

NO. 29689

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

IN THE MATTER OF THE PROTECTION OF F.Y.,
a Dependant, Incapacitated Person

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT (HILO)
(FC-AA NO. 04-1-0001)

ORDER GRANTING OCTOBER 14, 2009 MOTION
TO DISMISS APPEAL FOR LACK OF JURISDICTION
(By: Nakamura, C.J., Watanabe and Foley, JJ.)

Upon review of (1) Petitioner-Appellee State of Hawaii Department of Human Services' (Appellee DHS) October 14, 2009 motion to dismiss appellate court case number 29689 for lack of jurisdiction and (2) the record, it appears that we do not have jurisdiction over the appeal that Respondent-Appellant Velda M. Yamanaka (Appellant Yamanaka) has asserted from a January 7, 2009 order that Appellant Yamanaka claims the Honorable Glenn S. Hara filed in this case, because the record on appeal does not contain a January 7, 2009 order, and Appellant Yamanaka's appeal is untimely as to the most recent order that the Honorable Glenn S. Hara filed in this case, namely, the February 9, 2006 "Order Granting Ex Parte Motion for Order Terminating Jurisdiction" (the February 9, 2006 order terminating jurisdiction).

This case was a family court proceeding for Appellee DHS's petition for an order for protection of a dependent adult pursuant to Hawaii Revised Statutes (HRS) § 346-223 (1993) and HRS § 346-31 (1993). At the conclusion of such a proceeding,

"[a]ny party aggrieved by an order or decree of the court may appeal as provided by section 571-54." HRS § 346-243 (1993). "An interested party aggrieved by any order or decree of the court may appeal to the intermediate appellate court for review of questions of law and fact upon the same terms and conditions as in other cases in the circuit court[.]" HRS § 571-54 (2006). In circuit court cases, a party may appeal from "final judgments, orders, or decrees[.]" HRS § 641-1(a) (1993 & Supp. 2008). Consequently, "appeals in family court cases, as in other civil cases, may be taken only from (1) a final judgment, order, or decree, . . . or (2) a certified interlocutory order." In re Doe, 96 Hawaii 272, 283, 30 P.3d 878, 889 (2001) (citations omitted). "Final order means an order ending the proceedings, leaving nothing further to be accomplished." Familian Northwest v. Central Pacific Boiler, 68 Haw. 368, 370, 714 P.2d 936, 937 (1986) (citations and internal quotation marks omitted).

Although Appellant Yamanaka purports to be appealing from a January 7, 2009 order, the record on appeal does not contain a January 7, 2009 order. The most recent order in the record on appeal is the February 9, 2006 order terminating jurisdiction, which appears to have ended all proceedings for this case, leaving nothing further to be determined. Therefore, the February 9, 2006 order terminating jurisdiction is the appealable final order in this case pursuant to HRS § 346-243.

Appellant Yamanaka did not file her March 5, 2009 notice of appeal within ninety days after entry of the February 9, 2006 order terminating jurisdiction, as Rule 4(a)(1)

of the Hawaii Rules of Appellate Procedure requires for a timely appeal. Therefore, Appellant Yamanaka's 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) ("[N]o court or judge or justice thereof is authorized to change the jurisdictional requirements contained in Rule 4 of [the HRAP]."). Consequently, we lack jurisdiction over this case. Accordingly,

IT IS HEREBY ORDERED that Appellee DHS's October 14, 2009 motion to dismiss appellate court case number 29689 for lack of jurisdiction is granted, and appellate court case number 29689 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawaii, December 21, 2009.

Chief Judge

Associate Judge

Associate Judge