

NO. 25185

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

ROY CHON, individually, and MIKYUNG CHON, individually and as
Next Friend of MIKE HO CHON and JAMES TAESUNG CHON, minors,
Plaintiffs-Appellants

vs.

THE ASSOCIATION OF APARTMENT OWNERS OF LELE PONO, INC., a
non-profit Hawaii corporation, Defendant-appellee

and

ALICE A. BOOTH, individually and dba AAM REALTY, KENNETH A. ANDO,
individually, JOYCE M. ANDO, individually, KENNETH A. ANDO TRUST,
HARVIS CONSTRUCTION, DEVELCO, and DOES 3-10, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 97-4577)

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 Plaintiffs-Appellants Roy Chon, Mikyung Chon, Mike Ho Chon, and James Taesung Chon (the Plaintiffs) appeal from the May 24, 2002 judgment. Although the May 24, 2002 judgment was an appealable judgment under HRS § 641-1(a) (1993), the Plaintiffs did not file their June 26, 2002 notice of appeal within thirty days after entry of the May 24, 2002 judgment, as Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP) required.

Consequently, the Plaintiffs could obtain an extension of time to file a notice of appeal only upon a showing of "excusable neglect" pursuant to HRAP Rule 4(a)(4)(B). "[A]s a matter of law, only plausible misconstruction, but not mere

ignorance, of the law or rules rises to the level of excusable neglect.” Hall v. Hall, 95 Hawai‘i 318, 20, 22 P.3d 965, 967 (2001) (citation and internal quotation marks omitted). Thus, we held in a previous case that a “trial court abused its discretion by granting [a] motion to extend time for filing a notice of appeal because the failure to timely file the appeal was caused by counsel’s failure to read and comply with the plain language of the applicable procedural rules, which cannot constitute excusable neglect.” Id. (citation and internal quotation marks omitted).

The record shows that the Plaintiffs’ failure to file their June 26, 2002 notice of appeal within the thirty-day period under HRAP Rule 4(a)(1) was the result of the Plaintiffs’ “failure to follow the plain language of the rule rather than plausible misconstruction.” Hall v. Hall, 95 Hawai‘i at 20, 22 P.3d at 967 (citation and internal quotation marks omitted). For the purpose of obtaining an extension of time to file a notice of appeal pursuant to HRAP Rule 4(a)(4)(B), the Plaintiffs’ neglect was “not excusable.” Hall v. Hall, 95 Hawai‘i at 20, 22 P.3d at 967 (citation and internal quotation marks omitted). Therefore, the circuit court, the Honorable Victoria S. Marks presiding, abused its discretion by granting the Plaintiffs’ motion for an extension of time to file a notice of appeal, and the Plaintiffs’ June 26, 2002 notice of appeal is untimely.

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 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 this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, September 30, 2002.