

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 28373

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

JOHN NEWBORN, Plaintiff-Appellee, v. GLEN D. GANZER and
JEAN E. GANZER, Defendants-Appellants, and JOHN
DOES 1-10, JANE DOES 1-10, DOE PARTNERSHIPS,
CORPORATIONS, or ENTITIES 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Civ. No. 05-1-1361)

ORDER DISMISSING APPEAL

(By: Watanabe, Presiding J., Lim and Foley, JJ.)

Upon review of the record, it appears that we lack jurisdiction over the appeal filed by Defendants-Appellants Glen D. Ganzer and Jean E. Ganzer (collectively, the Ganzer Appellants) from the Honorable Eden Elizabeth Hifo's August 11, 2006 judgment (the Judgment) because the appeal was not timely filed pursuant to Rule 4(a)(3) of the Hawai'i Rules of Appellate Procedure (HRAP).

Hawaii Revised Statutes (HRS) § 641-1(a) (Supp. 2006) authorizes appeals from "final judgments, orders, or decrees[.]" Furthermore, pursuant to the separate document rule under Rule 58 of the Hawai'i Rules of Appellate Procedure (HRAP), "[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

K. HAMAKADO
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appropriate parties pursuant to [Hawai'i Rules of Civil Procedure (HRCP) [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

The Judgment resolved all claims against all parties by entering judgment in favor of and against the appropriate parties. Therefore, the Judgment satisfies the requirements for an appealable final judgment under HRCP Rule 58 and the holding in Jenkins. Accordingly, the Judgment is an appealable final judgment pursuant to HRS § 641-1(a).

Pursuant to HRAP Rule 4(a)(3),¹ the Ganzer Appellants extended the time period for filing a notice of appeal by filing their August 25,² 2006 post-judgment motion (the Post-Judgment

¹ Hawai'i Rules of Appellate Procedure (HRAP) Rule 4(a)(3) provides the following:

(3) TIME TO APPEAL AFFECTED BY POST-JUDGMENT MOTIONS. If any party files a timely motion for judgment as a matter of law, to amend findings or make additional findings, for a new trial, to reconsider, alter or amend the judgment or order, or for attorney's fees or costs, the time for filing the notice of appeal is extended until 30 days after entry of an order disposing of the motion; provided, that the failure to dispose of any motion by order entered upon the record within 90 days after the date the motion was filed shall constitute a denial of the motion.

HRAP Rule 4(a)(3) (effective July 1, 2006).

² The Circuit Court of the First Circuit (the circuit court) appears to have initially stamped Defendants-Appellants Glen D. Ganzer and Jean E. Ganzer's post-judgment motion for an award of attorney's fees with the date of receipt, August 25, 2006, and then the circuit court later file-stamped the post-judgment motion with the date August 28, 2006. The date on which a court receives a document prevails over any subsequent file-stamped date. Cf. Doe v. Doe, 98 Hawai'i 144, 151, 44 P.3d 1085, 1092 (2002) (the date on which a

(continued...)

Motion) for an award of attorney's fees within fourteen days after entry of the Judgment, as HRCP Rule 54(d)(2)(B) required. Although the Circuit Court of the First Circuit (the circuit court) entered a written order on December 19, 2006 that denied the Ganzer Appellants' Post-Judgment Motion, the Post-Judgment Motion was automatically deemed denied on November 24, 2006, pursuant to HRAP Rules 4(a)(3) and 26(a)³ because "the failure to dispose of any motion by order entered upon the record within 90 days after the date the motion was filed shall constitute a denial of the motion." HRAP Rule 4(a)(3). The December 19, 2006 written order was a nullity. The Ganzer Appellants did not file their January 17, 2007 notice of appeal within thirty days after November 24, 2006, as HRAP Rule 4(a)(3) required. Therefore, the Ganzer Appellants' 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) ("no court

²(...continued)
family court receives a document by mail prevails over any subsequent file-stamped date on which the family court eventually files the document).

³The ninetieth calendar day after August 25, 2006, was Thursday, November 23, 2006, which was a holiday, and, thus, HRAP Rule 26(a) extended the ninety-day period until Friday, November 24, 2006.

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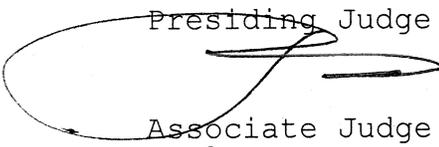
or judge or justice is authorized to change the jurisdictional requirements contained in Rule 4 of [the HRAP]"). Therefore, we lack jurisdiction over this appeal. Accordingly,

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

DATED: Honolulu, Hawai'i, April 5, 2007.

Corinne K A Watanabe

Presiding Judge


Associate Judge

Daniel R. Foley
Associate Judge