

*** NOT FOR PUBLICATION ***

NO. 26798

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

IN THE INTEREST OF DOE CHILDREN:

JOHN DOE, born on January 3, 1995;

JANE DOE, born on March 4, 1998;

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 01-07847)

ORDER DISMISSING APPEAL

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

Upon review of appellant's statement of jurisdiction, appellee's motion to dismiss appeal, appellant's response to the motion to dismiss appeal and the record, it appears that the June 14, 2004 order awarding permanent custody was appealable by notice of appeal filed within thirty days after entry of the July 29, 2004 order denying the motion for reconsideration of the June 14, 2004 order, unless the time for appeal was extended pursuant to HRAP 4(a)(4). Appellant filed her notice of appeal on September 8, 2004, forty-one days after entry of the July 29, 2004 order. HRAP 4(a)(4)(B) permitted appellant to file a motion for extension of time to appeal for excusable neglect by motion filed in the family court by September 27, 2004, but no motion for extension of time to appeal was filed and the time for appeal was not extended by the family court. The appellate court may not extend the time for appeal pursuant to HRAP 4(a)(4)(B) inasmuch as the rule authorizes the time for appeal to be

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extended "by the court or agency appealed from." The September 8, 2004 notice of appeal is untimely and we lack jurisdiction. See HRAP 26(b) ("no court or judge or justice is authorized to change the jurisdictional requirements contained in [HRAP] Rule 4"); 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 9, 2004.