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SCWC-12-0000870

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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ASSOCIATION OF CONDOMINIUM HOMEOWNERS OF TROPICS AT WAIKELE,  
by its Board of Directors, Respondent/Plaintiff-Appellee,

vs.

PATSY NAOMI SAKUMA, Petitioner/Defendant-Appellant,

and

FIRST HAWAIIAN BANK, a Hawai'i corporation; and  
WAIKELE COMMUNITY ASSOCIATION, a Hawai'i nonprofit corporation,  
Respondents/Defendants-Appellees.

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CERITORARI TO THE INTERMEDIATE COURT OF APPEALS  
(CAAP-12-0000870; CIV. NO. 07-1-1487)

DISSENT BY NAKAYAMA, J.

I respectfully dissent. I would reject the application for writ of certiorari on the ground that the Intermediate Court of Appeals (ICA) did not err in dismissing Petitioner Patsy N. Sakuma's (Sakuma) appeal for lack of jurisdiction.

The ICA dismissed Sakuma's appeal as untimely pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rules 4(a)(1) and 4(a)(3). Pursuant to HRAP Rule 4(a)(1), "[w]hen a civil appeal is permitted by law, the notice of appeal shall be filed within 30 days after entry of the judgment or appealable order." HRAP

Rule 4(a)(3) specifies that a motion for reconsideration constitutes a tolling motion and that when a motion for reconsideration is timely filed following a judgment, "the time for filing the notice of appeal is extended until 30 days after entry of an order disposing of the motion." Any motion that is not disposed of within 90 days is automatically deemed denied and the parties have 30 days as of the date of automatic denial to file the notice of appeal. HRAP Rules 4(a)(1) and 4(a)(3).

This case arises from the Association of Condominium Homeowners of Tropics at Waikale (AOAO) foreclosure on Sakuma's condominium unit after she failed to pay maintenance fees and other association dues. The Circuit Court of the First Circuit (circuit court) entered a default judgment and foreclosure decree on June 10, 2008,<sup>1</sup> and confirmed the sale to a third-party bidder by judgment dated August 31, 2010. Due to the delay in closing caused by two appeals filed by Sakuma, the winning bidder for the property withdrew his offer and the circuit court permitted the auction to be re-opened.<sup>2</sup> By order and judgment entered on May 29, 2012, the circuit court confirmed the foreclosure sale to a new third-party purchaser.

On June 7, 2012, Sakuma timely filed a motion for reconsideration of the circuit court's May 29, 2012 order. The

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<sup>1</sup> The Honorable Karen N. Blondin presided.

<sup>2</sup> The Honorable Bert I. Ayabe presided.

circuit court failed to rule within the HRAP Rule 4(a)(3) mandated 90 day period and the motion was automatically deemed denied on September 5, 2012. Pursuant to HRAP Rule 4(a)(3), Sakuma's motion for reconsideration tolled the time for filing a notice of appeal until 30 days after the September 5, 2012 deemed denial. Therefore, her deadline for filing the appeal was October 5, 2012. Sakuma, however, did not file her notice of appeal until October 16, 2012.

On January 11, 2013, the ICA dismissed Sakuma's appeal for lack of jurisdiction. Assoc. of Condominium Homeowners of Tropics at Waikele ex rel. Bd. of Dirs. v. Sakuma (Sakuma II), CAAP-12-0000870, 2013 WL 150175, at \*1 (Haw. App. Jan. 11, 2013) (order). The ICA's dismissal was based on its conclusion that the timing requirements of HRAP Rules 4(a)(1) and 4(a)(3) were non-waivable jurisdictional requirements.

The ICA "shall have jurisdiction . . . [t]o hear and determine appeals from any court or agency when appeals are allowed by law." Hawai'i Revised Statutes (HRS) § 602-57 (Supp. 2012) (emphasis added). "But to be effective, 'an appeal must be taken in the manner and within the time provided by the rules of court.'" Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1129 (1986) (alterations omitted) (quoting HRS § 641-1(c)(1976)). "'As a general rule, compliance with the requirement of the timely filing of a notice of appeal is jurisdictional'" and the ICA must dismiss an appeal if it lacks jurisdiction. Ditto v.

