

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29522

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAIIRICHARD H. GIBSON, JR., Claimant-Appellant,
R.M. TOWILL CORPORATION and HAWAII INSURANCE GUARANTEE
ASSOCIATION, Employer/Insurance Carrier-AppelleesAPPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 2007-420 (2-71-06281))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 do not have jurisdiction over Claimant-Appellant Richard H. Gibson, Jr.'s (Appellant Gibson), appeal from the State of Hawai'i Labor and Industrial Relations Appeals Board's (the LIRAB)¹ September 2, 2008 decision and order.

Pursuant to Hawaii Revised Statutes (HRS) § 386-88 (Supp. 2007) and HRS § 91-14(a) (1993 & Supp. 2007), an aggrieved party may appeal a decision or order by the LIRAB directly to the intermediate court of appeals.

The appeal of a decision or order of the LIRAB is governed by HRS § 91-14(a), the statute authorizing appeals in administrative agency cases. HRS § 91-14(a) authorizes judicial review of a final decision and order in a contested case or a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief. For purposes of HRS § 91-14(a), we have defined "final order" to mean an order ending the proceedings, leaving nothing further to be accomplished.

Bocalbos v. Kapiolani Medical Center for Women and Children, 89 Hawai'i 436, 439, 974 P.2d 1026, 1029 (1999) (citation and some internal quotation marks omitted). The LIRAB's September 2, 2008

¹ The State of Hawai'i Labor and Industrial Relations Appeals Board was composed of Chairman Roland Q. F. Thom, Interim Member Melanie S. Matsui, and Member David A. Pendleton.

decision and order finally ended the proceedings by dismissing Appellant Gibson's administrative appeal from the Director of Labor and Industrial Relations' August 24, 2007 decision. The LIRAB's September 2, 2008 decision and order left nothing further to be accomplished. Therefore, the LIRAB's September 2, 2008 decision and order is "a final decision and order in a contested case" under HRS § 91-14(a) that is appealable directly to the intermediate court of appeals pursuant to HRS § 386-88.

However, Appellant Gibson did not file his December 15, 2008 notice of appeal within thirty days after the LIRAB's September 2, 2008 mailing of the LIRAB's September 2, 2008 decision and order, as HRS § 386-88 requires. Appellant Gibson's October 14, 2008 motion for reconsideration was not authorized, nor did it extend the thirty-day time period for filing a notice of appeal from the September 2, 2008 decision and order pursuant to Hawai'i Administrative Rules (HAR) § 12-47-53(a) (2007), because Appellant Gibson did not file his October 14, 2008 motion for reconsideration within thirty days after the LIRAB's September 2, 2008 mailing of the LIRAB's September 2, 2008 decision and order, as HAR § 12-47-53(a) (2007) required for any such motion for reconsideration. Therefore, in order to assert a timely appeal, Appellant Gibson had to file a notice of appeal within thirty days after the LIRAB's September 2, 2008 mailing of the September 2, 2008 decision and order. Because Appellant Gibson did not file his December 15, 2008 notice of appeal within thirty days after the LIRAB's September 2, 2008 mailing of the September 2, 2008 decision and order, Appellant Gibson's appeal is untimely.

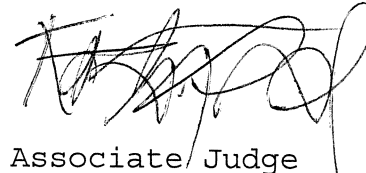
The failure to file a timely notice of appeal in a civil matter is a jurisdictional defect that the parties cannot waive and the appellate courts cannot disregard in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986). Therefore,

IT IS HEREBY ORDERED that appellate court case number 29522 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, April 6, 2009.


Presiding Judge


Associate Judge


Associate Judge