

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29093

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

HAWAII CONFERENCE OF THE UNITED CHURCH OF CHRIST, a Hawaii non-profit corporation, Plaintiff-Appellee,

v.

MAUNA ZIONA CHURCH aka Kekaha Protestant Church, Mauna Ziona, a Hawaii non-profit corporation, Defendant,

and

NORMAN A. KEANAAINA, Defendant-Appellant.

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 06-1-0113K)K. HANAMAKO
CLERK APPELLATE COURTS
STATE OF HAWAII

2008 AUG 20 AM 9:17

FILED

ORDER DISMISSING APPEAL

(By: Watanabe, Presiding Judge, Foley and Fujise, JJ.)

Upon review of the record, it appears that we lack jurisdiction over Defendant/Third-Party Plaintiff/Appellant Norman A. Keanaaina's (Keanaaina) appeal from the Honorable Ronald Ibarra's February 20, 2008 judgment, because Keanaaina's appeal is untimely.

The February 20, 2008 judgment appears to resolve all claims against all parties, and thus, the February 20, 2008 judgment is an appealable final judgment pursuant to Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2007), Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP), and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

On March 25, 2008, Keanaaina submitted to the circuit court a notice of appeal from the February 20, 2008 judgment. For reasons that are not obvious, the circuit court clerk waited several days before file-stamping the notice of appeal with the date April 1, 2008. In determining whether jurisdictional requirements have been satisfied, the date on which a court receives a document prevails over any subsequent file-stamped date. Cf. Doe v. Doe, 98 Hawai'i 144, 151, 44 P.3d 1085, 1092

(2002) (the date on which a circuit court clerk assigned to the family court received a document for filing prevails over any subsequent date that the family court eventually file stamps on the document). In this case, if we determine the timeliness of Keanaaina's appeal based on the March 25, 2008 date of receipt of Keanaaina's notice of appeal, it is apparent that Keanaaina's notice of appeal was not filed within thirty days after entry of the February 20, 2008 judgment, as Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP) required. Therefore, Keanaaina's appeal is untimely.

Granted, HRAP Rule 4(a)(3) provides that timely post-judgment motions can extend the time period for filing a notice of appeal:

(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) (emphasis added). Under HRAP Rule 4(a)(3), "[a]n HRCP Rule 60(b) motion for relief from judgment may toll the period for appealing a judgment or order, but only if the motion is served and filed within ten (10) days after the judgment is entered." Lambert v. Lua, 92 Hawai'i 228, 234, 990 P.2d 126, 132 (App. 1999) (citation omitted). Keanaaina did not file his March 20, 2008 motion to set aside judgment within ten days after entry of the February 20, 2008 judgment, and, thus, Keanaaina's March 20, 2008 motion to set aside the judgment did not extend the time period for filing a notice of appeal pursuant to HRAP Rule 4(a)(3).

Keanaaina'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

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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]."). Therefore, we must dismiss this appeal for lack of jurisdiction. Accordingly,

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

DATED: Honolulu, Hawai'i, August 20, 2008

Cerwinne KA Watanabe
Presiding Judge

Daniel R. Foley
Associate Judge

Alana DM Zizim
Associate Judge