

NO. 28373

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

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 DENYING APRIL 16, 2006 MOTION FOR RECONSIDERATION
(By: Watanabe, Acting C.J., Lim and Foley, JJ.)

Upon review of (1) the April 5, 2007 order dismissing appeal No. 28373 as untimely, (2) Defendants-Appellants Glen D. Ganzer and Jean E. Ganzer's (the Ganzer Appellants) April 16, 2007 motion for reconsideration of the April 5, 2007 order dismissing appeal pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 40, and (3) the record, it appears that the Ganzer Appellants' April 16, 2007 HRAP Rule 40 motion for reconsideration lacks merit.

The Ganzer Appellants assert that HRAP Rule 4(a)(3) does not govern the issue whether their appeal is timely because, according to the Ganzer Appellants, HRAP Rule 4(a)(3) applies only when a party files a post-judgment motion within ten days after entry of an appealable final judgment. However, on June 20, 2006, the supreme court amended HRAP Rule 4, and, as of July 1, 2006, HRAP Rule 4(a) no longer imposes an absolute

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ten-day time limitation to a post-judgment motion, but, instead, HRAP Rule 4(a)(3) applies to any "timely" post-judgment motion, such as when the Ganzer Appellants filed their August 25,¹ 2006 post-judgment motion for an award of attorney's fees within fourteen days after entry of the August 11, 2006 judgment, as required by Hawai'i Rules of Civil Procedure Rule 54(d)(2)(B). Although the circuit court entered a written order on December 19, 2006 that purported to deny the Ganzer Appellants' August 25, 2006 post-judgment motion for an award of attorney's fees, it was automatically deemed denied on November 24, 2006, pursuant to HRAP Rules 4(a)(3) and 26(a)² 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

¹ The Circuit Court of the First Circuit 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 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 family court receives a document by mail prevails over any subsequent file-stamped date on which the family court eventually files the document).

² The ninetieth calendar day after August 25, 2006 was Thursday, November 23, 2006, which was a holiday, and, thus, Hawai'i Rules of Appellate Procedure Rule 26(a) extended the ninety-day period until Friday, November 24, 2006.

November 24, 2006, as required by HRAP Rule 4(a)(3). Therefore, the Ganzer Appellants' appeal was not timely. Accordingly,

IT IS HEREBY ORDERED that the Ganzer Appellants' April 16, 2007 HRAP Rule 40 motion for reconsideration is denied.

DATED: Honolulu, Hawai'i, April 25, 2007.

A. Edward Fyffe, Jr.
for defendants-appellants
on the motion.

Corinne K. Watanabe
Acting Chief Judge


Associate Judge

Daniel R. Foley
Associate Judge