

**\*\*\* NOT FOR PUBLICATION \*\*\***

NO. 26372

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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JOHN EDDIE HORNER, Plaintiff-Appellee, Cross-Appellant

vs.

JULIE ANN MEHANA AIO, fka JULIE ANN MEHANA AIO HORNER,  
Defendant-Appellant, Cross-Appellee

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APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT  
(CIV. NO. 99-3969)

ORDER DISMISSING APPEAL

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

Upon review of the statements supporting and contesting jurisdiction and the record, it appears that the September 24, 2003 order awarding legal expenses is the appealable final order on the August 22, 2002 motion for post-decree relief. The time for appealing the September 24, 2003 order was extended by the filing of the September 30, 2003 motion to reconsider the order, which extended the time for appeal until thirty days after entry of an order disposing of the motion. HRAP 4(a)(3). An order denying the motion was entered on January 27, 2004, but the order was not entered within the ninety-day maximum period prescribed by HRAP 4(a)(3) for disposing of the motion. Therefore, the September 30, 2003 motion was denied by operation of law on December 29, 2003, ninety days after the motion was filed. HRAP 4(a)(3). The denial of the motion by operation of law on December 29, 2003 triggered the thirty-day period for appealing the September 24, 2003 order. HRAP 4(a)(3). The January 30, 2004 notice of appeal was filed more than thirty days after December 29, 2003 and is an untimely appeal of the September 24, 2003 order. The February 6, 2004 notice of cross-appeal was not filed within thirty days after December 29, 2003 or within

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fourteen days after service of a timely notice of appeal and is an untimely cross-appeal. Thus, we lack jurisdiction over this appeal. See HRAP 26(b); Bacon v. Karlin, 68 Hawai'i 648, 650, 727 P.2d 1127, 1128 (1986) (The failure of an appellant to file a timely notice of appeal in a civil matter is a jurisdictional defect that can neither be waived by the parties nor disregarded by the appellate court in the exercise of judicial discretion). Accordingly,

IT IS HEREBY ORDERED that this appeal and cross-appeal are dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, May 13, 2004.