

NO. CAAP-13-0000424

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

In the Matter of the Tax Appeal of BOBBY R. NARMORE,
Appellant-Appellant,
v.
DEPARTMENT OF TAXATION, STATE OF HAWAII, Appellee-Appellee

APPEAL FROM THE TAX APPEAL COURT
STATE OF HAWAII
(CASE NO. 02-0065)

ORDER
(1) DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
AND
(2) ALL PENDING MOTIONS ARE DISMISSED AS MOOT
(By: Nakamura, C.J., Leonard and Reifurth, JJ.)

Upon review of the record on appeal in CAAP-13-0000424, it appears that this court lacks appellate jurisdiction.

On May 1, 2012, the tax appeal court entered a Final Judgment in favor of the State of Hawaii, Department of Taxation and against Taxpayer-Appellant-Appellant Bobby R. Narmore (Appellant). On May 14, 2012, Appellant filed a "Motion for a New Trial and for Altering or Amending the Judgment Filed May 24, 2012. (New Trial Motion)" On April 1, 2013, the tax appeal court issued an "Order Denying Appellant's [New Trial Motion]." On

April 24, 2013, Appellant filed a notice of appeal from the Order Denying Appellant's New Trial Motion.

When a party files a timely tolling motion that extends the time period for filing a notice of appeal pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 4(a)(3), "[t]he rule provides that the court has 90 days to dispose of [the] post-judgment [tolling] motion . . . , regardless of when the notice of appeal is filed." Buscher v. Boning, 114 Hawai'i 2020, 221, 159 P.3d 814, 833 (2007). When "the court fail[s] to issue an order on [the movant]'s motion by . . . ninety days after [the movant has] filed the motion, the motion [i]s deemed denied." County of Hawai'i v. C & J Coupe Family Limited Partnership, 119 Hawai'i 352, 367, 198 P.3d 615, 630 (2008).

Although the tax appeal court entered an order denying Appellant's New Trial Motion on April 1, 2013, the tax appeal court did not enter the order within 90 days after it was filed. Therefore, the motion was deemed denied on August 13, 2012. C&J Coupe Family, 119 Hawai'i at 367, 198 P.3d at 630. Appellant then had until September 12, 2012 to file a notice of appeal. Appellant did not file his Notice of Appeal until April 24, 2013. Therefore, Appellant's notice of appeal was untimely.

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). Therefore, this court lacks appellate jurisdiction over this appeal.

THEREFORE, IT IS HEREBY ORDERED that the appeal is dismissed for lack of appellate jurisdiction.

IT IS FURTHER ORDER that all pending motions are dismissed as moot.

DATED: Honolulu, Hawai'i, October 9, 2013.

Chief Judge

Associate Judge

Associate Judge