

NO. 27664

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

EFLEDA SALOME B. WILLIAMSON, Plaintiff-Appellee, v.
CALVERT A. WILLIAMSON, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D No. 04-1-1296)

ORDER DISMISSING APPEAL FOR LACK OF JURISDICTION
(By: Watanabe, Presiding J., Lim, and Foley, JJ.)

This appeal by Defendant-Appellant Calvert A.

Williamson (Calvert) stems from a motion filed by Calvert on December 13, 2005, requesting that the Hawai'i Supreme Court "re-docket" the notice of appeal filed by Calvert on March 14, 2005. We conclude that Calvert's appeal is untimely and, accordingly, dismiss the appeal for lack of appellate jurisdiction.

BACKGROUND

The underlying action commenced on April 26, 2004 when Plaintiff-Appellee Eflada Salome B. Williamson (Eflada) filed a complaint in the Family Court of the First Circuit (the family court), seeking a divorce from Calvert, legal and physical custody of their two children, child support in accordance with the child support guidelines, and spousal support.

On March 8, 2005, following a bench trial that took

EM RIMANDO
CLERK APPELLATE COURTS
STATE OF HAWAII

2007 FEB - 8 AM 8:01

FILED

place on March 7, 2005, the family court¹ issued a signed minute order,² awarding, among other things, sole legal and physical custody of Calvert and Efleda's two children to Efleda, visitation rights to Calvert, and child support to Efleda.

On March 14, 2005, Calvert filed pro se a notice of appeal from the March 8, 2005 minute order. On July 29, 2005, the Hawai'i Supreme Court entered an order dismissing Calvert's appeal for lack of appellate jurisdiction, on grounds that "the family court's March 8, 2005 minute order is not an appealable final order and a final decree on the complaint for divorce has not yet been entered Thus, this appeal is premature and we lack jurisdiction."

On August 23, 2005, the family court entered a decree granting absolute divorce and awarding child custody (the Decree). The Decree dissolved Calvert and Efleda's marriage; determined child custody, visitation, and support; determined that no spousal support would be ordered; and divided and distributed the parties' property and debts. It was thus final and appealable when entered. See Cleveland v. Cleveland, 57 Haw. 519, 523-24, 559 P.2d 744, 747 (1977); Eaton v. Eaton, 7 Haw.

¹ The Honorable R. Mark Browning (Judge Browning) presided over the trial.

² We note that, although the March 8, 2005 minute order is signed by Judge Browning and was apparently distributed to the attorneys for both parties, it was never filed, date-stamped, and included in the official case record.

App. 111, 118, 748 P.2d 801, 805 (1987).

On October 28, 2005, Efleda filed a motion and affidavit for post-decree relief, requesting a modification of the award for child support (Efleda's post-decree motion). Efleda requested that "[c]hild support arrearages in the amount of \$2,520 from the period April 1, 2005 - September 30, 2005 should be paid from [Calvert's bank] account" because after she received her first payment for child support through the Child Support Enforcement Agency, Calvert "became irate and told [Efleda] that he had 'given his 2 weeks notice' at Child & Family Services in order to deprive her of future support; thus there will be no employment source from which to pay down [child support] arrearages, or even to collect future support." Efleda asserted that Calvert had \$15,494.58 in his bank account.

On November 14, 2005, Calvert filed his own motion and affidavit for post-decree relief (Calvert's post-decree motion). Calvert sought a modification of legal custody, physical custody and/or visitation rights to his children; relief from all obligations to pay child support; an order to "[c]ease garnishing [his] check"; an order to unfreeze his assets and release the assets to him; and an order imposing sanctions against Efleda's attorney.

On November 16, 2005, the family court granted in part and denied in part Efleda's post-decree motion. The family court

ordered \$4,500.00 in Calvert's bank account to be frozen until further order of the court. The family court also ordered that the sum of \$1,992.19 from Calvert's bank account be released by the bank directly to Efleda, "unless a stay is granted in respect to this order prior to November 14, 2005 and timely served on [the bank] and [Efleda's] attorney[.]" The court also scheduled a "one hour short trial on the issue of child support arrearages" for January 6, 2006, at 10:30 a.m.

On November 28, 2005, the Hawai'i Supreme Court received Calvert's motion to "re-docket the Notice of Appeal filed on March 14, 2005" (motion to re-docket). In a memorandum in support of his motion to re-docket his notice of appeal, Calvert pointed out that his earlier appeal had been dismissed by the supreme court for lack of jurisdiction. Calvert also explained:

[O]n August 23, 2005, Judge [R. Mark] Browning adjudged and ordered a divorce decree and ward [sic] of custody to [Efleda], . . . from which [Calvert] originally appealed [Efleda] and her attorney . . . did not serve [Calvert] with the documents until October 28, 2005

The effects of the divorce decree has been executed by the force of The Family Court in the First Circuit State of Hawaii. [Calvert's] parental rights of his natural children have been terminated . . . , [Calvert's] bank account has been frozen . . . , monies have been taken from [Calvert's] bank account . . . , and monies have been garnished from [Calvert's] income[.]

