

NO. 30255

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

DAWN ALVERIO, Plaintiff-Appellee, v.
JOEL ALVERIO, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 09-1-1091)

ORDER GRANTING FEBRUARY 12, 2010 MOTION
TO DISMISS APPEAL FOR LACK OF JURISDICTION
(By: Nakamura, Chief Judge, Fujise and Leonard, JJ.)

Upon review of (1) Plaintiff-Appellee Dawn Alverio's (Appellee) February 12, 2010 motion to dismiss appellate court case number 30255 for lack of jurisdiction, (2) the lack of any opposition by Defendant-Appellant Joel Alverio (Appellant) to Appellee's February 12, 2010 motion to dismiss appellate court case number 30255 for lack of jurisdiction, and (3) the record, it appears that we do not have jurisdiction over Appellant's appeal from the Honorable Jennifer Ching's October 28, 2009 divorce decree, because Appellant's appeal is untimely pursuant to Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP).

The October 28, 2009 divorce decree is an appealable final divorce decree pursuant to Hawai'i Revised Statutes § 571-54 (2006) and the holding in Eaton v. Eaton, 7 Haw. App. 111, 118-19, 748 P.2d 801, 805 (1987). However, Appellant did not file his December 21, 2009 notice of appeal within thirty days after entry of the October 28, 2009 divorce decree, as HRAP Rule 4(a)(1) requires for a timely appeal. Therefore, Appellant's appeal is untimely.

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 jurisdiction over this case. Accordingly,

IT IS HEREBY ORDERED that Appellee's February 12, 2010 motion to dismiss appellate court case number 30255 for lack of jurisdiction is granted, and this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, March 24, 2010.

Chief Judge

Associate Judge

Associate Judge