

NO. CAAP-15-0000431

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

AMBROSE S. FERNANDEZ, JR., Plaintiff-Appellant,
v.
STATE OF HAWAI'I, DEPT. OF PUBLIC SAFETY-SHERIFF DIVISION,
et al., Defendants-Appellees,
and
JOHN DOES 1-10, JANE DOES 1-10, DOE GOVERNMENTAL ENTITIES 1-10,
DOE CORPORATIONS 1-10, DOE NON-PROFIT CORP. 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 14-1-0097-01)

ORDER

DISMISSING APPELLATE COURT CASE NUMBER
CAAP-15-0000431 FOR LACK OF APPELLATE JURISDICTION

AND

DISMISSING AS MOOT ALL PENDING MOTIONS IN
APPELLATE COURT CASE NUMBER CAAP-15-0000431
(By: Nakamura, C.J., Reifurth and Ginoza, JJ.)

Upon review of the record, it appears that we lack jurisdiction over the appeal that Plaintiff-Appellant Ambrose S. Fernandez, Jr. (Appellant Fernandez) has asserted from the Honorable Karl K. Sakamoto's December 31, 2014 final judgment and March 20, 2015 post-judgment order, because Appellant Fernandez's May 20, 2015 notice of appeal is untimely under Rule 4(a) of the Hawai'i Rules of Appellate Procedure (HRAP).

Although the December 31, 2014 final judgment and March 20, 2015 post-judgment order were final and appealable under Hawaii Revised Statutes § 641-1(a) (1993 & Supp. 2014), HRAP Rule 4(a) required Appellant Fernandez to file a notice of

appeal within thirty days after entry of any appealable judgment or appealable post-judgment order. Appellant Fernandez did not file his May 20, 2015 notice of appeal within thirty days after entry of the December 31, 2014 final judgment or the March 20, 2015 post-judgment order, as HRAP Rule 4(a) required him to do.

The circuit court appears to have stamped a written request by Appellant Fernandez as "DENIED" on April 7, 2015. Even assuming that this was an appealable order, Appellant Fernandez did not file his May 20, 2015 notice of appeal within thirty days after entry of the April 7, 2015 file-stamped document.

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); HRAP Rule 26(b) ("[N]o court or judge or justice is authorized to change the jurisdictional requirements contained in Rule 4 of [the HRAP]."). Consequently, we lack appellate jurisdiction over this case. Accordingly,

IT IS HEREBY ORDERED that appellate court case number CAAP-15-0000431 is dismissed for lack of appellate jurisdiction.

IT IS FURTHER HEREBY ORDERED that all pending motions in appellate court case number CAAP-15-0000431 are dismissed as moot.

DATED: Honolulu, Hawai'i, September 28, 2015.

Chief Judge

Associate Judge

Associate Judge