

*** NOT FOR PUBLICATION ***

NO. 27012

IN THE SUPREME COURT OF THE STATE OF HAWAII

LYNN AWAI-TAVARES, Individually and as next friend to CODY
TAVARES, a minor, Plaintiffs-Appellants

vs.

STATE OF HAWAI'I, DEPARTMENT OF EDUCATION, Defendant-Appellee

and

JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10, and DOE
GOVERNMENTAL AGENCIES 1-10 inclusive, Defendants

APPEAL FROM THE SECOND CIRCUIT COURT
(CIV. NO. 99-0778)

ORDER DISMISSING APPEAL
(By: Nakayama, J. for the court¹)

Upon review of the record, it appears that judgment in Civil No. 99-0778 was entered on October 22, 2004. A second judgment was entered on November 23, 2004, but the second judgment is identical to the October 22, 2004 judgment and its entry did not extend the time for appealing the October 22, 2004 judgment. Cf. Wong v. Wong, 79 Hawai'i 26, 897 P.2d 953 (1995). The filing of the August 2, 2004 notice of appeal did not divest the circuit court of jurisdiction to enter the October 22, 2004 judgment inasmuch as the August 2, 2004 notice of appeal was a premature and invalid notice of appeal. See State v. Ontiveros, 82 Hawai'i 446, 449, 923 P.2d 388, 391 (1996) ("Where the notice

¹Considered by: Moon, C.J., Levinson, Nakayama, and Acoba, JJ., and Circuit Judge Chan, in place of Duffy, J., recused.

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of appeal is jurisdictionally defective, filing the notice of appeal does not transfer jurisdiction from the trial court to the appellate court."). Appellant's December 20, 2004 notice of appeal was filed more than thirty days after entry of the October 22, 2004 judgment and is an untimely appeal of the October 22, 2004 judgment. The failure 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. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986); HRAP 26(b) ("[N]o court or judge or justice is authorized to change the jurisdictional requirement [of the 30-day appeal period] contained in Rule 4 of [the HRAP]."). Thus, we lack jurisdiction over this appeal. Therefore,

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

DATED: Honolulu, Hawai'i, June 23, 2005.

FOR THE COURT:

Anna C. Nakayama
Associate Justice

