

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29262

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,

v.

DAN MEZURASHI, Defendant-Appellant,

and

EXODUS BAIL BOND, Party-in-Interest-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR. NO. 07-1-0336)

ORDER DISMISSING APPEAL

FOR LACK OF APPELLATE JURISDICTION

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

Upon review of the record, it appears that we lack jurisdiction over Real Party in Interest/Appellant Exodus Bail Bond's (Appellant Exodus Bail Bond) appeal from the Honorable Dexter D. Del Rosario's January 25, 2008 "Findings of Fact, Conclusions of Law, and Order Denying Amended Motion to Set-Aside Bail Forfeiture" (the January 25, 2008 order), because Appellant Exodus Bail Bond's appeal is untimely under Rule 4(a)(3) of the Hawaii Rules of Appellate Procedure (HRAP).

"The right to an appeal is strictly statutory." State v. Ontiveros, 82 Hawaii 446, 449, 923 P.2d 388, 391 (1996) (citation omitted). The statute that authorizes most appeals from circuit court criminal matters is Hawaii Revised Statutes (HRS) § 641-11 (Supp. 2007), which provides that "[a]ny party deeming oneself aggrieved by the judgment of a circuit court in a criminal matter, may appeal to the intermediate appellate court,

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CLERK, APPELLATE COURTS
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subject to chapter 602 in the manner and within the time provided by the rules of the court." HRS § 641-11 (Supp. 2007). However, it appears that HRS § 641-11 (Supp. 2007) does not apply to this appeal, because a proceeding involving the "forfeiture of a bond is a civil proceeding." State v. Camara, 81 Hawai'i 324, 329 n.7, 916 P.2d 1225, 1230 n.7 (1996) (citation omitted). The supreme court has explained that the statute authorizing an appeal from a bail bond forfeiture proceeding is HRS § 804-51 (Supp. 2007), and

the appealable event is the order denying the motion to set aside the judgment of forfeiture.

Once a motion to set aside is denied, the surety may appeal such denial "as in the case of a final judgment." Pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 4(a)(1), a notice of appeal from a final judgment must be filed within thirty days from the date of entry of the judgment - in this case, thirty days from the order denying the motion to set aside.

State v. Camara, 81 Hawai'i at 329, 916 P.2d at 1230 (footnote omitted). Thus, in the instant case, the January 25, 2008 order denying Appellant Exodus Bail Bond's November 19, 2007 amended motion to set aside the August 6, 2007 bail forfeiture order appears to be an appealable order pursuant HRS § 804-51 (Supp. 2007).

Regarding the timeliness of Appellant Exodus Bail Bond's appeal, the supreme court has held that, in an appeal from a ruling in a bail bond forfeiture proceeding, "HRAP [Rule] 4(a), as opposed to HRAP [Rule] 4(b), applies because forfeiture of a bond is a civil proceeding." State v. Camara, 81 Hawai'i at 329 n.7, 916 P.2d at 1230 n.7 (citation omitted). Thus, the rules governing civil proceedings control this case.

Appellant Exodus Bail Bond extended the time period for

filing a notice of appeal pursuant to HRAP Rule 4(a)(3)¹ when Appellant Exodus Bail Bond filed its December 24, 2007 motion, apparently pursuant to Rule 59(e) of the Hawai'i Rules of Civil Procedure (HRCP), to reconsider the circuit court's oral ruling that the circuit court denied Appellant Exodus Bail Bond's November 19, 2007 amended motion to set aside the August 6, 2007 bail forfeiture order. Although Appellant Exodus Bail Bond filed its December 24, 2007 HRCP Rule 59(e) motion for reconsideration prior to entry of the January 25, 2008 written order denying Appellant Exodus Bail Bond's November 19, 2007 amended motion to set aside the August 6, 2007 bail forfeiture order, the supreme court has explained that:

HRCP [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, requiring that it be served "not later than 10 days after the entry of the judgment." A motion served before the judgment is entered falls within that time constraint.

Saranillio v. Silva, 78 Hawai'i 1, 7, 889 P.2d 685, 691 (1995).

Therefore, Appellant Exodus Bail Bond's December 24, 2007 HRCP Rule 59(e) motion for reconsideration was timely under HRCP Rule 59(e) and HRAP Rule 4(a)(3) for the purpose of extending the

¹ Rule 4(a)(3) of the Hawai'i Rules of Appellate Procedure (HRAP) provides:

(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) (emphases added).

time period for filing a notice of appeal from the January 25, 2008 order denying Appellant Exodus Bail Bond's November 19, 2007 amended motion to set aside the August 6, 2007 bail forfeiture order.

However, HRAP Rule 4(a)(3) specifically "provide[s] 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). The ninetieth² day after Appellant Exodus Bail Bond's December 24, 2007 HRCP Rule 59(e) motion for reconsideration was Monday, February 24, 2008. The circuit court failed to dispose of Appellant Exodus Bail Bond's December 24, 2007 HRCP Rule 59(e) motion for reconsideration by the February 24, 2008 deadline. The circuit court entered the written June 18, 2008 order denying Appellant Exodus Bail Bond's December 24, 2007 HRCP Rule 59(e) motion for reconsideration long after the February 24, 2008 deadline had already expired, and, thus, pursuant to HRAP Rule 4(a)(3) the written June 18, 2008 order denying Appellant Exodus Bail Bond's December 24, 2007 HRCP Rule 59(e) motion for reconsideration is a nullity. At the close of the day on February 24, 2008, Appellant Exodus Bail Bond's December 24, 2007 HRCP Rule 59(e) motion for reconsideration was automatically deemed denied pursuant to HRAP Rule 4(a)(3). Appellant Exodus Bail Bond did not file its July 15, 2008 notice of appeal within

² The ninetieth calendar day after December 24, 2008, was Sunday, February 23, 2008, and, thus, HRAP Rule 26(a) extended the ninety-day deadline under HRAP Rule 4(a)(3) until Monday, February 24, 2008.

thirty days after the February 24, 2008 deemed denial of Appellant Exodus Bail Bond's December 24, 2007 HRCP Rule 59(e) motion for reconsideration, as HRAP Rule 4(a)(3) required. Therefore, Appellant Exodus Bail Bond's appeal is untimely.

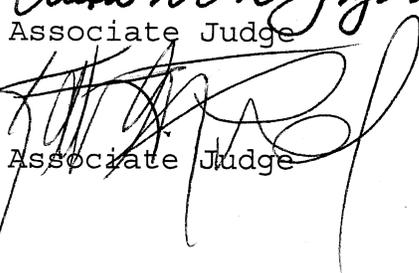
The failure to file a timely notice of appeal in a civil matter is a jurisdictional defect that the parties cannot waive and the appellate courts cannot disregard in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986); HRAP Rule 26(b) ("[N]o court or judge or justice thereof is authorized to change the jurisdictional requirements contained in Rule 4 of [the HRAP]."). Absent a timely notice of appeal, we lack appellate jurisdiction. Accordingly,

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

DATED: Honolulu, Hawai'i, November 12, 2008.


Daniel R. Foley
Presiding Judge


Auna Adu Fujino
Associate Judge


Associate Judge