

NO. 30002

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

JACQUELINE RIGSBY, Plaintiff-Appellant, v.  
WILLIAM E. RIGSBY, Defendant-Appellee

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT  
(FC-D NO. 00-0-61854)

ORDER DENYING THE SEPTEMBER 30, 2009 MOTION TO DISMISS APPEAL  
(By: Nakamura C.J., Watanabe and Leonard, JJ.)

Upon review of (1) the September 30, 2009 motion by Defendant-Appellee William E. Rigsby (Appellee William Rigsby) to dismiss this appeal on grounds that the appeal was not timely filed, (2) Appellee William Rigsby's October 7, 2009 supplemental memorandum in support of Appellee William Rigsby's September 30, 2009 motion to dismiss the appeal, and (3) the record, it appears that we have appellate jurisdiction over the appeal that Plaintiff-Appellant Jacqueline Rigsby (Appellant Jacqueline Rigsby), pro se, has asserted from the Honorable Linda K. C. Luke's June 3, 2009 post-decree order because Appellant Jacqueline Rigsby's August 13, 2009 notice of appeal was timely pursuant to Rule 4(a)(3) of the Hawai'i Rules of Appellate Procedure (HRAP).

With respect to family court cases, Hawaii Revised Statutes (HRS) § 571-54 (2006) provides that "[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) 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, 95 Hawai‘i 318, 22 P.3d 965 (2001). The family court entered a final divorce decree in this matter on January 20, 1967, and Appellant Jacqueline Rigsby is appealing from the June 3, 2009 post-decree order that is the last order in a series of two post-decree orders (i.e., a March 11, 2009 post-decree order and the June 3, 2009 post-decree order) that finally determined Appellee William Rigsby's December 10, 2008 motion for post-decree relief and Appellant Jacqueline Rigsby's January 21, 2009 motion for post-decree relief. The June 3, 2009 post-decree order is an appealable final post-decree order pursuant to HRS § 571-54 (2006).

Appellee William Rigsby argues, however, that Appellant Jacqueline Rigsby's August 13, 2009 notice of appeal is not timely under HRAP Rule 4(a)(3),<sup>1</sup> because Appellant Jacqueline Rigsby's failure to submit her June 24, 2009 Hawai‘i Family Court

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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).

Rules (HFCR) Rule 59 motion to the family court within ten days after entry of the June 3, 2009 post-decree order precluded Appellant Jacqueline Rigsby from invoking an extension of time under HRAP Rule 4(a)(3) for filing a notice of appeal more than thirty days after entry of the June 3, 2009 post-decree order. Thus, Appellee William Rigsby argues that Appellant Jacqueline Rigsby's failure to file her August 13, 2009 notice of appeal within thirty days after the June 3, 2009 post-decree order makes her appeal untimely under HRAP Rule 4(a)(1).

Nevertheless, in a non-conforming document that Appellant Jacqueline Rigsby submitted to the family court on June 12, 2009,<sup>2</sup> Appellant Jacqueline Rigsby asked the family court, in effect, to reconsider the June 3, 2009 post-decree order pursuant to HFCR Rule 59. Although on June 24, 2009, Appellant Jacqueline Rigsby submitted a second HFCR Rule 59 motion to reconsider the June 3, 2009 post-decree order to the family court, both of Appellant Jacqueline Rigsby's two HFCR Rule 59 motions for reconsideration requested essentially the same reconsideration of the June 3, 2009 post-decree order. Therefore, pursuant to HRAP Rule 4(a)(3), Appellant Jacqueline Rigsby extended the initial thirty-day time period under HRAP Rule 4(a)(1) for filing a notice of appeal when Appellant Jacqueline Rigsby submitted her June 12, 2009 HFCR Rule 59 motion for reconsideration to the family court within ten days after

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<sup>2</sup> See Doe v. Doe, 98 Hawai'i 144, 151, 44 P.3d 1085, 1092 (2002) (the date on which a family court receives a document by mail prevails over any subsequent file-stamped date on which the family court eventually files the document).

entry of the June 3, 2009 post-decree order, as HFCR Rule 59 required. Appellant Jacqueline Rigsby filed her August 13, 2009 notice of appeal within thirty days after entry of the July 14, 2009 order denying Appellant Jacqueline Rigsby's HFCR Rule 59 motion for reconsideration, as HRAP Rule 4(a)(3) required. Therefore, Appellant Jacqueline Rigsby's appeal is timely under HRAP Rule 4(a)(3), and the intermediate court of appeals has jurisdiction over Appellant Jacqueline Rigsby's appeal from the June 3, 2009 post-decree order pursuant to HRS § 571-54 (2006).

Accordingly, IT IS HEREBY ORDERED that Appellee William Rigsby's September 30, 2009 motion to dismiss this appeal (appellate case number 30002) for lack of appellate jurisdiction is denied.

DATED: Honolulu, Hawai'i, November 9, 2009.

Chief Judge

Associate Judge

Associate Judge