

*** NOT FOR PUBLICATION ***

NO. 25949

IN THE SUPREME COURT OF THE STATE OF HAWAII

CHRISTINE M. WONG, Plaintiff-Appellee

vs.

DERRICK K.H. WONG, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(FC-D NO. 02-1-2233)

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that we do not have jurisdiction over Defendant-Appellant Derrick K.H. Wong's (Appellant Wong) appeal from the April 3, 2003 divorce decree, because Appellant Wong did not file his July 3, 2003 notice of appeal within thirty days after entry of the May 7, 2003 order denying Appellant Wong's motion to set aside the April 3, 2003 divorce decree, as Rule 4(a)(3) of the Hawai'i Rules of Appellate Procedure (HRAP) required under these circumstances.

Furthermore, even if we apply Appellant Wong's notice of appeal to the May 13, 2003 amended divorce decree, Appellant Wong did not file his July 3, 2003 notice of appeal within thirty days after entry of the May 13, 2003 amended divorce decree, as HRAP Rule 4(a)(1) required.

Pursuant to HRAP Rule 4(a)(4)(B), Appellant Wong filed a July 1, 2003 motion to extend the time to file a notice of appeal. Nevertheless, on July 14, 2003, the family court denied Appellant Wong's July 1, 2003 motion, and, thus, Appellant Wong's July 3, 2003 notice of appeal was untimely.

Appellant Wong filed a September 11, 2003 motion to set aside the July 14, 2003 order, and on September 26, 2003, the family court granted Appellant Wong's September 11, 2003 motion. However, Appellant Wong's September 11, 2003 motion was, in effect, a second motion to extend time to file a notice of

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appeal. HRAP Rule 4(a)(4)(B) required Appellant Wong to file any motion to extend time to file a notice of appeal "not later than 30 days after the expiration of the time prescribed by subsections (a)(1) through (a)(3) of this rule." With respect to an appeal from the April 3, 2003 divorce decree, the last day on which Appellant Wong could have moved for an extension pursuant to HRAP Rule 4(a)(4)(B) and HRAP Rule 26(a) was July 7, 2003. With respect to an appeal from the May 13, 2003 amended divorce decree, the last day on which Appellant Wong could have moved for an extension pursuant to HRAP Rule 4(a)(4)(B) and HRAP Rule 26(a) was July 14, 2003. Therefore, Appellant Wong's September 11, 2003 motion was untimely under HRAP Rule 4(a)(4)(B), and, consequently, the family court erred when it granted Appellant Wong's September 11, 2003 motion. Accordingly, Appellant Wong's appeal is untimely.

The failure of Appellant Wong 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 lack jurisdiction over this appeal. Accordingly,

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

DATED: Honolulu, Hawai'i, January 7, 2004.