

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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LEWIS W. POE, Petitioner Appellant-Appellant,

vs.

HAWAI'I LABOR RELATIONS BOARD, State of Hawai'i,  
Appellee Appellee-Appellee,

and

HAWAI'I GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME,  
LOCAL 152, AFL-CIO, Intervenor Appellee-Appellee.

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NO. 24313

APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NO. 00-1-3007)

JULY 10, 2002

MOON, C.J., LEVINSON, AND NAKAYAMA, JJ.;  
RAMIL AND ACOBA, JJ., NOT JOINING<sup>1</sup>

OPINION OF THE COURT BY MOON, C.J.

Petitioner appellant-appellant Lewis Poe filed a notice of appeal on May 25, 2001, twenty-nine days after entry of a second amended judgment (filed April 26, 2001), but more than thirty days after entry of the first amended judgment (filed

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<sup>1</sup> A separate opinion or opinions will be filed subsequently.

April 17, 2001) and the original judgment (filed March 8, 2001).<sup>2</sup> Because we hold that the alteration to the April 17 amended judgment, resulting in the issuance of the April 26 second amended judgment, was merely a correction of a clerical error, the time for appealing the above-captioned matter is measured from April 17, 2001 -- the date the first amended judgment was entered. Accordingly, Poe's May 25, 2001 filing of his notice of appeal is untimely and must be dismissed for lack of appellate jurisdiction.

#### I. BACKGROUND

Poe is a public employee and a member of Bargaining Unit 03 of the Hawai'i Government Employees Association, AFSCME, Local 152, AFL-CIO [hereinafter, HGEA]. In 1997, he petitioned the Hawai'i Labor Relations Board (HLRB) for a declaratory ruling that Hawai'i Revised Statutes (HRS) § 89-10(a) (1993) (requiring employee ratification of any collective bargaining agreement) applied to a 1997 Memorandum of Agreement (MOA) between public employers and the HGEA. Poe contended that the MOA, which implemented alternative work schedules for Unit 03 members, was invalid because it was not ratified by the members. In 2000, the

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<sup>2</sup> The original judgment and all subsequent amended judgments were entered by the Honorable Eden Elizabeth Hifo, presiding.

HLRB dismissed Poe's petition as moot, finding that the MOA, which had expired in 1997, was superceded by provisions of a 1997-1999 collective bargaining agreement for Unit 03 members.

Thereafter, Poe appealed the HLRB's decision to the circuit court, pursuant to HRS § 91-14 (1993), and was assigned Civil No. 00-1-3007. The HGEA had participated as "intervenor" in Poe's case before the HLRB and was designated "intervenor-appellee" in Poe's appeal before the circuit court. On February 26, 2001, the circuit court entered an order affirming the HLRB's dismissal of Poe's petition as moot. In the order, the circuit court also sua sponte: (1) consolidated Civil No. 00-1-3007 with Civil No. 00-1-3725, another case in which Poe had appealed an HLRB decision concerning the 1997 MOA; (2) determined that, because Civil No. 00-1-3725 raised identical issues as in Civil No. 00-1-3007, further briefing and argument was not necessary; and (3) affirmed that HLRB decision as well. Judgment in favor of HLRB and HGEA and against Poe in Civil Nos. 00-1-3007 and 00-1-3725 was entered on March 8, 2001.

Poe then moved for reconsideration of the March 8, 2001 judgment pursuant to Hawai'i Rules of Civil Procedure Rule 59(e). The circuit court denied reconsideration of the judgment as it pertained to Civil No. 00-1-3007, but granted reconsideration with regards to Civil No. 00-1-3725. In so doing, the court rescinded the consolidation as well as the judgment in favor of

HLRB and HGEA in Civil No. 00-1-3725. On April 17, 2001, the circuit court entered the first amended judgment in favor of the HLRB and HGEA and against Poe only as to Civil No. 00-1-3007.

However, the April 17 amended judgment designated HGEA as "intervenor-appellee" in the body of the document, but as "respondent-appellee" in the caption of the case. On April 26, 2001, the circuit court sua sponte entered a second amended judgment, correcting the caption of the April 17 amended judgment by changing HGEA's designation from "respondent-appellee" to "intervenor-appellee," consistent with the designation reflected in the body of the document. In all other respects, the first and second amended judgments were identical. On May 25, 2001, twenty-nine days after entry of the second amended judgment and thirty-eight days after entry of the first amended judgment, Poe filed a notice of appeal in the instant case.

## II. DISCUSSION

"In each appeal, the supreme court is required to determine whether it has jurisdiction." Wong v. Wong, 79 Hawai'i 26, 29, 897 P.2d 953, 956 (1995). "Without jurisdiction, a court is not in a position to consider the case further." Id. "An appellant's failure to file a timely notice of appeal is a jurisdictional defect that can neither be waived by the parties nor disregarded by the court in exercise of judicial discretion." Id.; Hawai'i Rules of Appellate Procedure (HRAP) Rule 26(b) ("[N]o court or judge or justice is authorized to change the jurisdictional requirements contained in Rule 4 of [the HRAP])."

