

NO. CAAP-21-0000154

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

JOHN A. RUSSELL, Petitioner-Appellee, v.
AZIZI KAIAMA, Respondent-Appellant,
NIKKI VELLINA; CAT VELINNA also known as PHILIX "KAT" VELLINA;
MAKA COLLIER; JUSTIN COLLIER; AUKAI COLLIER;
CHRISTOPHER COPPA; VINCENT SUKI, Respondents-Appellees,
DOES 1-50, Respondents

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
WAILUKU DIVISION
(CASE NO 2DSS-20-0000299)

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

Upon review of the record, it appears that we lack jurisdiction over the appeal by self-represented Respondent-Appellant Azizi **Kaiama** from the District Court of the Second Circuit, Wailuku Division's post-judgment (1) February 8, 2021 Order Granting Petitioner[-Appellee] John A. **Russell**'s Non-Hearing Motion for Fees and Costs Against [Kaiama] (**Fees & Costs Order**), and (2) March 8, 2021 judgment on the Fees & Costs Order (**Fees & Costs Judgment**) because the appeal is untimely.

A "post-judgment order [by a district court] is an appealable final order under HRS [Hawaii Revised Statutes] § 641-1(a) if the order ends the proceedings, leaving nothing further to be accomplished." Ditto v. McCurdy, 103 Hawai'i 153, 157, 80 P.3d 974, 978 (2003) (citation omitted). The Fees & Costs Order was final and appealable because it finally determined, and thus ended, the post-judgment proceeding on

Russell's Non-Hearing Motion for Fees and Costs Against [Kaiama]. See Chun v. Bd. of Tr. of Emps.' Ret. Sys. of State of Hawai'i, 106 Hawai'i 416, 428 n.12, 106 P.3d 339, 351 n.12 (2005).

Once the district court issued the Fees & Costs Order, there was no need for the district court to enter the subsequent Fees & Costs Judgment. Because the Fees & Costs Judgment did not amend the Fees & Costs Order in a material and substantial respect, for the purpose of perfecting an aggrieved party's right to appeal, the Fees & Costs Judgment is superfluous. Korsak v. Hawai'i Permanente Med. Grp., 94 Hawai'i 297, 304, 12 P.3d 1238, 1245 (2000).

Kaiama did not file the notice of appeal within thirty days after issuance of the Fees & Costs Order, as required by Hawai'i Rules of Appellate Procedure (**HRAP**) Rule 4(a)(1), and it does not appear that she obtained an extension of time. Therefore, the appeal is untimely. Ditto, 103 Hawai'i at 159-60, 80 P.3d at 980-81. 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, 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, IT IS HEREBY ORDERED that the appeal in CAAP-21-0000154 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, November 17, 2021.

/s/ Keith K. Hiraoka
Presiding Judge

/s/ Clyde J. Wadsworth
Associate Judge

/s/ Karen T. Nakasone
Associate Judge