

\*\*\* NOT FOR PUBLICATION \*\*\*

NO. 25956

IN THE SUPREME COURT OF THE STATE OF HAWAII

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MARTHA J. POWELL, Plaintiff/Appellant/Cross-Appellee

vs.

EDWARD J. POWELL, Defendant/Appellee/Cross-Appellant

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APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT  
(FC-D NO. 97-149K)

ORDER DISMISSING APPEAL AND CROSS-APPEAL

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

Upon review of the record, it appears that we do not have jurisdiction over this appeal and cross-appeal.

Plaintiff/Appellant/Cross-Appellee Martha J. Powell's (Appellant Powell) appeal from the March 6, 2003 order is not timely because she did not file her July 7, 2003 notice of appeal within thirty days after entry of the March 6, 2003 order, as Rule 4 of the Hawai'i Rules of Appellate Procedure (HRAP) required.

Defendant/Appellee/Cross-Appellant Edward J. Powell's (Cross-Appellant Powell) April 1, 2003 motion for reconsideration did not extend the time period for filing a notice of appeal pursuant to HRAP Rule 4(a)(3), because Cross-Appellant Powell did not file the April 1, 2003 motion for reconsideration within ten days after entry of the March 6, 2003 order, as HRAP Rule 4(a)(3) required. Cross-Appellant Powell's cross-appeal from the March 6, 2003 order is also not timely because he did not file his July 21, 2003 notice of appeal either (a) within fourteen days

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after the service of a timely-file notice of appeal or (b) within thirty days after entry of the March 6, 2003 order, as HRAP Rule 4.1(b)(1) required.

Although Cross-Appellant Powell additionally cross-appealed from the June 4, 2003 order denying reconsideration, it appears that Cross-Appellant Powell's April 1, 2003 motion for reconsideration was unauthorized. Cross-Appellant Powell did not file his April 1, 2003 motion for reconsideration within ten days after entry of the March 6, 2003 order, as Rule 59(e) of the Hawai'i Family Court Rules (HFCR) required. HFCR Rule 60(b) does not authorize a motion for reconsideration when the motion merely repeats an argument that the family court has already rejected in a previous order. Cf. Isemoto Contracting Co., Ltd. v. Andrade, 1 Haw. App. 202, 204 n.2, 616 P.2d 1022, 1025 n.2 (1980). Without any supporting authority for Cross-Appellant Powell's April 1, 2003 motion for reconsideration, the June 4, 2003 order denying reconsideration is not an appealable post-decree order under HRS § 571-54 (1993).

The failure of a party to file a timely notice of appeal or notice of cross-appeal is a jurisdictional defect that the parties cannot waive and we cannot disregard in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1129 (1986); HRAP Rule 26(b) ("[N]o court or judge or justice thereof is authorized to change the jurisdictional

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requirements contained in Rule 4 of [the HRAP]."). Therefore, we lack jurisdiction over this appeal and cross-appeal.

Accordingly,

IT IS HEREBY ORDERED that this appeal and cross-appeal are dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, October 20, 2003.