

NO. CAAP-19-0000348

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

KA'U SUNSHINE LLC, Plaintiff-Appellee, v. Unknown heirs or assigns of KANAKALAUAI (w), also known as HANAKALAUAI (w); KEKAPA (k); SAMUELA (k); KAAMAI (w); PILIPO KAPALAMA (k), also known as KAPALAMA PILIPO (k); KAPALAMA (k), also known as PALAMA (k); KANEAMAHI (w), also known as KANIAMAHI (w) and KANEAMAHI FREDENBURG (w); ANNIE APIKI, also known as ANNA APIKI; BENEDICT K. APIKI, also known as BENEDICT KEOLANI APIKI; MRS. THOMAS ROBINS, also known as LUPUA FREDENBURG, VICTORIA ROBINS and VICTORIA L. FREDENBURG ROBINS; KANOE (w); ENAENA (k); KEO (k); KEOLA; and ALL WHOM IT MAY CONCERN, Defendants-Appellees, and ANDERSON X. LINDSEY, Real Party In Interest-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 17-1-0256)

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Reifurth, Presiding Judge, Chan and Hiraoka, JJ.)

Upon review of the record, it appears that we lack appellate jurisdiction over this appeal by Defendant-Appellant Anderson Lindsey (Lindsey) from the February 7, 2019 judgment entered by the Circuit Court of the Third Circuit in favor of Plaintiff-Appellee Ka'u Sunshine LLC in Civil No. 17-1-0256. Lindsey's April 12, 2019 notice of appeal is untimely under Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP). The February 7, 2019 judgment was an appealable final judgment under Hawaii Revised Statutes § 641-1(a) (2016) and Rule 58 of the

Hawai'i Rules of Civil Procedure under the holding in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). Lindsey did not file his April 12, 2019 notice of appeal within thirty days after entry of the February 7, 2019 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, 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."). We lack appellate jurisdiction.

Therefore, IT IS HEREBY ORDERED that appellate court case number CAAP-19-0000348 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, June 28, 2019.

Presiding Judge

Associate Judge

Associate Judge