

*** NOT FOR PUBLICATION ***

NO. 26833

IN THE SUPREME COURT OF THE STATE OF HAWAII

ARTHUR RUDLOPH ASTEL and MARY MARGARET ASTEL,
Plaintiffs-Appellees

vs.

MICHAEL HARVEY JAMES LINDSAY and SUSAN MARY LINDSAY,
Defendants-Appellants

and

JOHN DOES 1-5, JANE DOES 1-5, DOE CORPORATIONS 1-5,
DOE PARTNERSHIPS 1-5 and DOE GOVERNMENTAL ENTITIES 1-5,
Defendants

EMILY MANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2005 MAY -9 PM 1:26

FILED

APPEAL FROM THE THIRD CIRCUIT COURT
(CIV. NO. 01-1-0362)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon review of the record, it appears that the March 29, 2004 motion for reconsideration of the March 16, 2004 judgment extended the time for appealing the judgment until thirty days after entry of an order disposing of the motion. See HRAP 4(a)(3). An order disposing of the motion was entered on August 24, 2004, which denied the motion by operation of law because the motion was not disposed within the ninety-day period prescribed by HRAP 4(a)(3). However, the effective date of the denial of the motion for reconsideration was June 28, 2004, the ninetieth day after the motion was filed. See HRAP 4(a)(3). The denial of the motion for reconsideration by operation of law on June 28, 2004 triggered the thirty-day period for appealing the March 16, 2004 judgment. See HRAP 4(a)(3). The September 30,

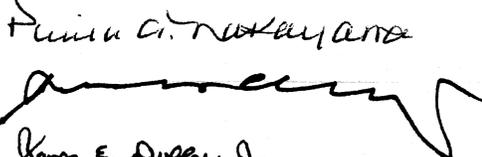
*** NOT FOR PUBLICATION ***

2004 notice of appeal was filed more than thirty days after June 28, 2004 and is an untimely appeal of the March 16, 2004 judgment and the order denying reconsideration. Thus, we lack jurisdiction over the appeal of the March 16, 2004 judgment and the order denying reconsideration. See HRAP 26(b); Bacon v. Karlin, 68 Hawai'i 648, 650, 727 P.2d 1127, 1128 (1986) (The failure of an appellant to file a timely notice of appeal in a civil matter is a jurisdictional defect that can neither be waived by the parties nor disregarded by the appellate court in the exercise of judicial discretion).

It further appears that the appeal of the August 24, 2004 order denying the motion to disqualify plaintiffs' counsel is an appeal of an interlocutory order that was not certified for appeal pursuant to HRS § 641-1(b). The order is not immediately appealable under the collateral order doctrine. Cf. Chuck v. St. Paul Fire & Marine Ins. Co., 61 Haw. 552, 557, 606 P.2d 1320, 1324 (1980). Thus, the appeal of the August 24, 2004 order is premature. Therefore,

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

DATED: Honolulu, Hawai'i, May 9, 2005.


Steven J. Harrison
Punika A. Nakayama

Kanae E. Dudgeon, Jr.