

NO. 29999

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

GREGORY ALLAN LEE, Plaintiff-Appellant, v.
BOBBI ANN LEE, Defendant-Appellee

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 01-1-2793)

ORDER GRANTING OCTOBER 28, 2009 MOTION
TO DISMISS APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Nakamura, Chief Judge, Watanabe and Fujise, JJ.)

Upon review of (1) the October 28, 2009 motion by Defendant-Appellee Bobbi Ann Lee (Appellee Bobbi Ann Lee) to dismiss appellate court case number 29999 for lack of appellate jurisdiction, (2) the lack of any opposition by Plaintiff-Appellant Gregory Allan Lee (Appellant Gregory Allan Lee) to Appellee Bobbi Ann Lee's October 28, 2009 motion to dismiss appellate court case number 29999 for lack of appellate jurisdiction, and (3) the record on appeal, it appears that we lack jurisdiction over Appellant Gregory Allan Lee's appeal from the following three post-decree orders that Honorable Gale L. F. Ching entered:

- (1) the July 13 2009 "Decision re: Defendant's Motion for Relief from Divorce Decree Filed July 31, 2002 (Filed 10/29/08)";
- (2) the July 13, 2009 "Decision re: Defendant's Motion for Execution of IRS Form 4506 Filed 1/28/09"; and
- (3) the August 26, 2009 "Amended Decision re: Defendant's Motion for Relief from Divorce Decree Filed July 31, 2002 (Filed 10/29/08)[.]"

The family court entered these three interrelated post-decree

orders during the post-decree proceedings for Appellee Bobbi Ann Lee's October 29, 2008 and January 28, 2009 post-decree motions for relief from the July 31, 2002 divorce decree. The July 31, 2002 divorce decree had, among other things, (a) dissolved the marriage of Appellee Bobbi Ann Lee and Appellant Gregory Allan Lee, and (b) divided and distributed their property and debts. Appellant Gregory Allan Lee asserted his appeal from the three post-decree orders pursuant to Hawaii Revised Statutes (HRS) § 571-54 (2006), which is the statutory authority for appeals from family court cases. "An interested party, aggrieved by any order or decree of the court, may appeal to the intermediate appellate court for review of questions of law and fact upon the same terms and conditions as in other cases in the circuit court[.]" HRS § 571-54. In circuit court cases, aggrieved parties may appeal from "final judgments, orders or decrees[.]" HRS § 641-1(a) (1993 & Supp. 2008). "A post-judgment order is an appealable final order under HRS § 641-1(a) if the order finally determines the post-judgment proceeding." Hall v. Hall, 96 Hawai'i 105, 111 n.4, 26 P.3d 594, 600 n.4 (App. 2001) (citation omitted), affirmed in part, and vacated in part on other grounds, Hall v. Hall, 95 Hawai'i 318, 22 P.3d 965 (2001). In other words, "[a] post-judgment order is an appealable final order under HRS § 641-1(a) if the order ends the proceedings, leaving nothing further to be accomplished." Ditto v. McCurdy, 103 Hawai'i 153, 157, 80 P.3d 974, 978 (2003) (citation omitted). For example, "[a]n order denying a motion for post-judgment relief under HRCF [Rule] 60(b) is an appealable final order under

HRS § 641-1(a)." Ditto, 103 Hawai'i at 160, 80 P.3d at 981 (citation omitted).

The three post-decree orders that Appellant Gregory Allan Lee has appealed do not appear to have finally determined and ended the post-decree proceedings for Appellee Bobbi Ann Lee's October 29, 2008 and January 28, 2009 post-decree motions for relief from the July 31, 2002 divorce decree. Although the three post-decree orders resolve some of the issues in Appellee Bobbi Ann Lee's October 29, 2008 and January 28, 2009 post-decree motions by requiring Appellant Gregory Allan Lee to disclose certain assets and produce certain tax returns to Appellee Bobbi Ann Lee, the three post-decree orders do not resolve the outstanding issues regarding whether Appellee Bobbi Ann Lee is entitled to any other relief, such as monetary relief, as a result of any necessary change in the family court's original division and distribution of Appellant Gregory Allan Lee's and Appellee Bobbi Ann Lee's property and debts. Under circumstances such as this where the separate judgment document rule does not apply, and

where the disposition of the case is embodied in several orders, no one of which embraces the entire controversy but collectively does so, it is a necessary inference from 54(b) that the orders collectively constitute a final judgment and entry of the last of the series of orders gives finality and appealability to all.

S. Utsunomiya Enterprises, Inc. v. Moomuku Country Club, 75 Haw. 480, 494-95, 866 P.2d 951, 960 (1994) (citations, internal quotation marks, and ellipsis points omitted). The family court has not yet entered the last post-decree order in the series of

post-decree orders that resolves the final outstanding issues and gives finality and appealability to all. Therefore, the three post-decree orders are not appealable post-decree orders pursuant to HRS § 571-54. Absent an appealable post-decree order, Appellant Gregory Allan Lee's appeal is premature, and we lack appellate jurisdiction over this appellate case. Accordingly,

IT IS HEREBY ORDERED that Appellee Bobbi Ann Lee's October 28, 2009 motion to dismiss appellate court case number 29999 for lack of appellate jurisdiction is granted, and appellate court case number 29999 is dismissed.

DATED: Honolulu, Hawai'i, December 9, 2009.

Chief Judge

Associate Judge

Associate Judge