

**Electronically Filed
Intermediate Court of Appeals
CAAP-19-0000565
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NO. CAAP-19-0000565

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

ANTHONY B. ARUDA and CORINNE S. ARUDA IN THEIR CAPACITIES AS THE SUCCESSOR CO-TRUSTEES IN AND UNDER THAT CERTAIN ALFRED ARUDA REVOCABLE LIVING TRUST AGREEMENT DATED JULY 19, 1976; ANTHONY B. ARUDA and CORINNE S. ARUDA IN THEIR CAPACITIES AS THE SUCCESSOR CO-TRUSTEES IN AND UNDER THAT CERTAIN MARY T. ARUDA REVOCABLE LIVING TRUST AGREEMENT DATED JULY 19, 1976; LISA R. ARUDA BROWN, TRUSTEE UNDER THAT CERTAIN UNRECORDED LISA R. ARUDA BROWN REVOCABLE LIVING TRUST DATED DECEMBER 3, 1991, Plaintiffs, v. HEIRS AND ASSIGNS OF KAHANAPULE (w) also known as MALEKA/MAREKA (w); HEIRS AND ASSIGNS OF LUAKA (w) also known as LUAKAA (w); HEIRS AND ASSIGNS OF ENOKA KAUPENA (k); HEIRS AND ASSIGNS OF KAHELEMAUNA KAUPENA (w) also known as MAUNA KAUPENA (w) also known as KAHELEMAUNA KANUHA (w) also known as KAHELEMAUNA APAPAU; and Heirs of persons named above who are deceased, or persons holding under said Heirs, and spouses, assigns, successors, personal representatives, executors, administrators, and trustees of persons named above who are deceased; STATE OF HAWAII; COUNTY OF MAUI; DEPARTMENT OF HAWAIIAN HOME LANDS OF THE STATE OF HAWAII; RONALD R. JACINTHO, SR., individually and as Trustee for the Ronald R. Jacintho Trust; MIRIAM M. JACINTHO individually and as the Trustee of the Mariam M. Jacintho Family Exempt Trust and as the Trustee of the Mariam Jacintho Family QTIP Marital Trust and the following adjoining land owners: MO'OLOA RANCH, LLC, a Delaware limited liability company; ULUPALAKUA RANCH, INC., a Hawaii corporation, JOHN DOES 1-50; JANE DOES 1-50; DOE PARTNERSHIPS 1-50; DOE CORPORATIONS

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1-50; DOE ENTITIES 1-50; and DOE GOVERNMENTAL
UNITS 1-50, and all other persons unknown claiming
any right, title, estate, lien or interest in the
real property described and TO ALL WHOM IT MAY
CONCERN, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CIVIL NO. 16-1-0621(2))

ORDER GRANTING AUGUST 23, 2019 MOTION TO
DISMISS APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Fujise, Presiding Judge, Leonard and Chan, JJ.)

Upon review of (1) the August 23, 2019 motion by Plaintiff-Appellee Anthony B. Aruda and Corinne S. Aruda in their capacities as the Successor Co-Trustees in and under that certain Alfred Aruda Revocable Living Trust Agreement Dated July 19, 1976, Anthony B. Aruda and Corinne S. Aruda in their capacities as the Successor Co-Trustees in and under that certain Mary T. Aruda Revocable Living Trust Agreement Dated July 19, 1976, and Lisa R. Aruda Brown, Trustee under that certain unrecorded Lisa R. Aruda Brown Revocable Living Trust Dated December 3, 1991 (the Arudas) to dismiss the appeal in CAAP-19-0000565 for lack of appellate jurisdiction, (2) the lack of any memorandum by Defendant-Appellant King Kamehameha VII, Ni'i Loa Moe~Kapu (Ni'i Loa Moe~Kapu), self-represented, in opposition to the Arudas' August 23, 2019 motion, and (3) the record, it appears that we lack appellate jurisdiction.

Pursuant to Hawaii Revised Statutes (HRS) § 641-1(a) (2016) and Rule 58 of the Hawai'i Rules of Civil Procedure (HRCPP), an aggrieved party may appeal from a civil circuit court case "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 HRCPP [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). "[A]n appeal from any judgment will be dismissed as premature if the judgment does not, on its face, either resolve all claims against all parties or contain the

finding necessary for certification under HRCP [Rule] 54(b)." Id. (original emphasis).

On April 11, 2018, the circuit court entered an order dismissing Ni'i Loa Moe~Kapu as a party from this case. It appears that the circuit court reduced the April 11, 2018 dismissal order, as well as other dispositive orders, to an appealable final judgment by entering a June 27, 2018 HRCP Rule 54(b)-certified judgment (June 27, 2018 Judgment). In the June 27, 2018 Judgment, the circuit court (1) entered judgment in favor of the Arudas' and against all of the multiple defendants as to Count 1 and Count 2 of second amended complaint, and (2) dismissed Count 4 of the second amended complaint. No party timely appealed from the June 27, 2018 Judgment.

Instead, on April 11, 2019, Ni'i Loa Moe~Kapu filed two non-conforming motions that appear to seek post-judgment relief under HRCP Rule 60(b) from the April 11, 2018 dismissal order. On April 22, 2019, the circuit court entered a post-judgment order that struck, and, in effect, denied Ni'i Loa Moe~Kapu's two April 11, 2019 motions for post-judgment relief, leaving nothing further for the circuit court to accomplish with respect to those motions. "An order denying a motion for post-judgment relief under HRCP [Rule] 60(b) is an appealable final order under HRS § 641-1(a)." Ditto v. McCurdy, 103 Hawai'i 153, 160, 80 P.3d 974, 981 (2003) (citation omitted). Therefore, the April 22, 2019 order was an appealable final post-judgment order pursuant to HRS § 641-1(a). Ni'i Loa Moe~Kapu did not file his August 9, 2019 notice of appeal within thirty days after entry of the April 22, 2019 order, as Hawai'i Rules of Appellate Procedure (HRAP) Rule 4(a)(1) requires for a timely appeal. 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

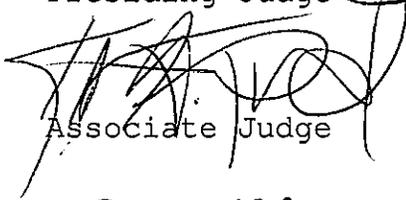
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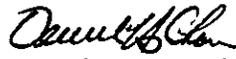
discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986); HRAP Rule 26(b).

Therefore, IT IS HEREBY ORDERED that the Arudas' August 23, 2019 motion to dismiss is granted, and CAAP-19-0000565 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, October 18, 2019.


Presiding Judge


Associate Judge


Associate Judge