

NO. 28109

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

ESTATE OF YVONNE MARIE MATHISON,  
by Special Administrator David Kaapu, et al.,  
Plaintiff-Appellee,  
v.  
KENNETH WAYNE MATHISON, Defendant-Appellant,

and

MICHAEL MATHISON, Plaintiff-Appellee  
v.  
KENNETH WAYNE MATHISON, et al., Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT  
(CV. 94-554)

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 Kenneth Mathison's (Appellant Kenneth Mathison) appeal from the December 28, 2005 amended judgment. HRS § 641-1(a) (Supp. 2005) provides that "[a]ppeals shall be allowed in civil matters from all final judgments, orders, or decrees of circuit . . . courts . . . to the intermediate appellate court[.]" Under the Rule 58 of the Hawaii Rules of Civil Procedure, "[a]n appeal may be taken from circuit court orders resolving claims against parties only after the orders have been reduced to a judgment and the judgment has been entered in favor of and against the appropriate parties pursuant to HRCP [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawaii 115, 119, 869 P.2d 1334, 1338 (1994). The

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December 28, 2005 amended judgment, on its face, resolved all claims against all parties and entered judgment in favor of and against the appropriate parties. Therefore, the December 28, 2005 amended judgment was an appealable final judgment under HRS § 641-1(a) (Supp. 2005). However, Appellant Kenneth Mathison did not file his August 16, 2006 notice of appeal within thirty days after entry of the December 28, 2005 amended judgment, and, thus, violated the thirty-day time limit for a notice of appeal under Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP) for filing a notice of appeal. Therefore, Appellant Kenneth Mathison's August 16, 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 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, November 2, 2006.

  
Chief Judge

  
Associate Judge

  
Associate Judge