

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29006

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

GKK MAKALEI, LLC,  
a Delaware Limited Liability Company,  
Plaintiff-Appellee,

v.

HOWARDYNE LORNA SPINNEY, et al., Defendants,

and

ALFRED NAPAHELUA SPINNEY, Defendant-Appellant.

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT  
(CIVIL NO. 07-1-0069K)

ORDER GRANTING PLAINTIFF-APPELLEE GKK MAKALEI LLC'S  
APRIL 23, 2008 MOTION TO DISMISS APPEAL  
(By: Recktenwald, C.J., Watanabe and Nakamura, JJ.)

Upon review of (1) the April 23, 2008 motion by Plaintiff-Appellee GKK Makalei LLC (Appellee GKK Makalei) to dismiss this appeal, and (2) the record, it appears that we lack jurisdiction over the appeal that Defendant-Appellant Alfred Napahuelua Spinney (Appellant Spinney) asserted from the Honorable Ronald Ibarra's January 15, 2008 judgment, because Appellant Spinney's appeal is untimely.

Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP) required Appellant Spinney to file his notice of appeal within thirty days after entry of the January 15, 2008. However, Appellant Spinney did not file his notice of appeal until February 15, 2008, thirty-one days after entry of the January 15, 2008 judgment. Therefore, Appellant Spinney's appeal is untimely under HRAP Rule 4(a). 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.

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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 Appellee GKK Makalei's April 23, 2008 motion to dismiss the appeal is granted, and this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, May 2, 2008.

*Mar McClinton*

Chief Judge

*Connie KA Watanabe*

Associate Judge

*Craig H. Nakamura*

Associate Judge