Calvert argued that the supreme court "has [j]urisdiction to decide this case in controversies. The [family court] has executed force against [Calvert] and [Calvert] has been denied

the right to appeal. . . . Untenable service leaves the Court no other choice but to wipe the slate clean in order to re-instate the citizens Constitutional Right to due process."

On November 29, 2005, pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 4(a)(1),³ the chief clerk of the supreme court forwarded Calvert's motion to re-docket his notice of appeal to the family court.

On January 6, 2006, the family court denied Calvert's post-decree motion on grounds that "the Court has no jurisdiction because [Calvert] has filed an appeal."⁴ The family court's order specifically noted that "[t]he short trial remains set for January 6, 2006 regarding enforcement."

Also on January 6, 2006, following the short trial, the

³ Hawai'i Rules of Appellate Procedure (HRAP) Rule 4(a)(1) provides, in relevant part, as follows:

Rule 4. APPEALS - WHEN TAKEN.

(a) Appeals in civil cases.

(1) TIME AND PLACE OF FILING. . . .

The notice of appeal shall be filed with the clerk of the court from which the appeal is taken. If a notice of appeal is mistakenly filed with the appellate clerk, the appellate clerk shall note on it the date of receipt and shall transmit the notice to the clerk of the court appealed from. The date of the receipt by the appellate clerk shall be deemed to be the date the notice of appeal was filed with the clerk of the court.

⁴ The Family Court of the First Circuit (the family court) erred when it denied Defendant-Appellant Calvert A. Williamson's (Calvert) motion and affidavit for post-decree relief on grounds that it lacked jurisdiction to hear the matter since Calvert had already filed his motion to re-docket his notice of appeal. The appeal from one motion for post-decree relief does not necessarily deprive the family court of jurisdiction to address others. See Cleveland v. Cleveland, 57 Haw. 519, 523, 559 P.2d 744, 747 (1977).

family court entered an order granting in part and denying in part Efleda's post-decree motion. The family court ordered that \$2,045.00 in child support shall be paid to Efleda from the frozen assets in Calvert's bank account and the remainder of the frozen assets "shall be unfrozen and immediately released back to [Calvert]." The family court also denied Efleda's request for attorneys' fees and costs. Calvert did not file a notice of appeal from the family court's January 6, 2006 order granting in part and denying in part Efleda's post-decree motion.

On April 24, 2006, pursuant to an order entered by the Hawai'i Supreme Court on March 24, 2006, the family court entered findings of fact and conclusions of law as to the Decree.

DISCUSSION

1.

Pursuant to HRAP Rule 4(a)(1),⁵ the thirty-day clock for filing a notice of appeal from the Decree began on August 23, 2005, the date the Decree was entered. Although Calvert contends that he was not served with the Decree until October 28, 2005, failure to receive notice of the entry of judgment does not

⁵ HRAP Rule 4(a)(1) provides, in relevant part, as follows:

Rule 4. APPEALS - WHEN TAKEN.

(a) Appeals in civil cases.

(1) TIME AND PLACE OF FILING. When a civil appeal is permitted by law, the notice of appeal shall be filed within 30 days after entry of the judgment or appealable order.

excuse a party from timely filing a notice of appeal. See Enos v. Pacific Transfer & Warehouse, Inc., 80 Hawai'i 345, 353, 910 P.2d 116, 124 (1996) (observing that "[a] party has an independent duty to keep informed and mere failure of the clerk to notify the parties that judgment has been entered does not provide grounds for excusable neglect or warrant an extension of time" to file a notice of appeal).

In light of HRAP Rule 4(a)(1) and Enos, we conclude that Calvert's motion to re-docket his notice of appeal, which was filed more than three months after entry of the Decree on August 23, 2005, was untimely. Thus, this court lacks jurisdiction to consider Calvert's appeal from the Decree.

2.

Calvert's motion to re-docket, which was filed on December 13, 2005 and treated by the supreme court as a notice of appeal, did not appeal the family court's subsequent order entered on January 6, 2006, which granted in part and denied in part Efleda's post-decree motion. Additionally, Calvert did not file a separate notice of appeal following the entry of the January 6, 2006 order granting in part and denying in part Efleda's post-decree motion.

"[A]n appellant's failure to file a timely notice of appeal is a jurisdictional defect that can neither be waived by the parties nor disregarded by the court in the exercise of

judicial discretion." Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1129 (1986) (brackets and quotation marks omitted). Therefore, we have no jurisdiction to address any issues raised by Calvert pertaining to the family court's January 6, 2006 order denying Efleda's post-decree motion.

CONCLUSION

In light of the foregoing discussion, we hereby dismiss Calvert's appeal for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, February 8, 2007.

On the briefs:

Calvert A. Williamson,
defendant-appellant, pro se.

Corinne K.A. Watawala

[Signature]
Daniel R. Foley