

NO. 30185

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

WAHI HO'OMALU LIMITED PARTNERSHIP,  
a Hawai'i limited partnership, Plaintiff-Appellee,

v.

ROSEMARIE L.K. YEE, Defendant-Appellant,

and

HEIRS OR ASSIGNS OF KEKINO(w), et al., Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT  
(CIVIL NO. 06-1-0140)

ORDER DISMISSING APPEAL

(By: Nakamura, Chief Judge, Foley and Reifurth, JJ.)

Upon review of (1) Plaintiff-Appellee Wahi Ho'omalua Limited Partnership's (Appellee Wahi Ho'omalua) February 22, 2010 motion to dismiss Defendant-Appellant Rosemarie L. K. Lee's (Appellant Lee) appeal for lack of jurisdiction, (2) the lack of any response by Appellant Lee to Appellee Wahi Ho'omalua's February 22, 2010 motion to dismiss Appellant Lee's appeal for lack of jurisdiction, and (3) the record, it appears that we lack jurisdiction over Appellant Lee's appeal from the Honorable Joseph E. Cardoza's February 9, 2009 judgment, because Appellant Lee's appeal is untimely under both Rule 4(a)(1) and Rule 4.1(b)(1) of the Hawai'i Rules of Appellate Procedure (HRAP).

The February 9, 2009 judgment resolves all claims in this case, and, thus, the February 9, 2009 judgment is an appealable final judgment under Hawai'i Revised Statutes

§ 641-1(a) (1993 & Supp. 2009), Rule 58 of the Hawai'i Rules of Civil Procedure, and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). However, Appellant Yee did file her November 18, 2009 notice of appeal within thirty days after entry of the February 9, 2009 judgment, as HRAP Rule 4(a)(1) requires. Therefore, Appellant Yee's appeal in appellate court case number 30185 is untimely under HRAP Rule 4(a)(1). Even if we would treat Appellant Yee's appeal as a cross-appeal from Defendant-Appellant Henry Maio, Jr.'s (Appellant Maio), March 10, 2009 notice of appeal that resulted in appellate court case number 29702, Appellant Yee did not file her November 18, 2009 notice of appeal within sixteen days after Appellant Maio's March 10, 2009 service by mail of Appellant Maio's March 10, 2009 notice of appeal, as HRAP Rule 4.1(b)(1) and HRAP Rule 26(c) require for a notice of cross-appeal when another party has served a notice of appeal by mail. Therefore, Appellant Yee's appeal in appellate court case number 30185 is untimely as a cross-appeal under HRAP Rule 4.1(b)(1).

The failure to file a timely notice of appeal in a civil matter is a jurisdictional defect that the parties cannot waive and the appellate courts cannot disregard in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986); HRAP Rule 26(b) ("[N]o court or judge or justice thereof is authorized to change the jurisdictional requirements contained in Rule 4 of [the HRAP]."). Consequently, we lack appellate jurisdiction over Appellant Yee's appeal in appellate court case number 30185. Therefore,

IT IS HEREBY ORDERED that Appellee Wahi Ho'omalulu's February 22, 2010 motion to dismiss Appellant Lee's appeal for lack of jurisdiction is granted and this appeal is dismissed.

DATED: Honolulu, Hawai'i, April 15, 2010.

Chief Judge

Associate Judge

Associate Judge