

NO. 29914

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

WILLIAM F. MOWRY and MARTHA J. MOWRY, Trustees of the  
William F. Mowry Living Trust dated November 16, 2000;  
WILLIAM F. MOWRY and MARTHA J. MOWRY, Trustees of the  
Martha J. Mowry Living Trust dated November 16, 2000,  
Plaintiffs-Appellees,

v.

MICHAEL A. ZAPARA and GINA A. ZAPARA, husband and wife,  
Defendants-Appellants

APPEAL FROM THE DISTRICT COURT OF THE FIFTH CIRCUIT  
(CIVIL NO. 5RC08-1-0316)

ORDER DISMISSING APPEAL  
FOR LACK OF APPELLATE JURISDICTION

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

Upon review of the record, it appears that we do not have jurisdiction over the appeal that Defendants-Appellants Michael A. Zapara and Gina A. Zapara (the Zapara Appellants) have asserted from the Honorable Calvin K. Murashige's May 5, 2009 judgment in favor of Plaintiffs-Appellees William F. Mowry and Martha J. Mowry (the Mowry Plaintiffs), because the Zapara Appellants' June 9, 2009 notice of appeal is untimely under Rule 4 of the Hawai'i Rules of Appellate Procedure (HRAP).

The Zapara Appellants are appealing pursuant to HRS § 641-1(a) (1993 & Supp. 2008).

Pursuant to HRS § 641-1(a) (1993), appeals are allowed in civil matters from all final judgments, orders, or decrees of circuit and district courts. In district court cases, a judgment includes any order from which an appeal lies. A final order means an order ending the proceeding, leaving nothing further to be accomplished. When a written judgment, order, or decree ends the litigation by fully deciding all rights and liabilities of all parties, leaving nothing further to be adjudicated, the judgment, order, or decree is final and appealable.

CLERK OF APPELLATE COURT  
STATE OF HAWAII

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Casumpang v. ILWU, Local 142, 91 Hawai'i 425, 426, 984 P.2d 1251, 1252 (1999) (citations, internal quotation marks, and footnote omitted) (emphases added). The requirement of a separate judgment under HRCF Rule 58 and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 869 P.2d 1334 (1994), is "not applicable to district court cases." Casumpang, 91 Hawai'i at 427, 984 P.2d at 1253. In cases where there is no requirement for a separate judgment, and

where the disposition of the case is embodied in several orders, no one of which embraces the entire controversy but collectively does so, it is a necessary inference from 54(b) that the orders collectively constitute a final judgment and entry of the last of the series of orders gives finality and appealability to all.

S. Utsunomiya Enterprises, Inc. v. Moomuku Country Club, 75 Haw. 480, 494-95, 866 P.2d 951, 960 (1994) (citations, internal quotation marks, and ellipsis points omitted).

The district court resolved all of the substantive claims in this case through a series of judgments and orders by entering

- the August 11, 2008 judgment for possession, and
- a February 26, 2009 decision and order.

Although the district court later entered the May 5, 2009 judgment, the district court utilized the May 5, 2009 judgment only to add the award of attorneys' fees and costs in favor of the Mowry Appellees when, in fact, the Mowry Appellees' award of attorneys' fees and costs "[wa]s not a final decision with respect to a claim for relief." Fujimoto v. Au, 95 Hawai'i 116, 136 n.16, 19 P.3d 699, 719 n.16 (2001) (citation and internal quotation marks omitted). "The entry of judgment and taxation of

costs are separate legal acts." CRSC, Inc. v. Sage Diamond Co., Inc., 95 Hawai'i 301, 307, 22 P.3d 97, 103 (App. 2001) (citation, internal quotation marks and brackets omitted). A judgment needs only to resolve substantive claims, and "[t]he entry of the judgment shall not be delayed for the taxing of costs." Dist. Ct. R. Civ. P. 58. For the purpose of appealability, it was unnecessary for the district court to enter the May 5, 2009 judgment that included the Mowry Appellees' award of attorneys' fees and costs, because the district court had already entered the February 26, 2009 decision and order (resolving all remaining substantive claims) and the separate May 5, 2009 order granting the Mowry Appellees' March 4, 2009 motion for attorneys' fees and costs. Therefore, for the purpose of any appeal, the May 5, 2009 judgment was superfluous, and it was not the final order or judgment in the series of orders and judgments that resolved the substantive claims in this case. The order or judgment that finally determined the last of the substantive issues of this case, and, thus, gave finality and appealability to all, was the February 26, 2009 decision and order. Therefore, the February 26, 2009 decision and order is the appealable final order in this case pursuant to HRS § 641-1(a) (1993 & Supp. 2008).

Although the Zapara Defendants' June 9, 2009 notice of appeal mistakenly refers to the May 5, 2009 judgment rather than the February 26, 2009 decision and order, that mistake does not invalidate the Zapara Appellants' appeal. "[T]he requirement that the notice of appeal designate the judgment or part thereof

appealed from is not jurisdictional." State v. Bohannon, 102 Hawai'i 228, 235, 74 P.3d 980, 987 (2003) (citation and internal quotation marks omitted); City and County of Honolulu v. Midkiff, 57 Haw. 273, 275, 554 P.2d 233, 235 (1976).

However, the Zapara Appellants did not file their June 9, 2009 notice of appeal in a timely manner. The February 26, 2009 decision and order initially triggered the thirty-day time period under HRAP Rule 4(a)(1) for filing a notice of appeal. Pursuant to HRAP Rule 4(a)(3)<sup>1</sup> the Mowry Appellees extended the thirty-day time period under HRAP Rule 4(a)(1) for filing a notice of appeal when the Mowry Appellees filed their March 4, 2009 motion for an award of attorneys' fees and costs. Nevertheless, the Zapara Appellants did not file their June 9, 2009 notice of appeal within thirty days after entry of the May 5, 2009 order granting the Mowry Appellees' March 4, 2009 motion for an award of attorneys' fees and costs, as HRAP Rule 4(a)(3) required. Therefore, the Zapara Appellees' June 9, 2009 notice of appeal is untimely, even if the May 5, 2009 judgment were the appealable document in this matter.

The failure to file a timely notice of appeal in a

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<sup>1</sup> Rule 4(a)(3) of the Hawai'i Rules of Appellate Procedure (HRAP) provides:

(3) Time to Appeal Affected by Post-Judgment Motions. If any party files a timely motion for judgment as a matter of law, to amend findings or make additional findings, for a new trial, to reconsider, alter or amend the judgment or order, or for attorney's fees or costs, the time for filing the notice of appeal is extended until 30 days after entry of an order disposing of the motion; provided that the failure to dispose of any motion by order entered upon the record within 90 days after the date the motion was filed shall constitute a denial of the motion.

HRAP Rule 4(a)(3) (effective July 1, 2006) (emphases added).

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

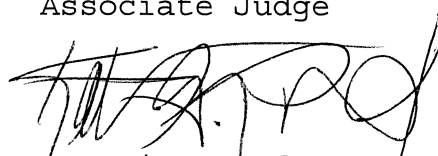
civil matter is a jurisdictional defect that the parties cannot waive and the appellate courts cannot disregard in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986); HRAP Rule 26(b) ("[N]o court or judge or justice thereof is authorized to change the jurisdictional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

IT IS HEREBY ORDERED that this appeal (appellate court case number 29914) is dismissed for lack of appellate jurisdiction.

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

  
Chief Judge

  
Associate Judge

  
Associate Judge