

NO. 25179

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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DENISE ISERI MATSUBARA, Petitioner-Appellee

vs.

MICHAEL D. PAMA, Respondent-Appellant

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APPEAL FROM THE FIRST CIRCUIT COURT  
(FC-DA NO. 02-1-0450)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Ramil, and Acoba, JJ.)

Upon review of the record, it appears that we do not have jurisdiction over the appeal by Respondent-Appellant Michael D. Pama (Appellant Pama). In family court cases "[a]n interested party aggrieved by any order or decree of the court may appeal to the supreme court for review of questions of law and fact upon the same terms and conditions as in other cases in the circuit court[.]" HRS § 571-54 (1993). In circuit court cases, aggrieved parties may appeal from "final judgments, orders or decrees[.]" HRS § 641-1(a) (1993). "Final order means an order ending the proceedings, leaving nothing further to be accomplished." Familian Northwest v. Central Pacific Boiler, 68 Haw. 368, 370, 714 P.2d 936, 937 (1986) (citations and internal quotation marks omitted). The final and appealable order in this case is the March 19, 2002 order for protection.

Although Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP) requires a party to file a notice of appeal within thirty days after entry of the appealable order, HRAP Rule 4(a)(3) provides that

[i]f, not later than 10 days after entry of judgment, any party files a motion that seeks to reconsider, vacate, or alter the judgment, or seeks 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[.]

Pursuant to HRAP Rule 4(a)(3), Appellant Pama's March 27, 2002 motion to amend the March 19, 2002 protection order extended the time period for filing a notice of appeal until thirty days after entry of the April 10, 2002 order disposing of the motion. Thus, the last day of the thirty-day time period for filing a notice of appeal under HRAP Rule 4(a)(3) was May 10, 2002. However, Appellant Pama did not file his June 24, 2002 notice of appeal before the thirty-day period under HRAP Rule 4(a)(3) expired on May 10, 2002. Therefore, Appellant Pama's appeal is untimely.

Appellant Pama's April 19, 2002 motion for reconsideration of the April 10, 2002 order did not extend the time period for filing a notice of appeal pursuant to HRAP Rule 4(a)(3) because Appellant Pama did not file it within ten days after entry of the March 19, 2002 protection order, as HRAP Rule 4(a)(3) required.

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, 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 lack jurisdiction over this case. Accordingly,

IT IS HEREBY ORDERED that Appellant Pama's appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, September 24, 2002.