

NO. CAAP-15-0000178

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

BMW BANK OF NORTH AMERICA, Plaintiff-Appellee, v.
ANNA E. QUINATA, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 12-1-1432-05)

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Foley, Presiding Judge, Leonard and Ginoza, JJ.)

Upon review of the record, it appears that we lack jurisdiction over the appeal that Defendant-Appellant Anna E. Quinata (Appellant Quinata) has asserted from the Honorable Rhonda A. Nishimura's February 9, 2015 judgment, because Appellant Quinata's March 19, 2015 notice of appeal is untimely under Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP).

Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & Supp. 2014) authorizes appeals from final judgments, orders, or decrees. Appeals under HRS § 641-1 "shall be taken in the manner . . . provided by the rules of court." HRS § 641-1(c). Rule 58

of the Hawai'i Rules of Civil Procedure (HRCP) requires that "[e]very judgment shall be set forth on a separate document." Based on this requirement under HRCP Rule 58, the Supreme Court of Hawai'i has held that "[a]n appeal may be taken . . . only after the orders have been reduced to a judgment and the judgment has been entered in favor of and against the appropriate parties pursuant to HRCP [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

"Thus, based on Jenkins and HRCP Rule 58, an order is not appealable, even if it resolves all claims against the parties, until it has been reduced to a separate judgment." Carlisle v. One (1) Boat, 119 Hawai'i 245, 254, 195 P.3d 1177, 1186 (2008).

The February 9, 2015 judgment enters judgment in favor of Plaintiff-Appellee BMW Bank of North America (Appellee BMW Bank of North America) and against Appellant Quinata as to Count 1 of Appellee BMW Bank of North America's three-count complaint. Although the February 9, 2015 judgment does not resolve all of the claims in this case, the February 9, 2015 judgment contains an express finding of no just reason for delay in the entry of judgment as to one or more but fewer than all claims or parties, as HRCP Rule 54(b) requires for certification under the holding in Jenkins. Therefore, the February 9, 2015 judgment is an appealable final judgment pursuant to HRS § 641-1(a), HRCP Rule 54(b), HRCP Rule 58 and the holding in Jenkins.

However, Appellant Quinata did not file her March 19, 2015 notice of appeal within thirty days after entry of the February 9, 2015 judgment, as HRAP Rule 4(a)(1) required for a

timely appeal. Therefore, Appellant Quinata's appeal is 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); 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]."); 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."). Consequently, we lack appellate jurisdiction over this case.

Accordingly, IT IS HEREBY ORDERED that appellate court case number CAAP-15-0000178 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, June 30, 2015.

Presiding Judge

Associate Judge

Associate Judge