

NO. 29014

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

SS&M AUTO PARTS, Plaintiff/Claimant-Appellant

v.

SAND ISLAND BUSINESS ASSOCIATION and MICHAEL CHOCK,  
Defendant/Respondents-Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT  
(S.P. NO. 07-1-0201)

ORDER DISMISSING APPEAL  
FOR LACK OF APPELLATE JURISDICTION  
(By: Foley, Presiding J., Fujise and Leonard, JJ.)

Upon review of the record, it appears that we do not have jurisdiction over the appeal that Plaintiff/Claimant-Appellant SS&M Auto Parts (Appellant SS&M Auto Parts) has asserted from the Honorable Bert I. Ayabe's October 23, 2007 order granting Defendant/Respondent-Appellee Sand Island Business Association's (Appellee Sand Island Business Association) motion to vacate an amended arbitration award, because Appellant SS&M Auto Parts' February 19, 2008 notice of appeal is untimely.

Appellant SS&M Auto Parts is appealing pursuant to Hawaii Revised Statutes (HRS) § 658A-28(a)(5) (Supp. 2007). However, Appellant SS&M Auto Parts did not file its February 19, 2008 notice of appeal within thirty days after entry of the October 23, 2007 order granting Appellee Sand Island Business Association's motion to vacate the amended arbitration award, as Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP) requires. Therefore, Appellant SS&M Auto Parts' appeal is untimely.

Although HRAP Rule 4(a)(3) extends the thirty-day time period for filing a notice of appeal "[i]f any party files a timely motion . . . to reconsider . . . the . . . order" (HRAP

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CLERK, APPELLATE COURTS  
STATE OF HAWAII

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Rule 4(a)(3)), the record on appeal for this appellate case does not include a timely motion for reconsideration. Appellant SS&M Auto Parts asserts that it filed a timely motion for reconsideration, but under the wrong circuit court case number. Under HRAP Rule 11(a), it is the "[d]uty of appellant" to "take any other action necessary to enable the clerk of the court to assemble and transmit the record." The record on appeal in this case does not contain a motion for reconsideration, nor any other kind of motion, that would have extended the time period for filing a notice of appeal pursuant to HRAP Rule 4(a)(3).

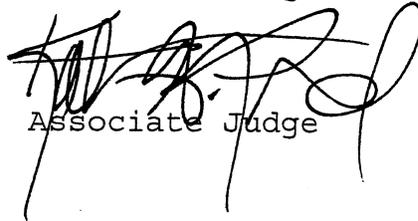
Consequently, Appellant SS&M Auto Parts's February 19, 2008 notice of appeal is untimely. The failure to file a timely notice of appeal in a civil matter is a jurisdictional defect that the parties cannot waive and the appellate courts cannot disregard in the exercise of judicial discretion. Bacon v. 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, July 23, 2008.

  
Daniel R. Foley  
Presiding Judge

  
Alesia M. Jizmo  
Associate Judge

  
Associate Judge