

**Electronically Filed
Supreme Court
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SCWC-16-0000800

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

STATE OF HAWAI‘I, By Its Office of Consumer Protection,
Respondent/Plaintiff-Appellee,

vs.

DEBORAH ANN HOKULANI JOSHUA,
Petitioner/Defendant-Appellant,

and

RONALD R. RABANG and MATTHEW G. AIELLO,
Respondents/Defendants-Appellees.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-16-0000800; CIVIL NO. 08-1-1-0240)

DISSENT

(By: Nakayama, J., in which Recktenwald, C.J., joins)

I respectfully dissent from this court's acceptance of
Petitioner's application for writ of certiorari.

In its February 16, 2017 order granting Respondent's
December 12, 2016 motion to dismiss the appeal, the Intermediate
Court of Appeals (ICA) correctly held that it lacked appellate
jurisdiction because Petitioner's notice of appeal filed on
November 9, 2016 was untimely. Petitioner was required to file

her notice of appeal by November 7, 2016 (thirty days after entry of the October 6, 2016 second amended judgment and permanent injunction) or file a timely post-judgment motion to toll the appeal deadline.¹ See HRAP Rule 4(a)(1) (“When 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) (a timely post-judgment motion extends the appeal deadline until thirty days after entry of an order disposing of the motion). Petitioner did not file a post-judgment tolling motion. Therefore, the notice of appeal was due no later than November 7, 2016. Petitioner, however, filed her notice of appeal two days later, on November 9, 2016. Thus, the appeal was untimely. See Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1129 (1986) (“[A]n 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 the exercise of judicial discretion.’” (alteration in original) (quoting Naki v. Hawaiian Electric Co., 50 Haw. 85, 86, 431 P.2d 943, 944 (1967))); HRAP Rule 26(b) (“[N]o court or judge or justice is authorized to change the jurisdictional requirements contained in [HRAP] Rule 4.”).

¹ The actual deadline to file an appeal was November 5, 2016. See Hawai‘i Rules of Appellate Procedure (HRAP) Rule 4(a)(1). However, because this deadline fell on a Saturday (a weekend), the filing deadline was extended to the following Monday (November 7, 2016). See HRAP Rule 26(a) (“In computing any period of time prescribed by these rules, . . . [t]he last day of the period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period extends until the end of the next day that is not a Saturday, a Sunday, or a legal holiday.”)

Petitioner's application for writ of certiorari does not contest the grounds upon which the ICA granted Respondent's motion to dismiss. Rather than proffering any argument that the ICA erred in holding that her notice of appeal was untimely, Petitioner contends that the ICA should have dismissed the appeal because she was never served with a copy of the complaint and the statute of limitations had passed.

Insofar as I agree with the ICA that it lacked appellate jurisdiction over the appeal and Petitioner does not challenge the ICA's determination that her notice of appeal was untimely, I would reject Petitioner's application for writ of certiorari.

DATED: Honolulu, Hawai'i, April 27, 2017.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

