

*** NOT FOR PUBLICATION ***

NO. 27636

IN THE SUPREME COURT OF THE STATE OF HAWAII

K. HANAKAHO
CLERK APPELLATE COURTS
STATE OF HAWAII

2006 MAR 20 PM 1:48

FILED

In the Interest of S.D.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 04-09847)

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

Upon review of the record, it appears that the right to appeal the October 3, 2005 order awarding permanent custody was conditioned upon the filing of a motion for reconsideration of the order within twenty days after the order was entered and filing a notice of appeal within thirty days after entry of an order disposing of the motion for reconsideration. See HRS § 571-54; HRAP 4(a)(1); In the Interest of Jane Doe, 77 Hawai'i 109, 113, 883 P.2d 30, 34 (1994); In the Interest of Jane Doe, 3 Haw. App. 391, 394, 651 P.2d 492, 494 (1982). Appellant's October 17, 2005 motion to set aside default was a timely motion for reconsideration of the October 3, 2005 order inasmuch as reconsideration of the October 3, 2005 order was sought and denied at the hearing on the October 17, 2005 motion. The October 17, 2005 motion was denied by order entered on October 27, 2005, but appellant's notice of appeal was untimely filed thirty-five days later on December 1, 2005. Appellant could have, but did not seek an extension of time to appeal pursuant to

¹Considered by: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.

HRAP 4(a)(4)(B). 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. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986).

It further appears that the December 1, 2005 notice of appeal was filed within thirty days after entry of the November 18, 2005 order denying appellant's November 15, 2005 motion for reconsideration of the October 3, 2005 order, but the November 15, 2005 motion was not filed within twenty days after entry of the October 3, 2005 order. The twenty-day statutory deadline of HRS § 571-54 could not be waived. See HRAP 26(b). Thus, the jurisdictional requirements for appealing the October 3, 2005 order were not met and 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, March 20, 2006.

FOR THE COURT:

Paula A. Nakayama
Associate Justice

