

NO. CAAP-15-0000807

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

VICTORIA SHAGANENKO, Plaintiff-Appellant
v.
DENISE YAMAUCHI, KAZI RESTAURANTS IN HAWAII, INC.,
BURGER KING CORPORATION, Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 14-1-0595)

ORDER
(1) DISMISSING THE APPEAL FOR LACK OF APPELLATE JURISDICTION
AND
DISMISSING AS MOOT ALL PENDING MOTIONS
(By: Foley, Presiding Judge, Leonard and Ginoza, JJ.)

Upon review of the record, it appears that we lack jurisdiction over this appeal by Plaintiff-Appellant Victoria Shaganenko (**Appellant**), pro se, because her October 29, 2015 notice of appeal is untimely under Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (**HRAP**) as to the September 14, 2015 Judgment.¹

Although the September 14, 2015 Judgment is final and appealable pursuant to Hawaii Revised Statutes § 641-1(a) (Supp. 2015), Rule 58 of the Hawai'i Rules of Civil Procedure, and the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994), Appellant failed to file

¹ The Honorable Edwin C. Nacino issued the Judgment.

her notice of appeal within thirty days after entry of the September 14, 2015 Judgment, as required by HRAP Rule 4(a)(1). 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, we lack appellate jurisdiction over the appeal in appellate court case number CAAP-15-0000807.

Accordingly, IT IS HEREBY ORDERED that Appellate Case No. CAAP-15-0000807 is dismissed for lack of appellate jurisdiction.

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

DATED: Honolulu, Hawai'i, May 12, 2016.

Presiding Judge

Associate Judge

Associate Judge