

NO. 23856

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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ROGELIO EVANGELISTA, Plaintiff-Appellee

vs.

EVERETT DEAN SPEARS, Defendant-Appellant

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APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT  
(CIV. NO. W2000-370)

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ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson,  
Nakayama, Ramil, and Acoba, JJ.)

Upon review of the record, it appears that the April 7, 2000 judgment for possession was immediately appealable under the Forgay doctrine by notice of appeal filed within 30 days after entry of the judgment. HRAP 4(a)(1); Ciesla v. Reddish, 78 Hawai'i 18, 889 P.2d 702 (1995). The time for appealing the judgment was extended by the April 7, 2000 motion to set aside the judgment. HRAP 4(a)(3). The motion was not disposed by a written order entered on the record within 90 days after the motion was filed and the motion was deemed denied on July 6, 2000 for purposes of HRAP 4(a)(3). See HRAP 4(a)(3). Appellant was required to file his notice of appeal by August 5, 2000, but notice of appeal was not filed until October 30, 2000. Thus, the appeal of the April 7, 2000 judgment for possession is untimely and we lack jurisdiction to review the judgment. HRAP 26(b); Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986)

(the failure of an appellant to file a timely notice of appeal in a civil matter is a jurisdictional defect that can neither be waived by the parties nor disregarded by the appellate court in the exercise of judicial discretion). The immediate appeal of the April 7, 2000 judgment being untimely, review of the judgment must await entry of a judgment for damages. See Ciesla v. Reddish, supra.

Absent final disposition of the summary possession case by entry of a judgment for damages, the appeal of the October 16, 2000 order denying the April 28, 2000 motion to set aside judgment is a premature appeal of an interlocutory order. Therefore,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, March 6, 2001.