

*** NOT FOR PUBLICATION ***

NO. 27039

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STEPHANIE J. BRADFORD-FOLEY, nka STEPHANIE J. DIGGS,
Plaintiff-Appellant

vs.

JAMES MICHAEL FOLEY, Defendant-Appellee

APPEAL FROM THE FAMILY COURT OF THE FIRST COURT
(FC-D NO. 97-2496)

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that the November 3, 2004 order denying the October 15, 2004 motion for post-decree relief and awarding attorney's fees and costs was an appealable final order under HRS §§ 571-54 and 641-1(a). The time for appealing the order was extended by the November 12, 2004 motion for reconsideration, which extended the time for appeal until entry of the November 23, 2004 order denying the motion for reconsideration. See HRAP 4(a)(3). The January 3, 2005 notice of appeal was filed more than thirty days after entry of the November 23, 2004 order and is an untimely appeal of the November 3, 2004 order and the November 23, 2004 order. See HRAP 4(a)(3). 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. Bacon v. Karlin,

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STATE OF HAWAII

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68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986). Thus, we lack jurisdiction over this appeal. Therefore,

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

DATED: Honolulu, Hawai'i, April 20, 2005.



Steven K. Keenan

Honua A. K. K. K.



Honua A. K. K.