

NO. CAAP-17-0000697

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

BRIAN A. BILBERRY, Plaintiff-Appellee,
v.
CHRISTOPHER FISHKIN, Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
(CASE NO. DC-TRO 17-1-0178)

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Ginoza, Chief Judge, Fujise and Reifurth, JJ.)

Upon review of the record, it appears that we lack jurisdiction over this appeal by Respondent-Appellant Christopher Fishkin (**Appellant**) because his September 28, 2017 notice of appeal from the August 28, 2017 Order Granting Petition for Injunction Against Harassment (**Order Granting Petition**), issued by the District Court of the Second Circuit, Wailuku Division,¹ is untimely, under Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (**HRAP**).

Although the August 28, 2017 Order Granting Petition is final and appealable, pursuant to Hawaii Revised Statutes § 641-1(a) (2016), Appellant failed to file his notice of appeal within thirty days after entry of the order, 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

^{1/} The Honorable Blaine J. Kobayashi issued the Order.

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. Accordingly,

IT IS HEREBY ORDERED that Appellate No. CAAP-17-0000697 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, June 26, 2018.

Chief Judge

Associate Judge

Associate Judge