

NO. 28675

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

HAWAI'I PUBLIC HOUSING AUTHORITY, a public body,  
body corporate and politic of the State of Hawai'i,  
Plaintiff-Appellee,

v.

ANTHONY KIM,  
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
(CIV. NO. 1RC07-1-0717)

ORDER DISMISSING APPEAL

(By: Watanabe, Presiding Judge, Nakamura and Fujise, JJ.)

Upon review of the record, it appears that we do not have jurisdiction over Defendant/Counterclaim Plaintiff/Appellant Anthony Kim's (Appellant Kim) appeal from the Honorable Peter T. Stone's June 21, 2007 judgment in favor of Plaintiff/Counterclaim Defendant/Appellee Hawaii Public Housing Authority (Appellee Hawaii Public Housing.

Pursuant to HRS § 641-1(a) (1993), appeals are allowed in civil matters from all final judgments, orders, or decrees of circuit and district courts. In district court cases, a judgment includes any order from which an appeal lies. A final order means an order ending the proceeding, leaving nothing further to be accomplished. When a written judgment, order, or decree ends the litigation by fully deciding all rights and liabilities of all parties, leaving nothing further to be adjudicated, the judgment, order, or decree is final and appealable.

Casumpang v. ILWU, Local 142, 91 Hawai'i 425, 426, 984 P.2d 1251,

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1252 (1999) (citations, internal quotation marks, and footnote omitted) (emphases added). The requirement of a separate judgment under Rule 58 of the Hawai'i Rules of Appellate Procedure (HRCP) and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 869 P.2d 1334 (1994), is "not applicable to district court cases." Casumpang v. ILWU, Local 142, 91 Hawai'i at 427, 984 P.2d at 1253. In cases where there is no requirement for a separate judgment, and

where the disposition of the case is embodied in several orders, no one of which embraces the entire controversy but collectively does so, it is a necessary inference from 54(b) that the orders collectively constitute a final judgment and entry of the last of the series of orders gives finality and appealability to all.

S. Utsunomiya Enterprises, Inc. v. Moomuku Country Club, 75 Haw. 480, 494-95, 866 P.2d 951, 960 (1994) (citations, internal quotation marks, and ellipsis points omitted).

The district court resolved all of the substantive claims in this case through a series of judgments by entering

- the April 19, 2007 judgment for possession, and
- the June 21, 2007 judgment.

The June 21, 2007 judgment was the final judgment that resolved the last remaining substantive issues. Therefore, the June 21, 2007 is the appealable judgment in this case pursuant to HRS § 641-1(a) (Supp. 2006).

However, Appellant Kim did not file his July 30, 2007 notice of appeal and his September 5, 2007 amended notice of appeal within thirty days after the entry of the June 21, 2007 judgment as Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP) requires. Therefore, Appellant Kim's appeal is untimely.

The failure to file a timely notice of appeal in a 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,

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

DATED: Honolulu, Hawai'i, November 6, 2007.

*Corinne K. Watanebe*  
Presiding Judge

*Craig W. Nakamura*  
Associate Judge

*Alexander H. Jizinec*  
Associate Judge