

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29715

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

EMERSON M.F. JOU, M.D., Provider-Appellant/Appellant, *Jean Kimoto*

v.

J.P. SCHMIDT, Insurance Commissioner,
Department of Commerce and Consumer Affairs, State of Hawaii,
Appellee-Appellee,

and

USAA CASUALTY INSURANCE COMPANY,
Respondent-Appellee/Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 05-1-0615)

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Watanabe, Acting C.J., Foley and Nakamura, JJ.)

Upon review of the record in this case, it appears that we lack jurisdiction over this appeal because the notice of appeal filed by Provider-Appellant/Appellant Emerson M.F. Jou, M.D. (Jou) on March 19, 2009 from the "Judgment for Attorney's Fees and Costs" entered by the Circuit Court of the First Circuit¹ on February 20, 2009 was untimely. The judgment was entered based on the "Order Granting in Part and Dismissing in Part [Jou's post-judgment] Motion for Judgment for Attorney's Fees and Costs[,]" entered by the circuit court on February 13, 2009 (the February 13, 2009 post-judgment order).

In Ditto v. McCurdy, 103 Hawai'i 153, 157, 80 P.3d 974, 978 (2003), the Hawai'i Supreme Court held that a post-judgment

¹ The Honorable Eden Elizabeth Hifo presided.

JEAN KIMOTO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2009 JUL 29 AM 8:48

FILED

order granting a return of garnished funds and costs and denying a request for attorneys' fees was final and appealable because the order "disposed of all issues raised" in the post-judgment motion, ended the post-judgment proceeding regarding the post-judgment proceeding, and "left nothing further to be accomplished". Id. at 157-58, 80 P.3d at 978-79. The supreme court declined to extend the separate document requirement of Hawai'i Rules of Civil Procedure (HRCPC) Rule 58 and Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 153, 869 P.2d 1334 (1994), to post-judgment orders properly entered in the record, Id. at 158-59, 869 P.2d at 979-80, and stated:

Clearly, the rule in *Jenkins*--to wit, that circuit court orders resolving claims against parties must generally be reduced to a judgment and the judgment must be entered in favor of or against the appropriate parties pursuant to HRCPC Rule 58 before an appeal may be taken--is limited to circuit court orders disposing of *claims raised in a circuit court complaint*.

Id. at 159, 80 P.3d at 980.

In this case, Jou did not file his March 19, 2009 notice of appeal within thirty days after entry of the February 13, 2009 post-judgment order, as Hawai'i Rules of Appellate Procedure (HRAP) Rule 4(a)(1) and Ditto required. Therefore, Jou's March 19, 2009 notice of appeal was 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

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

contained in Rule 4 of. [the HRAP]."). Accordingly,

IT IS HEREBY ORDERED that appellate court case number 29715 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, July 29, 2009.

Corinne K. A. Watanabe

Acting Chief Judge

Daniel R. Foley

Associate Judge

Cez H. Nukununu

Associate Judge