

NO. 28830

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

WAIANAE COMMUNITY DEVELOPMENT PROJECT ASSOCIATION,  
Plaintiff-Appellee,

v.

SHIROLL ALI, Defendant-Appellant,

and

JOHN DOES 1-50, JANE DOES 1-50,  
DOE PARTNERSHIPS 1-50, DOE CORPORATIONS 1-50,  
DOE ENTITIES 1-50 and DOE GOVERNMENTAL UNITS 1-50,  
Defendants.

FILED  
STATE OF HAWAII  
COURTS

2009 MAR 17 AM 8:44

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(CIV. NO. 07-1-0539)

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION  
(By: Chief Judge Recktenwald, C.J., Watanabe and Nakamura, JJ.)

Upon review of (1) Plaintiff-Appellee Waianae Community Development Project Association's January 16, 2008 statement contesting jurisdiction and (2) the record, it appears that we lack jurisdiction over the appeal by Defendant-Appellant Shiroll Ali (Appellant Ali) from the Honorable Karen Blondin's August 30, 2007 "Order Denying Defendant Shiroll Ali's Motion to Set Aside Judgment Filed July 26, 2007" (the August 30, 2007 order) because Appellant Ali's appeal is untimely.

The August 30, 2007 order is an appealable post-judgment order pursuant to Hawaii Revised Statutes (HRS) § 641-1(a) (Supp. 2007). Appeals under HRS § 641-1(a) "shall be taken in the manner . . . provided by the rules of the court." HRS § 641-1(c) (Supp. 2007). Rule 4(a)(1) of the Hawai'i Rules of

Appellate Procedure (HRAP) required Ali to file her notice of appeal "within 30 days after entry of the . . . appealable order." HRAP Rule 4(a)(1). Appellant Ali did not file her November 6, 2007 notice of appeal within thirty days after entry of the August 30, 2007 order, as HRAP Rule 4(a)(1) required. Therefore, Appellant Ali's appeal is untimely

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]."). Accordingly,

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

DATED: Honolulu, Hawai'i, March 17, 2008.

  
Chief Judge

  
Associate Judge

  
Associate Judge