

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29049

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

IN THE MATTER OF THE ESTATE OF SAMUEL M. DAMON, Deceased
(Probate No. 6664)

TRUST CREATED UNDER THE WILL OF SAMUEL M. DAMON, Deceased.
(Equity No. 2816-A)

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT

ORDER GRANTING THE MAY 16, 2008

MOTION TO DISMISS THE APPEAL

(By: Recktenwald, C.J., Foley and Fujise, JJ.)

Upon review of (1) Petitioners-Appellees Trustees David M. Haig, Fred C. Weyand, Paul Mullin Ganley, and Walter Dods, Jr.'s (the Appellee Trustees), May 16, 2008 motion to dismiss Respondent-Appellant Christopher Damon Haig's (Appellant Haig) appeal from the Honorable Coleen K. Hirai's October 1, 2007 "Judgment on Order Granting Petition for Approval of 2006 Income and Principal Accounts and Trust Termination Status Report" (the October 1, 2007 judgment), (2) Appellant Haig's lack of opposition to the Appellee Trustees' May 16, 2008 motion to dismiss Appellant Haig's appeal, and (3) the record, it appears that Appellant Haig's appeal is untimely, and, thus, we lack appellate jurisdiction.

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2007) authorizes appeals from the probate court to the intermediate court of appeals from "final judgments, orders, or decrees[.]" HRS § 641-1(a) (1993 & Supp. 2007) (emphasis added). Appeals under HRS § 641-1 "shall be taken in the manner . . . provided by the rules of the court." HRS § 641-1(c) (1993 & Supp. 2007). The Supreme Court of Hawaii has promulgated Rule 34 of the Hawaii Probate Rules (HPR), which generally requires, as a prerequisite for an appeal, the entry of a

K. HAMAKA'DI
CLERK, APPELLATE COURTS
STATE OF HAWAII

2008 JUL 29 AM 10:05

FILED

judgment that ends the proceeding.

Appellant Haig has attempted to appeal from the following four documents:

- (1) the September 18, 2007 order granting the Appellee Trustees' April 30, 2007 petition for approval of 2006 income and principal accounts and approval of a trust termination status report;
- (2) the October 1, 2007 judgment on the September 18, 2007 order granting the Trustees' April 30, 2007 petition for approval of 2006 income and principal accounts and approval of a trust termination status report;
- (3) the October 1, 2007 notice of entry of the October 1, 2007 judgment; and
- (4) the February 26, 2008 order purporting to deny Appellant Haig's September 28, 2007 HPR Rule 36(b) motion for reconsideration.

However, under HPR Rule 34, only the October 1, 2007 judgment is appealable, because the October 1, 2007 judgment ended the proceeding for the Appellee Trustees' April 30, 2007 petition for approval of 2006 income and principal accounts and approval of a trust termination status report, leaving nothing further to be adjudicated in this particular proceeding. Although the October 1, 2007 judgment did not completely resolve and close these trust and probate litigation matters in their entirety, the probate court certified the October 1, 2007 judgment for appeal in the manner provided by Rule 54(b) of the Hawai'i Rules of Civil Procedure (HRCP), as HPR Rule 34(a) requires. Therefore, the October 1, 2007 judgment is a final appealable judgment under HPR Rule 34(a) and HRS § 641-1(a) (1993 & Supp. 2007).

Appellant Haig did not file his March 7, 2008 notice of appeal within thirty days after entry of the October 1, judgment, as Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure

(HRAP) requires. Nevertheless, pursuant to HRAP Rule 4(a)(3),¹ Appellant Haig extended the time period for filing a notice of appeal by timely² filing his September 28, 2007 HPR Rule 36(b) motion to reconsider the October 1, 2007 judgment. However, the circuit court did not adjudicate Appellant Haig's September 28, 2007 HPR Rule 36(b) motion for reconsideration within ninety days after the September 28, 2007 filing date, as HRAP Rule 4(a)(3) requires. The ninetieth day after September 28, 2007, was December 27, 2007. Therefore, pursuant to HRAP Rule 4(a)(3), Appellant Haig's September 28, 2007 HPR Rule 36(b) motion for reconsideration was automatically deemed denied on December 27, 2007. Appellant Haig did not file his March 7, 2008 notice of appeal within thirty days after December 27, 2007, as HRAP Rule 4(a)(3) requires. Therefore, Appellant Haig's appeal is untimely.

Although the probate court, the Honorable Colleen K. Hirai presiding, later entered a February 26, 2008 written order that purports to deny Appellant Haig's September 28, 2007

¹ Rule 4(a)(3) of the Hawaii Rules of Appellate Procedure (HRAP) 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 Although Appellant Haig filed his September 28, 2007 HPR Rule 36(b) motion for reconsideration before entry (rather than after entry) of the October 1, 2007 judgment, Appellant Haig's September 28, 2007 HPR Rule 36(b) motion for reconsideration was timely. Cf. Saranillio v. Silva, 78 Hawai'i 1, 7, 889 P.2d 685, 691 (1995) ("HRC [Rule] 59 does not require that a motion be served after the entry of judgment; it imposes only an outer [ten-day] time limit on the service of a motion to alter or amend the judgment[.]").

