

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28310

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

CECIL LORAN LEE, also known as C. Loran Lee, Loran Lee,
Plaintiff-Appellant,

v.

PHILIP B. MAISE AND DIDIER FLAMENT; JOHN DOES 1-10, et al.,
Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CV. NO. 05-1-0235)

ORDER GRANTING THE FEBRUARY 13, 2007
MOTION TO DISMISS APPEAL

(By: Burns, C.J., Lim and Foley, JJ.)

NEHIMA T. YARA
CLERK OF APPELLATE COURTS
STATE OF HAWAII

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FILED

Upon review of (1) Defendants-Appellee Philip B. Maise (Appellant Maise) and Didier Flament's (Appellee Flament) February 13, 2007 motion to dismiss this appeal for lack of appellate jurisdiction, (2) the memorandum in opposition to the motion to dismiss, (3) the response to the memorandum in opposition, and (4) the record, it appears that we lack jurisdiction over Plaintiff-Appellant Cecil Loran Lee's (Appellant Lee) appeal because Appellant Lee's appeal is not timely under Rule 4(a)(3) of the Hawai'i Rules of Appellate Procedure (HRAP).

Hawaii Revised Statutes (HRS) § 641-1(a) (Supp. 2006) authorizes appeals from "final judgments, orders, or decrees[.]" Furthermore, under Rule 58 of the Hawai'i Rules of Civil Procedure (HRCPP), "[a]n appeal may be taken from circuit court

orders resolving claims against parties only after the orders have been reduced to a judgment and the judgment has been entered in favor of and against the appropriate parties pursuant to HRCP [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

[I]f a judgment purports to be the final judgment in a case involving multiple claims or multiple parties, the judgment (a) must specifically identify the party or parties for and against whom the judgment is entered, and (b) must (i) identify the claims for which it is entered, and (ii) dismiss any claims not specifically identified[.]

The October 25, 2006 judgment resolved all claims against all parties in that the October 25, 2006 judgment entered a judgment in favor of Appellee Maise and Appellee Flament and against Appellant Lee on all counts of Appellant Lee's complaint. Therefore, the October 25, 2006 judgment satisfies the requirements for an appealable judgment under the HRCP Rule 58 separate document rule in Jenkins v. Cades Schutte Fleming & Wright, and the October 25, 2006 judgment is an appealable final judgment under HRS § 641-1(a) (Supp. 2006).

With respect to the timeliness of the appeal,

[i]f any party files a timely motion for judgment as a matter of law, to amend findings or make additional findings, for a new trial, to reconsider, alter or amend the judgment or order, or for attorney's fees or costs, the time for filing the notice of appeal is extended until 30 days after entry of an order disposing of the motion; provided, that the failure to dispose of any motion by order entered upon the record within 90 days after the date the motion was filed shall constitute a denial of the motion.

HRAP Rule 4(a)(3). Pursuant to HRAP Rule 4(a)(3), Appellant Lee extended the time period for filing a notice of appeal when Appellant Lee filed his August 2, 2006 motion for reconsideration

pursuant to HRCP Rule 59(e). See Saranilio v. Silva, 78 Hawai'i 1, 7, 889 P.2d 685, 691 (1995) (HRCP Rule 59(e) does not require that a motion for reconsideration be served after the entry of judgment, because HRCP Rule 59 imposes only an outer time limit on the service of the motion, requiring that it be served no later than ten days after entry of the judgment). However, the circuit court did not enter a written order that disposed of Appellant Lee's August 2, 2006 HRCP Rule 59(e) motion for reconsideration, and, thus, pursuant to the ninety-day limit under HRAP Rule 4(a)(3) for the disposition of such a motion, Appellant Lee's August 2, 2006 HRCP Rule 59(e) motion for reconsideration was deemed denied on October 31, 2006. Appellant Lee did not file his December 8, 2006 notice of appeal within thirty days after October 31, 2006, as HRAP Rule 4(a)(3) required for a timely appeal. Therefore, Appellant Lee's appeal is not timely.

The failure of an appellant to file a timely notice of appeal in a civil matter is a jurisdictional defect that the parties cannot waive and an appellate court cannot disregard in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1129 (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 lack jurisdiction over this appeal. Accordingly,

IT IS HEREBY ORDERED that Appellee Maise and Appellee

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Flament's February 13, 2007 motion to dismiss appellate court case number 28310 is granted, and appellate court case number 28310 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, February 26, 2007.


Chief Judge


Associate Judge


Associate Judge