

NO. 29798

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

PASCAL C. BOLOMET and ROUTH T. BOLOMET,
Plaintiffs-Appellants,

v.

RLI INSURANCE COMPANY, JAMES G. McLEAN, and ANNE L. McLEAN,
Defendants-Appellees,

and

JOHN and JANE DOES 1-50 and DOE ENTITIES 1-50, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 05-1-2222)

ORDER DISMISSING APPEAL
FOR LACK OF APPELLATE JURISDICTION

(By: Watanabe, Acting Chief Judge, Foley and Nakamura, JJ.)

Upon review of the record, it appears that we lack jurisdiction over the appeal that Defendants-Appellants Pascal C. Bolomet and Routh T. Bolomet (the Bolomet Appellants) have asserted from the Honorable Bert I. Ayabe's January 23, 2009 judgment, because the Bolomet Appellants' appeal is untimely under Rule 4(a)(3) of the Hawai'i Rules of Appellate Procedure (HRAP).

The January 23, 2009 judgment resolved all claims against all parties, and, thus, the January 23, 2009 judgment is an appealable final judgment pursuant to Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2008), Rule 58 of the Hawai'i Rules of Civil Procedure (HRCPP), and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). Pursuant to HRAP Rule 4(a)(3), the Bolomet Appellants extended the thirty-day time period under HRAP Rule 4(a)(1) for filing a notice of appeal by timely filing their January 27, 2009 HRCPP Rule 59 motion for reconsideration within

EM. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

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ten days after entry of the January 23, 2009 judgment, as HRCF Rule 59 required. However, the Bolomet Appellants did not file their May 1, 2009 notice of appeal within thirty days after entry of the March 31, 2009 order denying the Bolomet Appellants' January 27, 2009 HRCF Rule 59 motion for reconsideration, as HRAP Rule 4(a)(3) required. Therefore, the Bolomet Appellants' May 1, 2009 notice of appeal is not timely under HRAP Rule 4(a)(3).

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]."). Accordingly, we must dismiss this appeal for lack of jurisdiction. Accordingly,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, August 26, 2009.


Acting Chief Judge


Associate Judge


Associate Judge