In civil cases, "the notice of appeal shall be filed within 30 days after entry of the judgment or appealable order." HRAP Rule 4(a)(1). As previously stated, the judgment in this case (i.e., Civil No. 00-1-3007) was originally entered on March 8, 2001, which included consolidation with another of Poe's cases. Upon reconsideration, an amended judgment was entered on April 17, 2001, to reflect the rescission of the consolidation order and judgment in the other civil matter. The first amended judgment was subsequently corrected, sua sponte, so as to reflect HGEA's proper party designation, and a Second Amended judgment was entered April 26, 2001. Poe's May 25, 2001 notice of appeal was filed within thirty days after entry of the April 26 second amended judgment, but more than thirty days after entry of either the original March 8 judgment and the April 17 first amended judgment. The question on appeal, therefore, is: From what date is the time for appeal measured?

In Korsak v. Hawai'i Permanente Medical Group, 94 Hawai'i 297, 12 P.3d 1238 (2000), this court adopted the following rule as a guide in determining whether an amendment of an order or judgment affects the time for appeal:

The general rule is that where a judgment is amended in a material and substantial respect, the time within which an appeal from such determination may be taken begins to run from the date of the amendment, although where the amendment relates only to the correction of a clerical . . . error, it does not affect the time allowed for appeal.

Moreover,

[I]f the amendment of a final judgment or decree for the purpose of correcting a "clerical error" either materially alters rights or obligations determined by the prior judgment [or decree] or creates a right of appeal where one did not exist before, the time for appeal should be measured from the entry of the amended judgment. If, however, the amendment has neither of these results, but instead makes changes in the prior judgment which have no adverse effect upon those rights or obligations or the parties' right to appeal, the entry of the amended judgment will not postpone the time within which an appeal must be taken from the original decree.

Korsak, 94 Hawai'i at 304, 12 P.3d at 1245 (quoting Interstate Printing Co. v. Department of Revenue, 459 N.W.2d 519, 522-23 (Neb. 1990) (other citations omitted)); accord Federal Trade Comm'n v. Minneapolis-Honeywell Regulator Co., 344 U.S. 206, 211-12 (1952) (immaterial revision of judgment does not extend time for seeking review of original judgment); Degale v. Krongold, Bass & Todd, 773 So. 2d 630 (Fla. App. 2000) (amendment of judgment correcting clerical error not impacting on rights and obligations of parties does not affect time for appealing original judgment); CC-California Plaza Associates v. Paller & Goldstein, 59 Cal. Rptr. 2d 382, 385 (Cal. App. 1996) (amendment substantially changing form of judgment starts new time for appeal); Nielson v. Gurly, 888 P.2d 130, 132-33 (Utah App. 1994) (amendment of judgment not affecting substantive rights of parties does not affect time for appealing original judgment); Matter of Marriage of Mullinax, 639 P.2d 628 (Or. 1982) (amendment of decree correcting clerical error and materially changing rights of parties starts new time for appeal); Kolasz v. Levitt, 404 N.Y.S.2d 914 (N.Y. App. 1978) (resettlement of

judgment containing no material or substantial change does not affect time for appealing original judgment); City of Newark v. Fischer, 70 A.2d 733 (N.J. 1950) (correction of judgment as to immaterial clerical error does not affect time for appealing original judgment).

The rule adopted in Korsak is applicable to this case. Because the April 17 amended judgment rescinded the original judgment as to the related consolidated case (i.e., Civil No. 00-1-3725), it also materially altered rights determined by the original March 8 judgment. On the other hand, the April 26 second amended judgment merely corrected HGEA's designation in the caption of the April 17 amended judgment (i.e., changing "respondent-appellee" to "intervenor-appellee") and, thus, did not materially alter any rights or obligations determined by the April 17 amended judgment and did not create a right of appeal where one did not exist. Because the correction was clerical in nature and had no adverse effect upon any rights or obligations or the parties' right to appeal, we hold that the time for appealing the judgment in the instant case is measured from April 17, 2001 -- the entry of the first amended judgment -- and not from April 26, 2001 -- the entry of the second amended judgment. Accordingly, Poe's notice of appeal should have been filed no later than May 17, 2001, thirty days after entry of the first

amended judgment. Because the notice of appeal was filed on May 25, 2001, the appeal is untimely. Consequently, we dismiss Poe's appeal for lack of appellate jurisdiction.

On the briefs:

Lewis W. Poe,  
appellant pro se

Valri Lei Kunimoto,  
for Appellee Hawai'i  
Labor Relations Board

James E.T. Koshiba and  
Lisa Anne Gruebner for  
Appellee Hawai'i Government  
Employees Association