

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29595

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

JOHN GUINAN,
Petitioner-Appellant,

v.

ADMINISTRATIVE DIRECTOR OF THE COURTS, STATE OF HAWAII,
Respondent-Appellee

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(JR NO. 1DAA-08-0010)

ORDER DISMISSING APPEAL
FOR LACK OF APPELLATE JURISDICTION

(By: Watanabe, Presiding Judge, Nakamura and Leonard, JJ.)

Upon review of the record, it appears that we lack jurisdiction over Petitioner-Appellant John Guinan's (Appellant Guinan) appeal from the Honorable William Cardwell's December 15, 2008 judgment, because Appellant Guinan's January 15, 2008 notice of appeal is untimely. The December 15, 2008 judgment is appealable pursuant to Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2008) and the holding in Kernan v. Tanaka, 75 Haw. 1, 17, 856 P.2d 1207, 1220 (1993) ("Thus, we hold that, pursuant to HRS §§ 602-5(1) and 641-1(a), jurisdiction properly lies in this court to hear and determine appeals from district court judgments after an administrative hearing."). Appeals under HRS § 641-1 "shall be taken in the manner . . . provided by the rules of the court." The supreme court has promulgated Rule 4 of the Hawaii Rules of Appellate Procedure (HRAP), which requires that "[w]hen a civil appeal is permitted by law, the notice of appeal shall be filed within 30 days after entry of the judgment or appealable order." Appellant Guinan did not file his January

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CLERK, APPELLATE COURTS
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15, 2009 notice of appeal within thirty days after entry of the December 15, 2008 judgment, as HRAP Rule 4(a)(1) requires.

Therefore, Appellant Guinan's appeal is untimely.

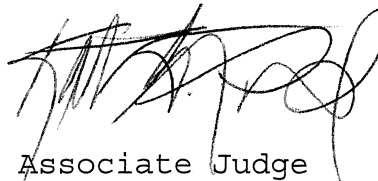
The failure to file a timely notice of appeal in a civil matter is a jurisdictional defect that the parties cannot waive and the appellate courts cannot disregard in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986); HRAP Rule 26(b) ("[N]o court or judge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

Accordingly, IT IS HEREBY ORDERED that Appellant Guinan's appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, May 4, 2009.


Presiding Judge


Associate Judge


Associate Judge