

\*\*\* NOT FOR PUBLICATION \*\*\*

NO. 26031

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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YANLUN BENNIE, Plaintiff-Appellee

vs.

MICHAEL BENNIE, Defendant-Appellant

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APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT  
(FC-D NO. 02-1-0143)

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that notice of appeal from the July 16, 2003 judgment dividing property and debts must have been filed "within thirty days after entry of the judgment[.]" HRAP 4(a)(1). Appellant's notice of appeal was filed on August 19, 2003, but the thirty-day period for appeal expired on August 18, 2003. HRAP 26(a). The thirty-day period for appeal was not extended for two additional days by operation of HFCR 6(e) inasmuch as HFCR 6(e) is invoked when a prescribed time is measured from the date of service and the prescribed time under HRAP 4(a)(1) is not measured from the date of service, but is measured from the date of entry of the judgment. Thus, this appeal is untimely and we lack jurisdiction. See Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986) (the failure to file a timely notice of appeal in a civil case is a jurisdictional defect that can neither be waived by the parties nor disregarded by the appellate court in the exercise of

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judicial discretion). Therefore,

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

DATED: Honolulu, Hawai'i, May 18, 2004.