

NO. 27791

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

THOMAS LUI, Plaintiff-Appellee,

v.

GUO XI WU, Defendant-Appellant

E.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2006 JUL 20 AM 9:00

FILED

APPEAL FROM THE FAMILY COURT OF THE FIFTH CIRCUIT
(FC-D No. 05-1-0192)

ORDER DISMISSING APPEAL

(By: Burns, C.J., Lim and Foley, JJ.)

Upon review of the record, it appears that we do not have jurisdiction over Defendant-Appellant Guo Xi Wu's (Appellant Guo Xi Wu) appeal from the divorce decree that the Honorable Calvin K. Murashige filed on December 30, 2005.

In family court cases "[a]n interested party aggrieved by any order or decree of the court may appeal to the intermediate appellate court for review of questions of law and fact upon the same terms and conditions as in other cases in the circuit court[.]" HRS § 571-54 (Supp. 2005). In circuit court cases, aggrieved parties may appeal from "final judgments, orders or decrees[.]" HRS § 641-1(a) (Supp. 2005). "Hawaii divorce cases involve a maximum of four discrete parts: (1) dissolution of the marriage; (2) child custody, visitation, and support; (3) spousal support; and (4) division and distribution of

property and debts." Eaton v. Eaton, 7 Haw. App. 111, 118, 748 P.2d 801, 805 (1987) (citation omitted). A divorce decree that finally determines all four parts of a divorce case is a final judgment under HRS § 571-54 (Supp. 2005). Eaton v. Eaton, 7 Haw. App. at 118-19, 748 P.2d at 805.

The December 30, 2005 divorce decree finally determined all four parts of Plaintiff-Appellee Thomas Lui's (Appellee Thomas Lui) and Appellant Guo Xi Wu's divorce case, because the December 30, 2005 divorce decree (1) dissolved the marriage between Appellee Thomas Lui and Appellant Guo Xi Wu, (2) acknowledged that Appellee Thomas Lui and Appellant Guo Xi Wu did not have any children, (3) awarded monthly spousal support to Appellant Guo Xi Wu, and (4) divided and distributed Appellee Thomas Lui's and Appellant Guo Xi Wu's property and debts. Therefore, the December 30, 2005 divorce decree was an appealable final decree under HRS § 571-54 (Supp. 2005). However, Appellant Guo Xi Wu did not file her February 24, 2006 notice of appeal within thirty days after entry of the December 30, 2005 divorce decree, as Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP) required. Therefore, Appellant Guo Xi Wu's February 24, 2006 notice of appeal was not timely.

The failure to file a timely notice of appeal in a civil matter is a jurisdictional defect that the parties cannot waive and the appellate courts cannot disregard in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727

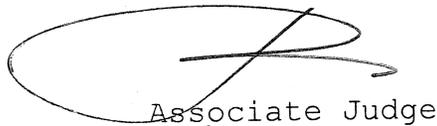
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P.2d 1127, 1128 (1986); HRAP Rule 26(b) ("[N]o court or judge or justice thereof is authorized to change the jurisdictional requirements contained in Rule 4 of [the HRAP]."). Therefore,

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

DATED: Honolulu, Hawai'i, July 20, 2006.


Chief Judge


Associate Judge


Associate Judge