

NO. 29085

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

SHIMAMOTO TRUST; aka DOROTHY S.J. SHIMAMOTO TRUST et al
TRUST ACCOUNT and DOROTHY SHIMAMOTO, Chairman Trustee,
Plaintiff-Appellant,

v.

HFS FEDERAL CREDIT UNION,
DOROTHY PUNG, KIM T. SAMOY, et al.,
Defendant-Appellees.

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
(CIV. NO. 3RC07-1-513)

ORDER DISMISSING APPEAL

(By: Foley, Presiding J., Fujise and Leonard, JJ.)

Upon review of the record, it appears that we do not have jurisdiction over Plaintiff-Appellant Shimamoto Trust, aka Dorothy Shimamoto Trust's (Shimamoto Trust's), appeal from the district court's February 26, 2008 final judgment in favor of Defendants-Appellees HFS Federal Credit Union (HFS Federal Credit Union), Dorothy Pung (Pung) and Kim Samoy (Samoy), because Shimamoto Trust's March 27, 2008 notice of appeal is untimely.

Shimamoto Trust is appealing pursuant to Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2007).

Pursuant to HRS § 641-1(a) (1993), appeals are allowed in civil matters from all final judgments, orders, or decrees of circuit and district courts. In district court cases, a judgment includes any order from which an appeal lies. A final order means an order ending the proceeding, leaving nothing further to be accomplished. When a written judgment, order, or decree ends the litigation by fully deciding all rights and liabilities of all parties, leaving nothing further to be adjudicated, the

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judgment, order, or decree is final and
appealable.

Casumpang v. ILWU, Local 142, 91 Hawai'i 425, 426, 984 P.2d 1251, 1252 (1999) (citations, internal quotation marks, and footnote omitted) (emphases added). The requirement of a separate judgment under Rule 58 of the Hawai'i Rules of Civil Procedure (HRCPP) and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 869 P.2d 1334 (1994), is "not applicable to district court cases." Casumpang v. ILWU, Local 142, 91 Hawai'i at 427, 984 P.2d at 1253.

The district court resolved all of the substantive claims in this case when the district court entered the February 1, 2008 order granting HFS Federal Credit Union and Samoy's motion (and Pung's joinder therein) to dismiss Shimamoto Trust's complaint. Thus, the February 1, 2008 dismissal order is an appealable final order pursuant to HRS § 641-1(a) (1993 & Supp. 2007).

Although the district court entered a judgment in favor of HFS Federal Credit Union, Pung and Samoy and against Shimamoto Trust, the February 26, 2008 judgment was superfluous for the purpose of perfecting Shimamoto Trust's right to assert an appeal from the district court's substantive rulings. The February 26, 2008 judgment additionally awarded attorneys' fees and costs, but an award of attorneys' fees and costs is not an essential component of an appealable final order or judgment, because "[t]he entry of judgment and taxation of costs are separate legal

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acts." CRSC, Inc. v. Sage Diamond Co., Inc., 95 Hawai'i 301, 307, 22 P.3d 97, 103 (App. 2001) (citation, internal quotation marks and original brackets omitted). An appealable final order or judgment needs only to resolve the substantive claims. As Rule 58 of the District Court Rules of Civil Procedure (DCRCP) provides, "[t]he entry of the judgment shall not be delayed for the taxing of costs." DCRCP Rule 58. Therefore, the February 1, 2008 dismissal order triggered the thirty-day time period for filing a notice of appeal under Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP).

No party invoked an extension of time under HRAP Rule 4(a)(3) for filing a notice of appeal by filing a written motion for attorneys' fees and costs. Therefore, HRAP Rule 4(a)(1) required an aggrieved party to file a notice of appeal within thirty days after entry of the February 1, 2008 dismissal order. Shimamoto Trust did not file its March 27, 2008 notice of appeal within thirty days after entry of the February 1, 2008 dismissal order, as HRAP Rule 4(a)(1) required. Therefore, Shimamoto Trust's March 27, 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

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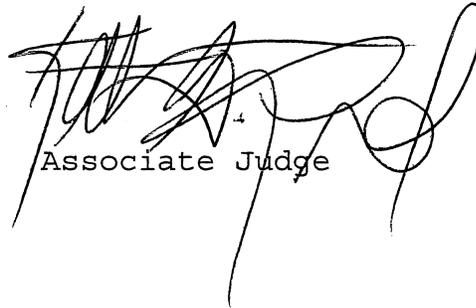
justice thereof is authorized to change the jurisdictional requirements contained in Rule 4 of [the HRAP].").

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


Auna M. Zujewski
Associate Judge


Associate Judge