

*** NOT FOR PUBLICATION ***

NO. 25521

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

HUI ALANUI O MAKENA, a Hawai'i non-profit corporation;
DANA NAONE HALL; MAUI AIR TRAFFIC ASSOCIATION, INC.,
a Hawai'i non-profit corporation; SIERRA CLUB, a California
non-profit corporation and MARY EVANSON, Plaintiffs-Appellants

JAMES H. APANA, JR., in his official capacity as
Mayor of the County of Maui, Plaintiff-Intervenor,

vs.

LINDA LINGLE, in her capacity as Governor of the State of
Hawai'i; DEPARTMENT OF TRANSPORTATION, STATE OF HAWAI'I; RODNEY K.
HARAGA, in his capacity as Director of the Department of
Transportation, State of Hawai'i, Defendants-Appellees

APPEAL FROM THE SECOND CIRCUIT COURT
(CIV. NO. 98-0361(1))

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, and Nakayama, JJ.,
Intermediate Court of Appeals Associate Judge Lim,
assigned by reason of vacancy, and Acoba, J. dissenting)

Upon review of the record, it appears that we do not have jurisdiction over Plaintiffs-Appellants Hui Alanui O Makena, Dana Naone Hall, Sierra Club, and Mary Evanson's (the Appellants) appeal. The Appellants could obtain an extension of time to file their notice of appeal pursuant to Rule 4(a)(4)(A) of the Hawai'i Rules of Appellate Procedure (HRAP) only upon a showing of "good cause." "Good cause" for an extension of time to file a notice of appeal exists only where the circumstances necessitating the extension "are beyond the control of the movant[.]" Enos v. Pacific Transfer & Warehouse, Inc., 80 Hawai'i 345, 351, 910 P.2d 116, 122 (1996). As the intermediate court of appeals noted, parties' ongoing settlement negotiations do not constitute "good

*** NOT FOR PUBLICATION ***

cause" for such an extension:

In light of the [supreme court's] ruling that . . . "good cause" requires a cause that is "beyond the movant's control," it must be concluded that (1) a desire for more time to seek settlement before incurring the cost of filing and appeal is not "good cause" for extending the time to file a notice of appeal; and (2) rarely will there be a situation where a motion based on that desire and presented within the first 30 days will be validly granted.

Hall v. Hall, 96 Hawai'i 105, 110 n.3, 26 P.3d 594, 599 n.3 (App. 2001), affirmed in part, and vacated in part on other grounds, Hall v. Hall, 95 Hawai'i 318, 319, 22 P.3d 965, 966 (2001). The record shows that the Appellants' reason for requesting an extension of time was the Appellants' desire for more time to negotiate a settlement. These circumstances were within the Appellants' control, and, thus, the Appellants did not show "good cause" for an extension, as HRAP Rule 4(a)(4)(A) required. The circuit court, the Honorable Joel E. August presiding, abused its discretion when it entered the October 28, 2002 order granting the Appellants' ex parte motion for an extension of time to file their notice of appeal. Hall v. Hall, 95 Hawai'i at 319, 22 P.3d at 966 ("[T]he applicable standard of review is the abuse of discretion standard.").

The failure of the Appellants to file a timely notice of appeal 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

***** NOT FOR PUBLICATION *****

lack jurisdiction over this appeal. Accordingly,

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

DATED: Honolulu, Hawai'i, April 4, 2003.