

NO. 22943

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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VINCENT M. SETALA, Plaintiff-Appellant

vs.

J.C. PENNEY COMPANY, SHARLENE PACHECO, LAMAR KAUFFMAN,  
RYAN TAKAHASHI, DEANNA STRIKOLIS, JUBAHL HASHIMOTO,  
and GARY HARMS, Defendants-Appellees

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NO. 97-0900)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson,  
Nakayama, Ramil, and Acoba, JJ.)

Upon review of the record, it appears that we do not have appellate jurisdiction over the appeal filed by Plaintiff-Appellant Vincent M. Setala (Plaintiff) from the September 22, 1999 order of the first circuit court (the court)<sup>1</sup> denying Plaintiff's motion for reconsideration of the court's February 22, 1999 order granting the Motion to Dismiss for Failure to State a Claim filed by Defendants-Appellees<sup>2</sup> [hereinafter collectively, Defendants].

"The right to an appeal is strictly statutory." State v. Ontiveros, 82 Hawai'i 446, 449, 923 P.2d 388, 391 (1996) (citation omitted). Hawai'i Revised Statutes (HRS) § 641-1(a) (1993) provides that "[a]ppeals shall be allowed in civil matters

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<sup>1</sup> The Honorable Dexter D. DelRosario presided over this matter.

<sup>2</sup> Defendants are J.C. Penney Company, and its employees Sharlene Pacheco, Lamar Kauffman, Ryan Takahashi, Deanna Strikolis, Jubahl Hashimoto, and Gary Harms.

from all final judgments, orders, or decrees of circuit . . . courts . . . to the supreme court or to the intermediate appellate court[.]” HRS § 641-1(c) provides that “[a]n appeal shall be taken in the manner and within the time provided by the rules of court.” Hawai‘i Rules of Appellate Procedure (HRAP) Rule 4(a)(1) states that, “[w]hen a civil appeal is permitted by law, the notice of appeal shall be filed within 30 days after entry of the judgment or appealable order.” It is well established that, “[a]s a general rule, compliance with the requirement of the timely filing of a notice of appeal is jurisdictional, . . . and [the supreme court] must dismiss an appeal on [its own] motion if [the supreme court] lack[s] jurisdiction.” Grattafiori v. State, 79 Hawai‘i 10, 13, 897 P.2d 937, 940 (1995) (citations and internal quotation marks omitted.)

This case comes to us after a temporary remand for supplementation of the appellate record on appeal. See Setala v. J.C. Penney Co., 97 Hawai‘i 484, 40 P.3d 886 (2002). In the prior proceedings, Plaintiff had filed a notice of appeal from an order entered on September 22, 1999. See id. The thirty-day period within which to file a notice of appeal, pursuant to HRAP Rule 4(a)(1), expired on October 22, 1999. See id. at 490, 40 P.3d at 892. The notice was filed on November 5, 1999, but was dated October 17, 1999. See id. at 486, 40 P.3d at 888. In our published opinion, we held that “a notice of appeal is deemed ‘filed’ for purposes of [HRAP] Rule 4(a) on the day it is

tendered to prison officials by a pro se prisoner.” Id. at 485, 40 P.3d at 897. In this case, however, no envelope was attached to the notice of appeal and there was no evidence that Plaintiff had tendered his notice to prison officials within the thirty-day period. See id. at 486, 40 P.3d at 888. We temporarily remanded this case to the court for an evidentiary hearing allowing Plaintiff to put forth evidence regarding the date on which he tendered his notice of appeal to prison authorities, and allowing Defendants to rebut this evidence. See id. at 491, 40 P.3d at 893.

On remand, the court found that “Plaintiff Vincent Setala did not produce any evidence as to when his Notice of Appeal was presented to prison officials for mailing[.]” Based upon the court’s findings, therefore, Plaintiff did not present any evidence that he did, in fact, tender his notice of appeal to prison officials at the Halawa Correctional Facility on or before October 22, 1999, the last date to file the notice. Plaintiff’s appeal was file stamped, instead, on November 5, 1999. Because Plaintiff did not demonstrate that he had tendered his notice to prison officials within the thirty-day appeal period, he is not deemed to have filed his notice of appeal prior to November 5, 1999. Accordingly, Plaintiff’s appeal is untimely, and this court is required to dismiss his appeal for lack of appellate jurisdiction. See Grattafiori, 79 Hawai’i at 13, 897 P.2d at 940. Therefore,

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

DATED: Honolulu, Hawai'i, August 19, 2002.

On the briefs:

Vincent Setala, plaintiff-appellant, pro se.

Lynn B.K. Costales  
(Gallagher & Associates)  
for defendants-appellees.