION, and DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS
APPEALS BOARD, Appellees-Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 17-1-1327)

ORDER

DENYING DECEMBER 17, 2018 HRAP RULE 40
MOTION FOR RECONSIDERATION OF DECEMBER 6, 2018 ORDER
DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION

AND

DENYING DECEMBER 24, 2018 AMENDED HRAP RULE 40
MOTION FOR RECONSIDERATION OF DECEMBER 6, 2018 ORDER
DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION

(By: Ginoza, Chief Judge, Fujise and Leonard, JJ.)

Upon review of (1) this court's June 27, 2018 order temporarily remanding this case to the circuit court for the proposed entry of a final judgment in Civil No. 17-1-1327-08, (2) the circuit court's June 28, 2018 order explaining that the

entry of a final judgment would not be appropriate in Civil No. 17-1-1327-08, because a cause of action by Claimant/Appellant/Appellant Craig A. Gomes (Gomes), pro se, for declaratory relief under HRS § 91-7 (2012 & Supp. 2017) is still unresolved and pending before the circuit court, (3) this court's December 6, 2018 order dismissing appeal for lack of appellate jurisdiction, (4) Gomes's December 17, 2018 motion to stay the December 6, 2018 dismissal order so that Gomes may file an amended notice of appeal from just one of the two December 26, 2017 circuit court interlocutory orders that are the subject of this appeal, (5) Gomes's December 24, 2018 amended motion to stay the December 6, 2018 dismissal order and (6) the record, it appears that Gomes's December 17, 2018 motion and December 24, 2018 amended motion to stay the December 6, 2018 dismissal order are both, in effect, motions for reconsideration of the December 6, 2018 dismissal order pursuant to Rule 40 of the Hawai'i Rules of Appellate Procedure (HRAP). An amended notice of appeal from just one of the two December 26, 2017 circuit court interlocutory orders that are the subject of this appeal would be futile, because, as already stated in the December 6, 2018 dismissal order, the circuit court has purposely refrained from reducing both of the two December 26, 2017 interlocutory orders to a separate judgment because the circuit court has not yet resolved all substantive issues in the underlying case in Civil No. 17-1-1327-08, and, thus, neither of the two December 26, 2017 interlocutory orders is eligible for appellate review at this time. In the absence of appellate jurisdiction, we cannot review the merits of Gomes's arguments. We did not overlook or misapprehend any point of law or fact when we entered the December 6, 2018 dismissal order.

Therefore, IT IS HEREBY ORDERED that we construe Gomes's December 17, 2018 motion and December 24, 2018 amended motion to stay the December 6, 2018 dismissal order as being HRAP

Rule 40 motions for reconsideration of the December 6, 2018 dismissal order.

IT IS FURTHER HEREBY ORDERED that Gomes's December 17, 2018 motion and his December 24, 2018 motion are denied.

DATED: Honolulu, Hawai'i, January 7, 2019.

Fisa M King
Chief Judge

Alvan DeJong
Associate Judge

[Signature]
Associate Judge