

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 29756

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAIIDLYNN DEE YOSHIOKA, nka DLYNN DEE SOUBA Plaintiff-Appellee, v.
WAYNE NORIYOSHI YOSHIOKA, Defendant-AppellantAPPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 00-1-4001)ORDER GRANTING IN PART AND DENYING IN PART
THE JUNE 30, 2009 MOTION TO DISMISS THIS APPEAL
(By: Watanabe, Acting C.J., Foley and Nakamura, JJ.)

Upon review of (1) the June 30, 2009 motion by Plaintiff-Appellee Dlynn Dee Yoshioka nka Dlynn Dee Souba (Appellee) to dismiss this appeal for lack of appellate jurisdiction, (2) the July 8, 2009 memorandum by Defendant-Appellant Wayne Noriyoshi Yoshioka (Appellant) in opposition to Appellee's June 30, 2009 motion to dismiss this appeal for lack of appellate jurisdiction, and (3) the record, it appears that the intermediate court of appeals has appellate jurisdiction over some, but not all, of this appeal pursuant to Hawaii Revised Statutes (HRS) § 571-54 (2006).

In family court cases "[a]n interested party, aggrieved by any order or decree of the court, may appeal to the intermediate appellate court for review of questions of law and fact upon the same terms and conditions as in other cases in the circuit court[.]" HRS § 571-54. In circuit court cases, aggrieved parties may appeal from "final judgments, orders or decrees[.]" HRS § 641-1(a) (1993 & Supp. 2008). "A post-judgment order is an appealable final order under HRS § 641-1(a)

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if the order finally determines the post-judgment proceeding." Hall v. Hall, 96 Hawai'i 105, 111 n.4, 26 P.3d 594, 600 n.4 (App. 2001) (citation omitted), affirmed in part, and vacated in part on other grounds, Hall v. Hall, 95 Hawai'i 318, 22 P.3d 965 (2001). For example, "[a]n order denying a motion for post-judgment relief under HRCP [Rule] 60(b) is an appealable final order under HRS § 641-1(a)." Ditto v. McCurdy, 103 Hawai'i 153, 160, 80 P.3d 974, 981 (2003) (citation omitted).

The family court entered a divorce decree in this case on April 4, 2001. Appellant seeks appellate review of the following four subsequent post-decree orders that the Honorable Linda S. Martell entered:

- (1) a February 1, 2008 post-decree "Order re Short Trial" (the February 1, 2008 post-decree order);
- (2) a June 27, 2008 post-decree "Amended Order re Short Trial" (the June 27, 2008 amended post-decree order);
- (3) a March 10, 2009 post-decree "Order Awarding Attorney's Fees and Costs" (the March 10, 2009 post-decree order); and
- (4) a June 3, 2009 "Order re Defendant's Motion for Relief from Order re Short Trial Filed February 1, 2008, and Amended Order re Short Trial Filed June 27, 2008" (the June 3, 2009 post-decree order).

Each of the four post-decree orders finally ended a separate and distinct post-decree proceeding, leaving nothing further to be accomplished. Therefore, each of the four post-decree orders is an appealable post-decree order pursuant to HRS § 571-54 (2006).

However, Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP) required Appellant to file a notice of appeal

within thirty days after entry of each of the four post-decree orders. Although certain post-judgment motions can potentially extend the time period for filing a notice of appeal pursuant to HRAP Rule 4(a)(3), no party filed any post-judgment motions in a manner that extended the time period for filing a notice of appeal pursuant to HRAP Rule 4(a)(3).

Appellant did not file his April 9, 2009 notice of appeal within thirty days after entry of the February 1, 2008 post-decree order or the June 27, 2008 amended post-decree order, as HRAP Rule 4(a)(1) requires. Consequently, Appellant's appeal is not timely as to (1) the February 1, 2008 post-decree order and (2) the June 27, 2008 amended post-decree order. 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, the intermediate court of appeals lacks jurisdiction over Appellant's appeal from the February 1, 2008 post-decree order and the June 27, 2008 amended post-decree order.

Nevertheless, Appellant filed his April 9, 2009 notice of appeal within thirty days after entry of the March 10, 2009 post-decree order, as HRAP Rule 4(a)(1) requires. Furthermore, Appellant filed his July 2, 2009 notice of appeal within thirty days after entry of the June 3, 2009 post-decree order, as HRAP

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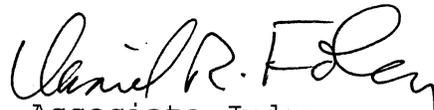
Rule 4(a)(1) requires. Therefore, Appellant's appeal is timely as to (1) the March 10, 2009 post-decree order, and (2) the June 3, 2009 post-decree order, and, thus, the intermediate court of appeals has jurisdiction over this portion of Appellant's appeal. Accordingly,

IT IS HEREBY ORDERED that we grant in part and deny in part Appellee's June 30, 2009 motion to dismiss Appellant's appeal as follows:

- (1) we grant Appellee's June 30, 2009 motion to dismiss Appellant's appeal as to the February 1, 2008 post-decree order;
- (2) we grant Appellee's June 30, 2009 motion to dismiss Appellant's appeal as to the June 27, 2008 amended post-decree order;
- (3) we deny Appellee's June 30, 2009 motion to dismiss Appellant's appeal as to the March 10, 2009 post-decree order; and
- (4) we deny Appellee's motion to dismiss Appellant's appeal as to the June 3, 2009 post-decree order.

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


Acting Chief Judge


Associate Judge


Associate Judge