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NO. 25445

IN THE SUPREME COURT OF THE STATE OF HAWAII

HAWAII ELECTRIC LIGHT COMPANY, INC., a Hawaii corporation,
Appellant-Appellee

vs.

DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII; BOARD
OF LAND AND NATURAL RESOURCES, as the Executive Head of the
Department of Land and Natural Resources, State of Hawaii;
DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII; WAIMANA
ENTERPRISES, INC., a Hawaii corporation, Appellees-Appellees

and

PEGGY J. RATLIFF and MAHI COOPER, Appellees-Appellants

and

KEAHOLE DEFENSE COALITION, INC., a Hawaii nonprofit corporation,
Intervenor-Appellant
(CIV. NO. 96-131K)

WAIMANA ENTERPRISES, INC., a Hawaii corporation, Cross-Appellant

vs.

DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII;
et al., Cross-Appellees
(CIV. NO. 96-141K)

PEGGY RATLIFF, Cross-Appellant

vs.

DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII;
et al., Cross-Appellee
(CIV. NO. 96-142K)

MAHI COOPER, Cross-Appellant

vs.

DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII;
et al., Cross-Appellees
(CIV. NO. 96-143K)

HAWAII ELECTRIC LIGHT COMPANY, INC., a Hawaii corporation,
Plaintiff

vs.

PETER YIM, in his capacity as Chairman of the Board of Land and
Natural Resources, State of Hawaii; et al., Defendants,

and

KEAHOLE DEFENSE COALITION and PEGGY RATLIFF, Intervenors
(CIV. NO. 96-144K)

APPEAL FROM THE THIRD CIRCUIT COURT

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, and Acoba, JJ.,
and Circuit Judge Ahn, assigned by reason of vacancy)

Upon review of the record, it appears that the circuit court's November 9, 2000 order finally disposed of the June 21, 2000 motion for post-judgment relief and was a final order that was appealable within thirty days after the order was entered. See HRS § 641-1(a); HRAP 4(a)(1). The lack of a separate judgment on the November 9, 2000 order did not affect the time for appeal inasmuch as the separate judgment rule of HRCP 58 did not apply to the November 9, 2000 post-judgment order. The proceeding before the Board of Land and Natural Resources did not affect the time for appeal inasmuch as the proceeding was an agency action separate from Civil No. 96-131K that did not affect the finality of the November 9, 2000 order. The notice of appeal

filed on November 1, 2002 is an untimely appeal of the November 9, 2000 order. Thus, we lack jurisdiction over this appeal. See 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). Therefore,

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

DATED: Honolulu, Hawai'i, February 14, 2003.