

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28039

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

RANDOLPH J. AMEN; "FRISCO", a canine service animal,
Plaintiffs-Appellants/Cross-Appellees.

v.

LISA MALMBERG, Defendant-Appellee,
and
McCULLY ASSOCIATES,
Defendant-Appellee/Cross-Appellant

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

2006 SEP 15 PM 3:50

FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CV. NO. 1RC 06-1-906)

ORDER DISMISSING CROSS-APPEAL

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

Upon review of the record, it appears that we do not have jurisdiction over Defendant/Appellee/Cross-Appellant McCully Associates' (Cross-Appellant McCully Associates) cross-appeal from the June 9, 2006 judgment.

Pursuant to HRS § 641-1(a) (1993), appeals are allowed in civil matters from all final judgments, orders, or decrees of circuit and district courts. In district court cases, a judgment includes any order from which an appeal lies. A final order means an order ending the proceeding, leaving nothing further to be accomplished. When a written judgment, order, or decree ends the litigation by fully deciding all rights and liabilities of all parties, leaving nothing further to be adjudicated, the judgment, order, or decree is final and appealable.

Casumpang v. ILWU, Local 142, 91 Hawai'i 425, 426, 984 P.2d 1251, 1252 (1999) (citations, internal quotation marks, and footnote omitted). The June 9, 2006 judgment ended the litigation by fully deciding the rights of all the parties. Therefore, the June 9, 2006 judgment was an appealable final judgment under HRS

§ 641-1(a) (Supp. 2005).

Plaintiffs/Appellants/Cross-Appellees Randolph J. Amen (Appellant Amen) and Frisco (Appellant Frisco) filed their June 26, 2006 notice of appeal within thirty days after entry of the June 9, 2006 judgment, as Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP) required. Therefore, Appellant Amen's and Appellant Frisco's appeal is timely.

However, Cross-Appellant McCully Associates' cross-appeal is not timely. HRAP Rule 4.1(b)(1) required Cross-Appellant McCully Associates to file the "notice of cross-appeal and pay the filing fee within 14 days after the notice of appeal is served on the cross-appellant, or within the time prescribed for filing the notice of appeal, whichever is later." HRAP 4.1(a)(1). Cross-Appellant McCully Associates did not file its July 13, 2006 notice of cross-appeal within fourteen days after service of Appellant Amen's and Appellant Frisco's June 26, 2006 notice of appeal, and Cross-Appellant McCully Associates did not file its July 13, 2006 notice of cross-appeal within thirty days after entry of the June 9, 2006 judgment, as HRAP Rule 4.1(b)(1) required. Therefore, Cross-Appellant McCully Associates' cross-appeal is 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 Cross-Appellant McCully Associates' cross-appeal is dismissed for lack of appellate jurisdiction. The briefing for Appellant Amen's and Appellant Frisco's appeal shall proceed according to HRAP Rule 28.

DATED: Honolulu, Hawai'i, September 15, 2006.


Chief Judge


Associate Judge


Associate Judge