

NO. 23771

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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RALPH A. SCHRADER, Appellant-Appellee

vs.

CITY AND COUNTY OF HONOLULU, DEPARTMENT OF PLANNING AND  
PERMITTING, ZONING BOARD OF APPEALS, Appellee-Appellant

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NO. 99-1064)

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

Upon review of the statements supporting and contesting jurisdiction and the record, it appears that: (1) the notice of appeal filed on September 26, 2000 was filed more than thirty days after entry of the August 25, 2000 final judgment and is an untimely appeal of the judgment; HRAP 4(a)(1) and 26(a); (2) the service-by-mail rule of HRAP 26(c) does not apply to the period of time prescribed by HRAP 4(a)(1) inasmuch as the time for appeal is measured from entry of the judgment, not service of the judgment; and, thus, (3) we lack jurisdiction over this appeal. See 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).

It further appears that the issue of whether the time for appeal should have been extended under HRAP 4(a)(4)(B) is not

before the appellate court inasmuch as the disposition of the motion for extension of time to appeal was entered after the appeal was docketed in the supreme court and is not part of the record on appeal. Therefore,

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

DATED: Honolulu, Hawai'i, January 8, 2001.