

**Electronically Filed
Intermediate Court of Appeals
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NO. CAAP-25-0000830

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

DAVID BROWN and SANTO TRIOLO, Plaintiffs-Appellees, v.
AUGUSTINE ANDREW PONCE; AUGUSTINE ANDREW PONCE, AS TRUSTEE OF
THE REVOCABLE LIVING TRUST OF AUGUSTINE ANDREW PONCE DATED
MAY 23, 2024, Defendants-Appellants, and
JANICE HARRIS;

CHILD SUPPORT ENFORCEMENT AGENCY, STATE OF HAWAI'I;
STATE OF HAWAI'I, HAWAI'I HEALTH SYSTEMS CORPORATION,
dba MAUI MEMORIAL MEDICAL CENTER, Defendants-Appellees, and
DOE DEFENDANTS 1-20, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CIVIL NO. 2CCV-24-0001007)

ORDER GRANTING IN PART MOTION TO DISMISS APPEAL

(By: Leonard, Presiding Judge, McCullen and Guidry, JJ.)

Upon consideration of Plaintiffs-Appellees David Brown and Santo Triolo's (**Appellees**) December 19, 2025 Motion to Dismiss Appeal and for Award of Attorneys' Fees and Costs, the papers in support, the record, and there being no timely opposition filed, it appears as follows.

On November 18, 2025, self-represented Defendant-Appellant Augustine Andrew Ponce (**Appellant**) filed a notice of appeal from the Circuit Court of the Second Circuit's October 16, 2025 Judgment on Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs' Motion for Summary Judgment and for Interlocutory Decree of Foreclosure (**Judgment**). Appellees seek dismissal of the appeal as untimely.

The court lacks appellate jurisdiction because the notice of appeal was not timely-filed within thirty days of the

Judgment, as required under Hawai'i Rules of Appellate Procedure (**HRAP**) Rule 4(a)(1),¹ and the record does not indicate that Appellant received an extension of time to appeal under HRAP Rule 4(a)(4), or that the deadline was tolled by a timely 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).

Appellees further seek an award of their attorneys' fees and costs in bringing their motion, citing Hawai'i Revised Statutes (**HRS**) § 604-10.5(h) and HRAP Rule 39. HRS § 604-10.5(h) (2016) governs awards of attorneys' fees and costs in District Court actions to enjoin and temporarily restrain harassment; however, this appeal is from a Circuit Court foreclosure case. While HRAP Rule 39(a) allows taxation of costs against an appellant when dismissing an appeal, Appellees' motion does not request an award of costs. Thus, the court will deny the request.

Therefore, IT IS HEREBY ORDERED that the December 19, 2025 Motion to Dismiss Appeal and for Award of Attorneys' Fees and Costs is granted in part and denied in part as follows:

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

DATED: Honolulu, Hawai'i, January 8, 2026.

/s/ Katherine G. Leonard
Presiding Judge

/s/ Sonja M.P. McCullen
Associate Judge

/s/ Kimberly T. Guidry
Associate Judge

¹ Per HRAP Rules 4(a)(1) and 26(a), the deadline to appeal was Monday, November 17, 2025.