

NO. 26583

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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

vs.

STATE OF HAWAI'I, RODNEY HARAGA¹ 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

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

ORDER

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

Upon consideration of Plaintiffs-Appellants' motion for reconsideration of order granting Defendants-Appellees' motion to dismiss appeal 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) Rule 4(a)(1) of the Hawaii Rules of Appellate Procedure (HRAP) requires the appellant to file the notice of appeal within thirty days after entry of the judgment; (3) 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

¹ 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.

that would toll the time to file a notice of appeal pursuant to HRAP Rule 4(a)(3); (4) a motion to stay the judgment does not extend the time to file a notice of appeal; (5) thus, the May 20, 2004 notice of appeal, which was filed more than thirty days after 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 for reconsideration is denied.

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

Meghan R.K. Cedillos
and Philip H. Cedillos
plaintiffs-appellants,
pro se, on the motion