

NO. CAAP-15-0000769

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

RICARDO GARZA SALINAS, Plaintiff-Appellee,  
v.  
CHRISTINE N. LOMINARIO, Defendant-Appellant,  
and  
ALL OCCUPANTS, Defendants-Appellees

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT  
(CASE NO. 3RC15-1-0423)

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION  
(By: Nakamura, C.J., Foley and Leonard, JJ.)

Upon review of the record, it appears that we lack jurisdiction over this appeal that Defendant-Appellant Christine N. Lominario (Appellant Lominario) has asserted from the Honorable Harry P. Freitas's July 20, 2015 judgment for possession, because Appellant Lominario's October 22, 2015 notice of appeal is untimely under Rule 4(a)(3) of the Hawaii Rules of Appellate Procedure (HRAP) as to the July 20, 2015 judgment for possession.

The July 20, 2015 judgment for possession is an immediately appealable district court judgment pursuant to Hawaii Revised Statutes (HRS) 641-1(a) (1993 & Supp. 2015) and the

doctrine in Forgay v. Conrad, 47 U.S. 201 (1848) (the Forgay doctrine). See Ciesla v. Reddish, 78 Hawai'i 18, 20, 889 P.2d 702, 704 (1995) (regarding the two requirements for appealability under the Forgay doctrine).

Pursuant to HRCPP Rule 4(a)(3), Appellant Lominario extended the initial thirty-day time period under HRAP Rule 4(a)(1) for filing a notice of appeal from the July 20, 2015 judgment for possession when Appellant Lominario served her July 23, 2015 post-judgment motion for reconsideration pursuant to District Court Rule of Civil Procedure (DCRCP) Rule 59 within ten days after entry of the July 20, 2015 judgment for possession, as DCRCP Rule 59 required for a timely post-judgment motion that invoked the tolling provision in HRAP Rule 4(a)(3) and extended the time period for filing a notice of appeal. HRAP Rule 4(a)(3) provides that when a party files a timely post-judgment motion for reconsideration of a judgment, "the time for filing the notice of appeal is extended until 30 days after entry of an order disposing of the motion[.]" See, e.g., Association of Condominium Homeowners of Tropics at Waikale v. Sakuma, 131 Hawai'i 254, 256, 318 P.3d 94, 96 (2013). Consequently, the thirty-day time period under HRAP Rule 4(a)(3) for filing a notice of appeal from July 20, 2015 judgment for possession commenced upon entry of the district court's August 13, 2015 post-judgment order denying Appellant Lominario's July 23, 2015 DCRCP Rule 59 post-judgment motion for reconsideration of the July 20, 2015 judgment for possession. However, Appellant Lominario did not file her October 22, 2015 notice of appeal within thirty days after entry of the August 13, 2015 post-judgment order denying Appellant Lominario's July 23, 2015 DCRCP Rule 59 post-judgment motion for reconsideration of the July 20, 2015 judgment for possession, in violation of HRAP Rule 4(a)(3). Therefore, Lominario's appeal is not timely. 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 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, we lack appellate jurisdiction over Appellant Lominario's untimely appeal.

Accordingly, IT IS HEREBY ORDERED that appellate court case number CAAP-15-0000769 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, April 7, 2016.

Chief Judge

Associate Judge

Associate Judge