

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 29787

IN THE INTERMEDIATE COURT OF APPEALS  
 OF THE STATE OF HAWAI'I

HEATHER WEHRLE, Petitioner-Appellee, v.  
 AVERY RAY CHESSER, Respondent-Appellant

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT  
 (FC-DA NO. 08-1-0418K)

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

Upon review of the record on appeal, it appears that we lack jurisdiction over the appeal that Respondent-Appellant Avery Ray Chesser (Appellant Chesser) asserted from the Honorable Aley K. Auna, Jr.'s, (1) February 9, 2009 order for protection and (2) March 18, 2009 order denying Appellant Chesser's motion for reconsideration of the February 9, 2009 order for protection pursuant to Rule 59 of the Hawai'i Family Court Rules (HFCR), because Appellant Chesser's appeal is untimely under Rule 4(a)(3) of the Hawai'i Rules of Appellate Procedure (HRAP).

The February 9, 2009 order for protection was an appealable final order pursuant to Hawaii Revised Statutes (HRS) § 571-54 (2006), and the entry of this order triggered the thirty-day time period under HRAP Rule 4(a)(1) for filing a notice of appeal. Pursuant to HRAP Rule 4(b)(3), Appellant Chesser extended the standard thirty-day time period under HRAP Rule 4(a)(1) for filing a notice of appeal when Appellant Chesser timely filed his February 9, 2009 HFCR Rule 59 motion for reconsideration of the February 9, 2009 order for protection within ten days after entry of the February 9, 2009 order for protection, as HFCR Rule 59 required. However, Appellant Chesser did not file his April 20, 2009 notice of appeal within thirty days after entry of the March 18, 2009 order denying Appellant Chesser's February 9, 2009 HFCR Rule 59 motion to reconsider the February 9, 2009 order for protection, as HRAP Rule 4(a)(3) required for a timely appeal. Therefore, Appellant Chesser's

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 JUDGE NAKAMURA  
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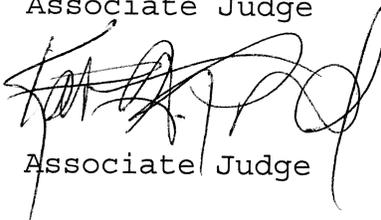
appeal is untimely. The failure to file a timely notice of appeal in a civil matter is a jurisdictional defect that the parties cannot waive and the appellate courts cannot disregard in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986); HRAP Rule 26(b) ("[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 Appellant Chesser's untimely appeal. Accordingly,

IT IS HEREBY ORDERED that appellate court case number 29787 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, October 23, 2009.

  
Chief Judge

  
Associate Judge

  
Associate Judge