

NO. CAAP-20-0000116

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

DB, now known as DP, Plaintiff-Appellant, v.
BB, Defendant-Appellee

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-D NO. 07-1-0864)

ORDER
DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
AND
DISMISSING AS MOOT ALL PENDING MOTIONS IN CAAP-20-0000116
(By: Ginoza, Chief Judge, Leonard and Wadsworth, JJ.)

Upon review of the record, it appears that we lack appellate jurisdiction over this appeal by Plaintiff-Appellant D.P.,¹ self-represented, from the Honorable Elizabeth Paek-Harris's December 10, 2019 post-judgment order (Post-Judgment Order) granting in part and denying in part Defendant-Appellee B.B.'s August 21, 2019 motion to alter or amend an August 12, 2019 post-judgment order on D.P.'s September 5, 2018 motion for post-decree relief regarding child custody and visitation. D.P.'s March 2, 2020 notice of appeal is untimely under Rule 4(a) of the Hawai'i Rules of Appellate Procedure (HRAP).

¹ Because this case involves a controversy regarding the custody of the parties' minor child, we refer to the parties according to their initials rather than their full names in accordance with Rule 3(c)(1) of the Hawai'i Rules of Appellate Procedure.

In this post-judgment proceeding, D.P. sought relief from a July 11, 2008 divorce decree that had dissolved D.P.'s marriage with B.B. in FC-D No. 07-1-0864. The Post-Judgment Order finally determined and ended this proceeding, and, thus, was an independently appealable final post-judgment order under Hawaii Revised Statutes § 571-54 (2018). See Hall v. Hall, 96 Hawai'i 105, 111 n.4, 26 P.3d 594, 600 n.4 (App. 2001) (regarding a family court's appealable final post-judgment order), affirmed in part, and vacated in part on other grounds, Hall v. Hall, 95 Hawai'i 318, 22 P.3d 965 (2001), overruled in part on other grounds, Eckard Brandes, Inc., v. Dept. of Labor and Industrial Relations, SCWC-19-0000095, slip op. (Hawai'i April 20, 2020); cf. Ditto v. McCurdy, 103 Hawai'i 153, 157, 80 P.3d 974, 978 (2003) (regarding a circuit court's appealable final post-judgment order).

On February 3, 2020, the family court entered an order granting D.P.'s January 8, 2020 motion to extend the initial thirty-day time period under HRAP Rule 4(a)(1) for filing a notice of appeal by thirty additional days pursuant to HRAP Rule 4(a)(4)(A). With respect to the initial thirty-day time period, the thirtieth day after entry of the Post-Judgment Order was Thursday, January 9, 2020. With respect to the family court's thirty-day extension, the thirtieth calendar day after January 9, 2020, was Saturday, February 8, 2020, and, thus, HRAP Rule 26(a) automatically extended the thirty-day extension until Monday, February 10, 2020. However, D.P. did not file her March 2, 2020 notice of appeal by February 10, 2020, and it was therefore untimely. 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), (e).

Therefore, IT IS HEREBY ORDERED that appellate court case number CAAP-20-0000116 is dismissed for lack of appellate jurisdiction.

IT IS FURTHER HEREBY ORDERED that all pending motions in appellate court case number CAAP-20-0000116 are dismissed as moot.

DATED: Honolulu, Hawai'i, May 22, 2020.

/s/ Lisa M. Ginoza
Chief Judge

/s/ Katherine G. Leonard
Associate Judge

/s/ Clyde J. Wadsworth
Associate Judge