

**Electronically Filed
Intermediate Court of Appeals
CAAP-19-0000676
18-AUG-2020
07:51 AM**

NO. CAAP-19-0000676

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

SHAREEN WAIHI'IKA'AHU'ULA KAHEAKU, Appellant-Appellant, v.
STATE OF HAWAII, CHILD SUPPORT ENFORCEMENT AGENCY, and
ADAM KARIM SAKRI, Appellees-Appellees

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(FC-AP NO. 18-1-6009)

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

Upon review of the record of this appeal by Appellant-Appellant S.K., self-represented, from the June 28, 2019 order in Family Court FC-AP No. 18-1-6009 affirming the Office of Child Support Hearings' August 1, 2018 order confirming the registration of a foreign child support order pursuant to Hawaii Revised Statutes (HRS) Chapter 576B and the Uniform Interstate Family Support Act, it appears that S.K.'s October 3, 2019 notice of appeal is untimely under Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP).

The June 28, 2019 order is an appealable final order pursuant to HRS § 571-54 (2018). HRAP Rule 4(a)(1) required that S.K.'s notice of appeal be filed within 30 days after the June 28, 2019 order. However, the Family Court entered a September 3, 2019 order granting S.K.'s July 29, 2019 motion to extend the time for filing the notice of appeal until October 7, 2019, pursuant to HRAP Rule 4(a)(4), which provides:

(4) Extensions of Time to File the Notice of Appeal.

(A) Requests for Extensions of Time Before Expiration of the Prescribed Time. The court or agency appealed from, upon a showing of good cause, may extend the time for filing a notice of appeal upon motion filed within the time prescribed by subsections (a)(1) through (a)(3) of this Rule. However, no such extension shall exceed 30 days past such prescribed time. An extension motion that is filed before the expiration of the prescribed time may be ex parte unless the court or agency otherwise requires.

(B) Requests for Extensions of Time After Expiration of the Prescribed Time. The court or agency appealed from, upon a showing of excusable neglect, may extend the time for filing the notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by subsections (a)(1) through (a)(3) of this Rule. However, no such extension shall exceed 30 days past the prescribed time. Notice of an extension motion filed after the expiration of the prescribed time shall be given to the other parties in accordance with the rules of the court or agency appealed from.

HRAP Rule 4(a)(4) (emphases added). "Although a trial court's decision to grant an extension of time to file a notice of appeal is reviewed under an abuse of discretion standard, its interpretation of the rules governing such extensions is reviewed de novo." Cabral v. State, 127 Hawai'i 175, 179-80, 277 P.3d 269, 273-74 (2012) (citation omitted; emphasis added). Both HRAP Rule 4(a)(4)(A) and HRAP Rule 4(a)(4)(B) limit any extension of time to no more than thirty days past the "prescribed time" period under HRAP Rule 4(a)(1) or HRAP Rule 4(a)(3). In the absence of any tolling motions that could have invoked the tolling provision in HRAP Rule 4(a)(3), the initial "prescribed time" period under HRAP Rule 4(a)(1) was thirty days.

The thirtieth calendar day after entry of the June 28, 2019 order was Sunday, July 28, 2019, and, thus, HRAP Rule 26(a) automatically extended the thirty-day prescribed time period under HRAP Rule 4(a)(1) for filing a notice of appeal until Monday, July 29, 2019. Both HRAP Rule 4(a)(4)(A) and HRAP Rule 4(a)(4)(B) limited any extension of time until the thirtieth day after July 29, 2019, which was Wednesday, August 28, 2019. Nevertheless, the Family Court entered the September 3, 2019 order extending the time period to file a notice of appeal until October 7, 2019. Both HRAP Rule 4(a)(4)(A) and HRAP Rule

4(a)(4)(B) prohibited the Family Court from extending the time for S.K. to file a notice of appeal beyond August 28, 2019. Therefore, the Family Court's extended deadline of October 7, 2019 is invalid, and S.K.'s October 3, 2019 notice of appeal is 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); HRAP Rule 26(e),

Accordingly, IT IS HEREBY ORDERED that appellate court case number CAAP-19-0000676 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, August 18, 2020.

/s/ Katherine G. Leonard
Presiding Judge

/s/ Derrick H.M. Chan
Associate Judge

/s/ Keith K. Hiraoka
Associate Judge