

*** NOT FOR PUBLICATION ***

NO. 26001

IN THE SUPREME COURT OF THE STATE OF HAWAII

JOHN WILLIAM PIEPER JAMES, Plaintiff-Appellant

vs.

ANN AIKO JAMES, Defendant-Appellee

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 98-3889)

ORDER DISMISSING APPEAL

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

Upon review of the statements supporting and contesting jurisdiction, the motion to dismiss appeal, the papers in opposition to the motion and the record, it appears that the January 27, 2003 motion to alter or amend the January 15, 2003 judgment extended the time for appealing the judgment until thirty days after entry of an order disposing of the motion. HRAP 4(a)(3). An order denying the motion was entered on June 30, 2003, but the order was not entered within the ninety-day maximum period prescribed by HRAP 4(a)(3) for disposing of the motion. Therefore, the January 27, 2003 motion was denied by operation of law on April 28, 2003, ninety days after the motion was filed. HRAP 4(a)(3). The denial of the motion by operation of law on April 28, 2003 triggered the thirty-day period for appealing the January 15, 2003 judgment. HRAP 4(a)(3). The July 26, 2003 notice of appeal was filed more than thirty days after April 28, 2003 and is an untimely appeal of the January 15,

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2003 judgment. Thus, we lack jurisdiction over this appeal. See HRAP 26(b); Bacon v. Karlin, 68 Hawai'i 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, November 18, 2003.