

Electronically Filed
Supreme Court
SCWC-12-0000870
17-DEC-2013
08:02 AM

IN THE SUPREME COURT OF THE STATE OF HAWAII

---o0o---

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.

SCWC-12-0000870

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

DECEMBER 17, 2013

DISSENTING OPINION BY NAKAYAMA, J.

I must respectfully dissent from the majority's holding
that the Intermediate Court of Appeals (ICA) had jurisdiction

over Sakuma's appeal. I believe that the majority misreads the Hawai'i Rules of Appellate Procedure (HRAP) Rule 4(a)(3). When the filing deadlines contained in HRAP Rule 4(a)(3) are properly applied, Sakuma's notice of appeal was untimely and the ICA therefore lacked jurisdiction over her appeal.

"An appeal shall be taken in the manner and within the time provided by the rules of court." Hawai'i Revised Statutes (HRS) § 641-1(c). For every appeal, the appellate court must first determine whether it has jurisdiction. Poe v. Haw. Labor Relations Bd., 98 Hawai'i 416, 418, 49 P.3d 382, 384 (2002).

"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." Id. (quoting Wong v. Wong, 79 Hawai'i 26, 29, 897 P.2d 953, 956 (1995)). The appellate court must dismiss an appeal if it lacks jurisdiction. Ditto v. McCurdy, 103 Hawai'i 153, 157, 80 P.3d 974, 978 (2003).

Generally, "[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)(1). However, pursuant to HRAP Rule 4(a)(3):

If any party files a timely motion for judgment as a matter of law, to amend findings or make additional findings, for a new trial, to reconsider, alter or amend the judgment or order, or for attorney's fees or costs, the time for filing

the notice of appeal is extended until 30 days after entry of an order disposing of the motion; provided, that the failure to dispose of any motion by order entered upon the record within 90 days after the date the motion was filed shall constitute a denial of the motion.

Under the majority's reading of HRAP Rule 4(a)(3), the "deemed denial" of a post-judgment motion upon a failure of the court to enter an order disposing of the motion does not constitute an "order disposing of the motion." Thus, the majority concludes that after the filing of a post-judgment motion, the time for filing an appeal is extended until 30 days after the court actually files an order with the clerk of the court disposing of the motion, regardless of any earlier "deemed denial" of the motion.

The majority quotes Keliipuleole v. Wilson, 85 Hawai'i 217, 221, 941 P.2d 300, 304 (1997), for the guiding principles in interpreting rules and statutes: "[C]ourts are bound to give effect to all parts of a statute, and that no clause, sentence, or word shall be construed as superfluous, void, or insignificant if a construction can be legitimately found which will give force to and preserve all words of the statute." 85 Hawai'i at 221, 941 P.2d at 304. The majority's reading of HRAP Rule 4(a)(3) disregards this principle of statutory construction and renders the second clause of the rule superfluous. Under the majority's interpretation, a "deemed denial" is not ripe for appeal until

the court affirmatively issues an order disposing of the post-judgment motion. By stating that a "deemed denial" is not an "order disposing of the motion," the "deemed denial" is stripped of all legal effect.

The majority's reading also disregards the role of HRAP Rule 4(a)(3)'s second clause in modifying and clarifying the general rule contained in the first clause. The first clause states that a post-judgment motion extends the time for filing a notice of appeal to 30 days after the court enters an order disposing of the motion. The second clause clarifies that the circuit court only has 90 days to dispose of a post-judgment motion, and that after 90 days the motion is "deemed denied." These clauses are linked by the term "provided." Black's Law Dictionary defines "provided" as: (1) "On the condition or understanding"; (2) "Except"; and (3) "And." Black's Law Dictionary 1345 (9th ed. 2009). Applying these common definitions, it is apparent that the "deemed denial" after 90 days, contained in the second clause, is meant to clarify and create an exception to the general practice of disposing of a motion by order. As these two clauses are meant to be read in conjunction, the proper reading of HRAP Rule 4(a)(3) is that the filing of a post-judgment motion extends the deadline for filing an appeal until 30 days after the disposition of the motion by

order or by "deemed denial."

Applying this reading of HRAP Rule 4(a)(3) to this case, Sakuma's appeal was untimely. Sakuma filed her motion for reconsideration in the circuit court on June 7, 2012. The circuit court failed to rule upon her motion within the 90-day period and her motion was "deemed denied" on September 5, 2012. Pursuant to HRAP Rule 4(a)(3), Sakuma's motion for reconsideration tolled the time for filing the appeal until 30 days after the "deemed denial." Therefore, the deadline for filing the notice of appeal was October 5, 2012. Sakuma's October 16, 2012 notice of appeal was untimely and the ICA therefore lacked jurisdiction over her appeal.

/s/ Paula A. Nakayama

