

*** NOT FOR PUBLICATION ***

NO. 27012

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

LYNN AWAI-TAVARES, Individually and as next friend of
TAVARES, a minor, Plaintiffs-Appellants

vs.

STATE OF HAWAI'I, DEPARTMENT OF EDUCATION, Defendant-Appellee

and

JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10, and DOE
GOVERNMENTAL AGENCIES 1-10 inclusive, Defendants

APPEAL FROM THE SECOND CIRCUIT COURT
(CIV. NO. 99-0778)

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that judgment in Civil No. 99-0778 was entered on October 22, 2004. A second judgment was entered on November 23, 2004, but the second judgment is identical to the October 22, 2004 judgment and its entry did not extend the time for appealing the October 22, 2004 judgment. Cf. Wong v. Wong, 79 Hawai'i 26, 897 P.2d 953 (1995). Notice of entry of the October 22, 2004 judgment was filed by the clerk on October 22, 2004. Appellant's counsel approved the October 22, 2004 judgment as to form and had advance knowledge that the judgment would be entered. Consequently, any failure by the clerk to make service of the October 22, 2004 notice of entry of judgment did not affect the time to appeal the judgment. See HRCF 77(d); Bacon v. Karlin, 68 Haw. 648, 652, 727 P.2d 1127,

CLERK, APPELLATE COURTS
STATE OF HAWAI'I

E. M. RIMANDO

2005 MAY -9 PM 1:27

FILED

*** NOT FOR PUBLICATION ***

1130-31 (1986). Appellant's December 20, 2004 notice of appeal was filed more than thirty days after entry of the October 22, 2004 judgment and is an untimely appeal of the October 22, 2004 judgment. The failure 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, 68 Haw. at 650, 727 P.2d as 1128; HRAP 26(b) ("[N]o court or judge or justice is authorized to change the jurisdictional requirement [of the 30-day appeal period] contained in Rule 4 of [the HRAP]."). Thus, we lack jurisdiction over this appeal. Therefore,

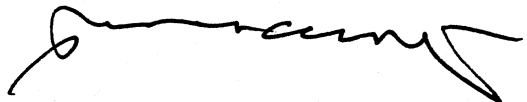
IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, May 9, 2005.



Donald H. Wilson

Fumio U. Nakayama



Kenneth E. Duggan Jr.