

NO. 23929

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

DANIEL A. JOHNSON, JASON J. McCUBBINS,
STEVEN M. CRANE, EARL KANAE, II,
MABEL P. ANDRADE, and
SHARON AKANA, Plaintiffs-Appellants

vs.

STATE OF HAWAI'I, BERYL IRAMINA, TED SAKAI,
and KAREN MAYS, Defendants-Appellees

and

JOHN DOES 1-50, Defendants

APPEAL FROM THE THIRD CIRCUIT COURT
(CIV. NO. 98-227)

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that the issue of whether attorney's fees and costs were awardable on the claim for injunctive relief was a matter completely separate from the merits of the action filed in Civil No. 98-227. The issue was finally decided by the September 13, 2000 order denying attorney's fees and costs on the claim for injunctive relief. The September 13, 2000 order was a collateral order immediately appealable within thirty days after the order was entered. HRAP 4(a)(1). The notice of appeal filed on November 30, 2000 is an untimely collateral order appeal of the September 13, 2000 order. The failure to file a timely notice of appeal in a civil

case is a jurisdictional defect that cannot be waived by the parties or disregarded by the appellate court in the exercise of judicial discretion. *Bacon v. Karlin*, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986).

It further appears that the September 13, 2000 order was immediately appealable by plaintiffs' counsel, but not by the plaintiffs. See *Siangco v. Kasadate*, 77 Hawai'i 157, 161, 883 P.2d 78, 82 (1994). The November 30, 2000 notice of appeal was filed by plaintiffs' counsel, but it did not identify counsel as the party to the appeal, as required by HRAP 3(c)(1). The failure to identify counsel as the appellant in the notice of appeal is a jurisdictional defect that cannot be waived by the appellate court, even if good cause is shown. *Stewart Properties v. Brennan*, 8 Haw. App. 431, 435, 807 P.2d 606, 608 (1991); *Gold v. Harrison*, 88 Hawai'i 94, 104-05, 962 P.2d 353, 363-64 (1998).

It finally appears that the September 13, 2000 order was certified for appeal under HRCP 54(b) by judgment entered on November 6, 2000. However, certification under HRCP 54(b) was improper inasmuch as the September 13, 2000 order did not ultimately dispose of the plaintiffs' entire claim for attorney's fees and costs in Civil No. 98-227. See 10 *Moore's Federal Practice*, § 54.22[2][a] (Matthew Bender 3d ed.). The plaintiffs' appeal of the November 6, 2000 judgment is a premature appeal of a non-final interlocutory judgment. Therefore,

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

DATED: Honolulu, Hawai'i, April 17, 2001.