

*** NOT FOR PUBLICATION ***

NO. 27360

IN THE SUPREME COURT OF THE STATE OF HAWAII

TOSHIO UCHIMA, Individually and as Guardian Prochein Ami for
HERMAN UCHIMA and DUSTIN UCHIMA, Minors; and YOKO UCHIMA,
Plaintiffs-Appellees

vs.

DURST CORP., Defendant-Appellant

and

ERECT-A-TUBE, INC.; ROTOR WING HAWAII, INC.; JOHN DOES 1-10 and
DOE ENTITIES 1-10, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 98-2949)

ORDER DISMISSING APPEAL

(By: Nakayama, J. for the court¹)

EN RIMANDO
DEPT. OF APPELLATE COURTS
STATE OF HAWAII

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FILED

Upon review of the record, it appears that the proceeding on the March 17, 2005 motion for post-judgment interest was a post-judgment proceeding in Civil No. 98-2949. The May 9, 2005 order determined that post-judgment interest was awardable in the amount sought and granted the March 17, 2005 motion for post-judgment interest of \$33,472.77. The May 9, 2005 order was properly entered in the record and resolved the March 17, 2005 motion. The May 9, 2005 order left nothing further to be accomplished and was the appealable final order in the post-judgment proceeding to award post-judgment interest. See Familian Northwest, Inc. v. Central Pacific Boiler & Piping, Ltd., 68 Haw. 368, 369-70, 714 P.2d 936, 937 (1986) (A post-judgment order is an appealable final order if it finally determines the post-judgment proceeding, leaving nothing further to be accomplished.). Entry of the May 9, 2005 order

¹Considered by: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.

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definitively signaled the end of the proceeding on the March 17, 2005 motion and it was unnecessary for the circuit court to enter the May 20, 2005 judgment as a separate document under HRCp 58. See Ditto v. McCurdy, 103 Hawai'i 153, 158-159, 80 P.3d 974, 979-80 (2003) (The separate judgment of rule of HRCp 58 "is limited to circuit court orders disposing of *claims raised in a circuit court complaint*" and "is inapposite in the post-judgment context."). The time for appealing the post-judgment interest award commenced upon entry of the May 9, 2005 order, not upon entry of the May 20, 2005 judgment. The notice of appeal filed on June 17, 2005 was filed more than thirty days after entry of the May 9, 2005 order and was an untimely appeal of the post-judgment interest award. 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, 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, October 21, 2005.

FOR THE COURT:

Anna C. Nakayama

Associate Justice

