

NO. 28186

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I
IN THE INTEREST OF I.K.

EMERILIANO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2006 DEC 27 AM 11:49

FILED

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-S NO. 01-07717)

ORDER GRANTING PETITIONER-APPELLEE DEPARTMENT
OF HUMAN SERVICES' MOTION TO DISMISS THIS APPEAL
(By: Burns, C.J., Lim and Foley, JJ.)

Upon review of (1) Petitioner-Appellee Department of Human Services' (Appellee DHS) December 8, 2006 motion to dismiss this appeal for lack of appellate jurisdiction, (2) Mother-Appellant's failure to file a memorandum in opposition to Appellee DHS's motion to dismiss, and (3) the record, it appears that we lack jurisdiction over Mother-Appellant's appeal from the August 7, 2006 order that divested Mother-Appellant of her parental and custodial rights over Mother-Appellant's minor child, and awarded Appellee DHS with permanent custody over the minor child. Under HRS § 571-54 (Supp. 2006), "appeals in family court cases, as in other civil cases, may be taken only from (1) a final judgment, order, or decree, . . . or (2) a certified interlocutory order." In re Doe, 96 Hawai'i 272, 283, 30 P.3d 878, 889 (2001) (citations omitted). The August 7, 2006 order that divested Mother-Appellant of her parental rights and awarded permanent custody of Mother-Appellant's child to Appellee DHS had

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the requisite degree of finality for an appealable decision under HRS § 571-54 (Supp. 2006). Effective July 1, 2006, 2006 Hawai'i Sessions Laws Act 3 amended HRS § 571-54 by repealing the requirement for a motion for reconsideration of as a prerequisite for the appealability of final orders in cases involving the protection of any child under HRS § 571-11(9) (Supp. 2006). Therefore, the August 7, 2006 order was an appealable final order pursuant to HRS § 571-54 (Supp. 2006).

However, Mother-Appellant did not file her September 29, 2006 notice of appeal within thirty days after entry of the August 7, 2006 order, as Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP) required. Mother-Appellant did not extend the time period for filing a notice of appeal under HRAP Rule 4(a)(3) by filing her August 23, 2006 motion for reconsideration, because Mother-Appellant did not file her August 23, 2006 motion for reconsideration within ten days after entry of the August 7, 2006 order, as Rule 59(e) of the Hawai'i Family Court Rules (HFCR) required. However, even if Mother-Appellant's motion for reconsideration were timely, Mother-Appellant did not file her September 29, 2006 notice of appeal within thirty days after entry of the August 25, 2006 order denying Mother-Appellant's August 23, 2006 motion for reconsideration, as HRAP Rule 4(a)(3) required. Therefore, Mother-Appellant's appeal was not timely.

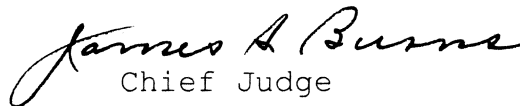
The failure to file a timely notice of appeal in a

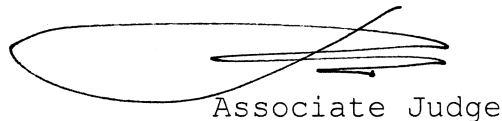
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civil matter is a jurisdictional defect that the parties cannot waive and the appellate courts cannot disregard in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986); HRAP Rule 26(b) ("[N]o court or judge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

IT IS HEREBY ORDERED that Appellee DHS's motion to dismiss this appeal is granted, and this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, December 27, 2006.


Chief Judge


Associate Judge


Associate Judge