

NO. 26583

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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MEGHAN R.K. CEDILLOS, PHILIP H. CEDILLOS, DBA HAWAIIAN WINDOW,  
Plaintiffs-Appellants

vs.

STATE OF HAWAI'I, RODNEY HARAGA<sup>1</sup> as Director of the State  
Department of Transportation; TOM BUSIC, Individually and  
official capacity; LANCE TAKAYAMA, Individually and official  
capacity; RAYMOND KAPUNIAI, Individually and official capacity,  
Defendants-Appellees

and

JOHN DOES 1-5; JANE DOES 1-5; DOE CORPORATIONS 1-5;  
DOE PARTNERSHIPS 1-5; DOE GOVERNMENTAL ENTITIES 1-5,  
Defendants

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APPEAL FROM THE SECOND CIRCUIT COURT  
(CIV. NO. 02-1-0577)

ORDER GRANTING DEFENDANTS-APPELLEES'  
MOTION TO DISMISS APPEAL FOR LACK OF JURISDICTION  
(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon consideration of Defendants-Appellees' motion to  
dismiss the appeal of Plaintiffs-Appellants Meghan R.K. Cedillos  
and Philip H. Cedillos, dba Hawaiian Window, for lack of  
jurisdiction, the papers in support, and the records and files  
herein, it appears that: (1) the circuit court entered the final  
judgment on March 5, 2004, and Appellants filed their notice of  
appeal on May 20, 2004; (2) pursuant to HRS § 641-1, appeals  
shall be allowed in civil matters from all final judgments,  
orders or decrees within the time provided by the rules of the  
court; (3) Rule 4(a)(1) of the Hawai'i Rules of Appellate

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<sup>1</sup> Pursuant to Hawai'i Rules of Appellate Procedure Rule 43(c)(1),  
Rodney Haraga, the current Director of the Department of Transportation, has  
been substituted for Brian Minaai, the Director at the time this case was  
decided by the second circuit court.

Procedure (HRAP) requires the appellant to file the notice of appeal within thirty days after entry of a judgment; (4) pursuant to HRAP Rule 4(a)(5) a judgment or order is entered when it is filed in the office of the clerk of the court. See also HRCF Rule 58 (the filing of the judgment in the office of the clerk constitutes the entry of judgment); (5) Appellants did not obtain an extension of time to file their notice of appeal pursuant to HRAP Rule 4(a)(4), and they did not file a post judgment motion that would toll the time to file a notice of appeal pursuant to HRAP Rule 4(a)(3); (6) the May 20, 2004 notice of appeal, which was filed more than thirty days after the entry of the final judgment, was untimely, and the appeal must be dismissed. See Enos v. Pacific Transfer & Warehouse, 80 Hawai'i 345, 349, 910 P.2d 116, 120 (1996) (quoting Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1129 (1986)) (an appellant's failure to file a timely notice of appeal is a jurisdictional defect that can neither be waived by the parties nor disregarded by the court in the exercise of judicial discretion). Therefore

IT IS HEREBY ORDERED that the motion to dismiss the appeal for lack of jurisdiction is granted, and this appeal is dismissed.

DATED: Honolulu, Hawai'i, September 24, 2004.

Dennis K. Ferm  
Deputy Attorney General,  
for defendants-appellees  
on the motion