

*** NOT FOR PUBLICATION ***

NO. 26316

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

JUDY A. PITRE, Petitioner-Appellant

vs.

ADMINISTRATIVE DIRECTOR OF THE COURT, STATE OF HAWAI'I,
Respondent-Appellee

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(JR-03-0030)

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 Petitioner-Appellant Judy A. Pitre's (Appellant Pitre) appeal from the November 4, 2003 judgment that affirmed the administrative revocation of her diver's license. The November 4, 2003 judgment was an appealable final judgment under HRS § 641-1(a) (1993). See, e.g., Kernan v. Tanaka, 75 Haw. 1, 17, 856 P.2d 1207, 1216 (1993). However, Appellant Pitre did not file her January 2, 2004 notice of appeal within thirty days after entry of the November 4, 2003 judgment, as Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP) required.

Following the expiration of the thirty-day time period under HRAP 4(a)(1), Pitre 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

***** NOT FOR PUBLICATION *****

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, 320, 22 P.3d 965, 967 (2001) (citation and internal quotation marks omitted). Thus, for example, 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 Pitre’s failure to file her notice of appeal within the thirty-day period under HRAP Rule 4(a)(1) was the result of Pitre’s “failure to follow the plain language of the rule rather than plausible misconstruction.” Hall v. Hall, 95 Hawai’i at 320, 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), Pitre’s neglect was “not excusable.” Hall v. Hall, 95 Hawai’i at 320, 22 P.3d at 967 (citation and internal quotation marks omitted). Therefore, the district court, the Honorable Clarence A. Pacarro presiding, abused its discretion by granting Pitre’s motion for an extension of time to file a notice of appeal, and Pitre’s January 2, 2004

***** NOT FOR PUBLICATION *****

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 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, April 7, 2004.