

*** NOT FOR PUBLICATION ***

NO. 26714

IN THE SUPREME COURT OF THE STATE OF HAWAII

SUSAN FAITH RUBIN, Appellant-Appellant

vs.

ROGER KUI SIN GOO; CHILD SUPPORT ENFORCEMENT AGENCY,
STATE OF HAWAII, Appellees-Appellees

APPEAL FROM THE FAMILY COURT OF THE FIFTH CIRCUIT
(FC-AP 03-1-0002)

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that the May 24, 2004 order dismissing FC-AP 03-1-0002 was a final order appealable within thirty days after the order was entered. HRAP 4(a)(1). The notice of appeal filed on July 23, 2004 is an untimely appeal of the May 24, 2004 order. Appellant received a copy of the May 24, 2004 order on June 7, 2004, more than ten days after the order was entered, but more than two weeks before the June 23, 2004 deadline for appealing the order. Appellant was not required to seek reconsideration of the order as a prerequisite to appeal. The June 9, 2004 motion for reconsideration was treated by the family court as a timely motion for reconsideration under HFCR 59(e); however, for purposes of HRAP 4(a)(3), the June 9, 2004 motion was not filed within ten days after entry of the May 24, 2004 order and did not extend the time for appealing the May 24, 2004 order until entry

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of the June 23, 2004 order denying the motion. Thus, we lack jurisdiction over this appeal. See HRAP 26(b); Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1129 (1986) (the failure 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). Therefore,

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

DATED: Honolulu, Hawai'i, December 1, 2004.