McCurdy, 103 Hawai‘i 153, 157, 80 P.3d 974, 978 (2003) (quoting Grattafiori v. State, 79 Hawai‘i 10, 13, 897 P.2d 937, 940 (1995)). “An appellant’s failure to file a timely notice of appeal is a jurisdictional defect that can neither be waived by the parties nor disregarded by the court in exercise of judicial discretion.” Poe v. Haw. Labor Relations Bd., 98 Hawai‘i 416, 418, 49 P.3d 382, 384 (2002) (quoting Wong v. Wong, 79 Hawai‘i 26, 29, 897 P.2d 953, 956 (1995)).

In Cabral v. State, 127 Hawai‘i 175, 277 P.3d 269 (2012), we explained that the authority for the time constraints in HRAP Rule 4(a) was derived from the requirement of HRS § 641-1(c) (1993) that “an appeal shall be taken in the manner and within the time provided by the rules of court.”<sup>3</sup> 127 Hawai‘i at 184, 277 P.3d at 278 (quoting HRS § 641-1(c) (1993)). Citing the decision of the United States Supreme Court in Bowles v. Russell, 551 U.S. 205 (2007), we reasoned that “rules regarding time constraints that are derived from statutes specifically limiting a court’s jurisdiction are considered ‘jurisdictional.’” Id. at 182, 277 P.3d at 276. An appellant’s failure to file a timely

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<sup>3</sup> In Cabral, we considered whether the “unique circumstances” doctrine applied to grant the ICA jurisdiction over an otherwise untimely appeal filed in reliance upon the trial court’s erroneously granted extension for the plaintiff’s notice of appeal. 127 Hawai‘i at 177-78, 277 P.3d 271-72. We held that, while “the time constraints in HRAP Rule 4(a)(4)(A) are jurisdictional, we consider its requirement that a request for an extension of time be made by motion and for good cause, an aspect of ‘claim processing.’” Id. at 184, 277 P.3d at 278 (emphasis in original) (footnote omitted). We therefore concluded that the ICA had jurisdiction over the plaintiff’s untimely appeal due to the unique circumstances of the plaintiff’s reliance on the trial court’s erroneous extension. Id. at 177, 277 P.3d at 271. Here, there was no analogous reliance upon an extension.

notice of appeal pursuant to HRAP Rule 4(a) is such a jurisdictional defect.

HRAP Rule 26(b) specifically references the jurisdictional nature of the timing requirements in HRAP Rule 4(a). It provides:

The Hawai'i appellate courts, or any judge or justice thereof, for good cause shown upon motion may extend the time prescribed by these rules for doing any act, or may permit an act to be done after the expiration of such time. Provided however, no court or judge or justice is authorized to change the jurisdictional requirements contained in [HRAP] Rule 4 . . . ."

HRAP Rule 26(b) (emphasis added); See also Cabral, 127 Hawai'i at 184, 277 P.3d at 278 (citing HRAP Rule 26(b) for the principle that the time constraints in HRAP Rule 4 are non-waivable jurisdictional requirements). Thus, while HRAP Rule 26(b) allows appellate courts to grant time extensions in certain circumstances for good cause shown, it specifically notes that "no court or judge or justice" may allow exceptions to the HRAP Rule 4 time constraints. See HRAP Rule 26(b).

Although HRAP Rule 2 contains a general provision permitting Hawaii's appellate courts to suspend the Hawai'i Rules of Appellate Procedure for good cause shown, this provision may not be applied to suspend the jurisdictional requirements of Rule 4. HRAP Rule 2 provides:

In the interest of expediting a decision, or for other good cause shown, either Hawai'i appellate court may suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction.

