

**\*\*\* NOT FOR PUBLICATION \*\*\***

NO. 26297

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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CHRISTY L. LETHEM, Plaintiff-Appellant

vs.

LILY E. HAMILTON, Defendant-Appellee

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APPEAL FROM THE FIRST CIRCUIT COURT  
(UCCJEA NO. 98-0028)

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 this appeal. Plaintiff-Appellant Christy L. Lethem's (Appellant Lethem) appeal from the August 27, 2003 post-decree order is not timely because Appellant Lethem did not file his December 23, 2003 notice of appeal within thirty days after entry of the August 27, 2003 post-decree order, as Rule 4 of the Hawai'i Rules of Appellate Procedure (HRAP) required. Appellant Lethem's November 4, 2003 motion for reconsideration pursuant to Rule 59(e) of the Hawai'i Family Court Rules (HFCR) did not extend the time period for filing a notice of appeal pursuant to HRAP Rule 4(a)(3), because Appellant Lethem did not file his November 4, 2003 motion for reconsideration within ten days after entry of the August 27, 2003 post-decree order, as HRAP Rule 4(a)(3) required. Furthermore, the family court was not authorized to extend the ten-day time period for filing a HFCR Rule 59(e) motion for reconsideration, nor was it authorized to extend the jurisdictional effect of HRAP Rule 4(a)(3). See HFCR 6(b) (A family court "may not extend the time for taking any action under Rules 52(b), 59(b), (d) and (e) and 60(b) of these rules and Rule 4(a) of the Hawai'i Rules of Appellate Procedure, except to the extent and under the conditions stated in them.");

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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].”).

The failure of a party to file a timely notice of appeal is a jurisdictional defect that the parties cannot waive and we cannot disregard in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1129 (1986). 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, April 7, 2004.