

NO. 24443

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STEVE WOLSHIN and RHONDA BORNTRAGER, Plaintiffs-Appellants

vs.

AMON ESCALONA, Defendant-Appellee

APPEAL FROM THE FIFTH CIRCUIT COURT
(CIV. NO. 98-0359)

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

Upon review of the record, it appears that the time for appeal in Civil No. 98-0359 commenced on June 3, 2001, not upon entry of the June 27, 2001 order denying Plaintiffs-Appellants Steven Wolshin and Rhonda Bornttrager's motion for new trial and/or judgment notwithstanding the verdict. After judgment was entered on February 23, 2001, Wolshin and Bornttrager timely moved for a new trial and/or judgment notwithstanding the verdict on March 5, 2001. See HRAP 4(a)(3). However, inasmuch as the circuit court, the Honorable George M. Masuoka presiding, did not enter its order until June 27, 2001, the motion was deemed denied on June 3, 2001, ninety days after it was filed. See id. Therefore, Wolshin and Bornttrager's notice of appeal filed on July 26, 2001, is untimely, and we lack jurisdiction over this appeal. See id.; HRAP 26(b); Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986) (The failure of an appellant to file a

timely notice of appeal in a civil matter is a jurisdictional defect that can neither be waived by the parties nor disregarded by the appellate court in the exercise of judicial discretion.). Accordingly,

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

DATED: Honolulu, Hawai'i, January 30, 2002.