

NO. 30505

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

KATHLEEN B. WILKINS,
Plaintiff-Appellant,

v.

AMERICAN INSTITUTE OF MASSAGE THERAPY, a Hawaii corporation,
Defendant-Appellee,

and

JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, et al.,
Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 07-1-0514)

ORDER DISMISSING APPEAL
FOR LACK OF APPELLATE JURISDICTION

(By: Fujise, Presiding Judge, Reifurth and Ginoza, JJ.)

Upon review of the record, it appears that court lacks jurisdiction over the appeal that Plaintiff-Appellant Kathleen B. Wilkins (Appellant Wilkins) has asserted from the April 8, 2010 judgment issued by the Circuit Court of the First Circuit (circuit court)¹, because Appellant Wilkins's May 18, 2010 notice of appeal is untimely under Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP).

The April 8, 2010 judgment resolved all claims against all parties, and, thus, the April 8, 2010 judgment is an appealable final judgment in this case pursuant to Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2009), Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP), and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

Appellant Wilkins did not file her May 18, 2010 notice of appeal within thirty days after entry of the April 8, 2010

¹ The Honorable Rom A. Trader, presided.

judgment, as HRAP Rule 4(a)(1) requires. Therefore, Appellant Wilkins's May 18, 2010 notice of appeal is untimely under HRAP Rule 4(a)(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 this case. Accordingly,

IT IS HEREBY ORDERED that appellate court case number 30505 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, September 10, 2010.

Presiding Judge

Associate Judge

Associate Judge