In construing statutes or rules, “laws in pari materia, or upon the same subject matter, shall be construed with reference to each other.” Aloha Care v. Ito, 126 Hawai‘i 326, 349, 271 P.3d 621, 644 (2012) (alterations omitted) (quoting HRS § 1-16 (1993)); see also State v. Bohannon, 102 Hawai‘i 228, 239, 74 P.3d 980, 991 (2003) (Acoba, J., dissenting) (applying the principle of in pari materia to the Hawai‘i Rules of Appellate Procedure). And, “[w]hen faced with ‘a plainly irreconcilable conflict between a general and a specific statute concerning the same subject matter,’ this court invariably favors the specific.” Kinkaid v. Bd. of Review of City and Cnty. of Honolulu, 106 Hawai‘i 318, 323, 104 P.3d 905, 910 (2004) (some internal quotation marks omitted) (quoting Metcalf v. Vol. Emps. Ben. Ass’n of Haw., 99 Hawai‘i 53, 59, 52 P.3d 823, 829 (2002)). Thus, the specific provision of HRAP Rule 26(b), stating that “no court or judge or justice is authorized to change the jurisdictional requirements of [HRAP] Rule 4,” controls over the conflicting general provision of HRAP Rule 2, allowing for the suspension of the requirements of “any of these rules.”

Even if this court were to apply HRAP Rule 2 to Sakuma’s untimely appeal, no good cause exists to permit the ICA to review her appeal. Sakuma does not plead any special circumstances that prevented her from meeting the filing requirements of HRAP Rule 4(a). And, while ignorance of the rule does not constitute good cause, Sakuma cannot even claim that she

was unaware of HRAP Rule 4(a)'s timing requirements. Sakuma's first appeal to the ICA was dismissed as untimely based on circumstances identical to those of the present appeal. In both instances the circuit court failed to rule on a motion for reconsideration within 90 days and Sakuma thereby had 30 days as of the date of deemed denial to file a notice of appeal. Compare Assoc. of Condominium Homeowners of Tropics of Waikele ex rel. Bd. of Dirs. v. Sakuma (Sakuma I), CAAP-11-0000054, 2011 WL 3435052, at \*1 (Haw. App. Aug. 3, 2011) (order), with Sakuma II, 2013 WL 150175, at \*1. In the ICA's order denying Sakuma's first appeal, that court clearly articulated how the 30 day timing requirement of HRAP Rule 4(a)(1) was triggered by HRAP Rule 4(a)(3)'s deemed denial of a tolling motion after 90 days. See Sakuma I, 2011 WL 3435052, at \*1. Where Sakuma has failed to articulate any special circumstances preventing her from complying with HRAP Rule 4(a), we should not apply Rule 2 to grant her the extraordinary relief of reviewing her untimely appeal over which the ICA clearly lacked jurisdiction.

While we have repeatedly stated that the requirements of due process are "'flexible and call[] for such procedural protections as the particular situation demands,'" our application of the Hawai'i Rules of Appellate procedure must not be so inconsistent and unpredictable as to deprive the rules of meaning. In re 'Īao Ground Water Mgmt. Area High-Level Source Water Use Permit App., 128 Hawai'i 228, 269, 287 P.3d 129, 170

(2012) (quoting Ko'olau Agric. Co. v. Comm'n on Water Res. Mgmt., 83 Hawai'i 484, 496, 927 P.2d 1367, 1379 (1996)). A civil statute fails to meet the requirements of due process when it is "so vague and indefinite as really to be no rule or standard at all." In re Guardianship of Carlsmith, 113 Hawai'i 236, 245, 151 P.3d 717, 726 (2007). Similarly, permitting haphazard exceptions to the jurisdictional requirements of HRAP Rule 4 risks eroding the rule to the point of meaninglessness and would itself constitute a due process violation.

Therefore, where the ICA was required to dismiss Sakuma's untimely appeal for lack of jurisdiction, I respectfully dissent to this court's grant of Sakuma's application for writ of certiorari.

DATED: Honolulu, Hawai'i, April 24, 2013.

/s/ Paula A. Nakayama

