

NO. 28202

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

KAHIKINA M. KANEKOA,
Plaintiff/Third-Party Plaintiff-Appellee,
v.
HUBERT U. KANEKOA, Defendant-Appellant
v.
GRACE INTERNATIONAL CORPORATION,
a Nevada corporation, Third-Party Defendant

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

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FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 03-1-2405)

ORDER GRANTING PLAINTIFF/THIRD-PARTY PLAINTIFF-APPELLEE KAHIKINA
M. KANEKOA'S DECEMBER 28, 2006 MOTION TO DISMISSING THE APPEAL
(By: Burns, C.J., Lim and Foley, JJ.)

Upon review of (1) Plaintiff/Third-Party Plaintiff-Appellee Kahikina M. Kanekoa's (Appellee Kahikina Kanekoa) December 28, 2006 motion to dismiss appellate court case number 28202, and (2) the record, it appears that we do not have jurisdiction over Defendant-Appellant Hubert U. Kanekoa's (Appellant Hubert Kanekoa) appeal from the Honorable Nancy Ryan's September 8, 2006 judgment, the August 7, 2006 post-decree "Order with Respect to Plaintiff's 'Motion to Determine Distribution of Proceeds from Sale of Property at 929 Kahili Street, Kailua, Hawai'i,'" the ten other prior post-decree orders that Appellant Hubert Kanekoa listed in his notice of appeal, and the September 3, 2003 divorce decree.

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). The family court entered a final decree in this case when the family court entered the September 3, 2003 divorce decree, which was an appealable final decree pursuant to HRS § 571-54 (Supp. 2005). No party filed a notice of appeal within thirty days after entry of the September 3, 2003 divorce decree, as Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP) required, and, thus, no party timely appealed from the September 3, 2003 divorce decree.

All subsequent rulings by the family court were post-decree orders, also sometimes referred to as post-judgment orders. "A post-judgment order is an appealable final order under HRS § 641-1(a) if the order finally determines the post-judgment proceeding." Hall v. Hall, 96 Hawai'i 105, 111 n.4, 26 P.3d 594, 600 n.4 (App. 2001) (citation omitted), affirmed in part, and vacated in part on other grounds, Hall v. Hall, 95 Hawai'i 318, 22 P.3d 965 (2001). Furthermore, "the separate judgment requirement articulated in Jenkins [v. Cades Schutte Fleming & Wright], 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994),] is inapposite in the post-judgment context." Ditto v. McCurdy, 103 Hawai'i 153, 158, 80 P.3d 974, 979 (2003).

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Therefore, a post-decree order that finally determines a post-decree proceeding is an appealable final order under HRS § 571-54 (Supp. 2005) without the entry of a corresponding separate judgment.

The order that finally determined the post-decree proceeding for Appellee Kahikina Kanekoa's April 26, 2006 post-decree motion to determine the distribution of proceeds from the sale of real property was the August 7, 2006 post-decree "Order with Respect to Plaintiff's 'Motion to Determine Distribution of Proceeds from Sale of Property at 929 Kahili Street, Kailua, Hawai'i.'" The August 7, 2006 post-decree order also resolved Appellee Kahikina Kanekoa's third-party complaint, as well as all other outstanding post-decree motions, through operative language that affirmatively dismissed any and all other claims in this case with prejudice.

Despite that the August 7, 2006 post-decree order resolved all outstanding post-decree orders, the family court entered the September 8, 2006 judgment. However, the August 7, 2006 post-decree order was an appealable final order without the entry of the September 8, 2006 judgment. In this post-decree context, the September 8, 2006 judgment was superfluous. Therefore, the September 8, 2006 judgment was not an appealable final judgment under HRS § 571-54 (Supp. 2005).

Appellant Hubert Kanekoa did not file his October 6, 2006 notice of appeal within thirty days after entry of the

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August 7, 2006 post-decree order, nor did Appellant Hubert Kanekoa file his October 6, 2006 notice of appeal within thirty days after entry of the prior post-decree orders and the September 3, 2003 divorce decree, as HRAP Rule 4(a)(1) required. Therefore, Appellant Hubert Kanekoa's appeal is not timely.

The failure of an appellant to file a timely notice of appeal in a civil matter is a jurisdictional defect that the parties cannot waive and an appellate court cannot disregard in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1129 (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, we lack jurisdiction over this appeal. Accordingly,

IT IS HEREBY ORDERED that Appellee Kahikina Kanekoa's December 28, 2006 motion to dismiss appellate court case number 28202 is granted, and appellate court case number 28202 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, January 3, 2007.


Chief Judge


Associate Judge


Associate Judge