

NO. CAAP-23-0000354

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

MIKAEL KLEMME, Petitioner-Appellee, v.
CARMELA BURTELL and LAUREN BURTELL, Respondents-Appellants

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT
WAILUKU DIVISION
(CASE NO. 2DSS-21-0000358)

ORDER GRANTING MOTION TO DISMISS APPEAL AND
DENYING ATTORNEYS' FEES AND COSTS
(By: Ginoza, Chief Judge, Wadsworth and Guidry, JJ.)

Upon consideration of Plaintiff-Appellee Mikael Klemme's (**Klemme**) June 5, 2023 Motion to Dismiss Appeal and For Award of Attorneys' Fees and Costs (**Motion**), the papers in support and in opposition, and the record, it appears that:

(1) Klemme seeks dismissal of the appeal filed by self-represented Defendants-Appellants Lauren Burtell and Carmela Burtell (**Burtells**) as untimely, and an award under Hawaii Revised Statutes (**HRS**) § 604-10.5(h) for attorneys' fees and costs incurred in bringing the Motion.

(2) The Burtells filed their May 23, 2023 Notice of Appeal more than 30 days after entry of the District Court of the Second Circuit's December 20, 2021 Order Granting Petition for Injunction Against Harassment, which is outside of the deadline set forth in Hawaii Rules of Appellate Procedure (**HRAP**) Rule 4(a)(1). The record does not indicate that the Burtells received an extension of time to appeal under HRAP Rule 4(a)(4), or that the deadline was otherwise tolled by a timely-filed post-judgment

motion under HRAP Rule 4(a)(3). Compliance with the requirement of timely filing a notice of appeal is jurisdictional.

Grattafiori v. State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995); see also 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").

(3) The award of attorneys' fees and costs under HRS § 604-10.5(h) is discretionary.

Therefore, IT IS HEREBY ORDERED that the Motion is granted in part and denied in part as follows:

1. The appeal is dismissed for lack of jurisdiction.
2. The request for attorneys' fees and costs is denied.

DATED: Honolulu, Hawai'i, June 30, 2023.

/s/ Lisa M. Ginoza
Chief Judge

/s/ Clyde J. Wadsworth
Associate Judge

/s/ Kimberly T. Guidry
Associate Judge