

NO. 26462

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

BENNY C. GIBSON, Plaintiff-Appellee

vs.

JENNIFER N. GIBSON, nka JENNIFER N. CUMMINGS, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(FC-D NO. 02-1-2400)

ORDER GRANTING PLAINTIFF-APPELLEE
BENNY C. GIBSON'S MOTION TO DISMISS APPEAL

(By: Moon, C.J., Levinson, Nakayama, and Duffy, JJ.,
and Intermediate Court of Appeals Judge Nakamura,
in place of Acoba, J., who is unavailable)

Upon consideration of Plaintiff-Appellee Benny C. Gibson's motion to dismiss the appeal of Defendant-Appellant Jennifer N. Gibson, nka Jennifer N. Cummings, Appellant's jurisdictional statement, and the records and files herein, it appears that the March 17, 2003 motion to reconsider the March 7, 2003 divorce decree extended the time for appealing the divorce decree until thirty days after entry of an order disposing of the motion pursuant to HRAP Rule 4(a)(3). An order denying the motion was entered on February 19, 2004, but the order was not entered within the ninety-day maximum period prescribed by HRAP Rule 4(a)(3) for disposing of the motion. Therefore, pursuant to HRAP Rule 4(a)(3), the March 17, 2003 motion for reconsideration was deemed denied by operation of law on June 16, 2003, ninety days after the motion was filed, and the family court's untimely February 19, 2004 order denying the motion for reconsideration was a nullity. The denial of the motion by operation of law on June 16, 2003 triggered the thirty-day period for appealing the March 7, 2003 decree and the denial of the motion for reconsideration. The March 19, 2004 notice of appeal was filed

more than thirty days after June 16, 2003 and is an untimely appeal of the March 7, 2003 divorce decree and the denial of the motion for reconsideration. Thus, we lack jurisdiction over this appeal. See HRAP Rule 26(b) (no court or judge or justice is authorized to change the jurisdictional requirements contained in Rule 4 of these rules); Bacon v. Karlin, 68 Haw. 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). Therefore,

IT IS HEREBY ORDERED that the motion to dismiss is granted, and this appeal is dismissed for lack of appellate jurisdiction.

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

Donna Davis Green
for plaintiff-appellee
on the motion