NO. CAAP-16-0000398

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAIʻI

YURIE YAMANO, Plaintiff-Appellant, v.
DOCTOR KEIICHI KOBAYASHI and
DOCTOR KATIE HUANG, Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 14-1-2135 (RAN))

SUMMARY DISPOSITION ORDER
(By: Leonard, Presiding Judge, Reifurth and Ginoza, JJ.)

Plaintiff-Appellant Yurie Yamano (**Yamano**) appeals *pro se* from the Order Denying Plaintiff's Ex Parte Motion to Expedite the Demand for Final Judgment Pursuant to H.R. Civ. P. Rule 54, Filed April 14, 2016 (**Order Denying Post-Judgment Motion**), which was entered on May 4, 2016, by the Circuit Court of the First Circuit (**Circuit Court**).[1]

On appeal, Yamano states four related points of error, asserting that the Circuit Court: (1) erred by not issuing a final judgment and thereby violated Yamano's due process right to be heard under Hawaii Revised Statutes (**HRS**) § 641-1; (2) abused

[1] The Honorable Rhonda A. Nishimura presided.

its discretion by failing to issue a final judgment in a separate document; (3) abused its discretion for failing to issue a final judgment as according to law; and (4) abused its discretion "by not looking at the guaranteed Constitutional Right verses procedure of a subchapter of a state law that subverts that right."

Upon careful review of the record and the briefs submitted by the parties, and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Yamano's points of error as follows:

Defendants-Appellees Keiichi Kobayashi, M.D., and Katie Huang, M.D., (**Appellees**) correctly note that Yamano has failed to comply with various provisions in the Hawaiʻi Rules of Appellate Procedure (**HRAP**). Nevertheless, this court observes a policy of affording *pro se* litigants the opportunity "to have their cases heard on the merits, where possible." O'Connor v. Diocese of Honolulu, 77 Hawaiʻi 383, 386, 885 P.2d 361, 364 (1994).

The gravamen of Yamano's appeal is that she was denied due process with respect to an appeal from the dismissal of her medical malpractice claims against Appellees. All of Yamano's contentions appear to be based on her mistaken belief that the Circuit Court failed to reduce its dismissal orders to a final judgment that is appealable under HRS § 641-1(a) (2016). However, on August 20, 2015, the Circuit Court entered a Judgment that was an immediately appealable final judgment under HRS § 641-1(a), Hawaiʻi Rules of Civil Procedure Rule 58, and the

holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawaiʻi 115, 119, 869 P.2d 1334, 1338 (1994).

Yamano did not file a notice of appeal within thirty days after entry of the August 20, 2015 Judgment, as HRAP Rule 4(a)(1) requires for a timely appeal. 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, 1129 (1986); HRAP Rule 26(b) ("[N]o court or judge or justice is authorized to change the jurisdictional requirements contained in Rule 4 of these rules."); HRAP Rule 26(e) ("The reviewing court for good cause shown may relieve a party from a default occasioned by any failure to comply with these rules, except the failure to give timely notice of appeal."). Therefore, Yamano's appeal herein was untimely with respect to the August 20, 2015 Judgment and we lack appellate jurisdiction to review the August 20, 2015 Judgment.

Nevertheless, the May 4, 2016 Order Denying Post-Judgment Motion was appealable under HRS § 641-1(a) as an independently appealable post-judgment order. See Ditto v. McCurdy, 103 Hawaiʻi 153, 157, 80 P.3d 974, 978 (2003). Yamano filed her May 13, 2016 Notice of Appeal within thirty days after entry of the Order Denying Post-Judgment Motion, as HRAP Rule 4(a)(1) required for a timely appeal. Therefore, we have appellate jurisdiction to review the May 4, 2016 Order Denying Post-Judgment Motion.

However, as the Circuit Court did in fact enter a final judgment on Yamano's complaint, the arguments raised in this appeal are without merit.

Accordingly, the Circuit Court's May 4, 2016 Order Denying Post-Judgment Motion is affirmed.

DATED: Honolulu, Hawaiʻi, May 17, 2017.

On the briefs:

Yurie Yamano,
Plaintiff-Appellant *pro se*.

Presiding Judge

Thomas E. Cook,
Malia E. Schreck,
(Lyons, Brandt, Cook & Hiramatsu)
for Defendant-Appellee
KEIICHI KOBAYASHI, M.D.

Associate Judge

John S. Nishimoto,
Ryan I. Inouye
(Chong, Nishimoto, Sia, Nakamura & Goya)
for Defendant-Appellee
KATIE HUANG, M.D.

Associate Judge