

Iriarte v. Individual Assurance Co.
17 FSM Intrm. 78 (App. 2010)

FSM SUPREME COURT APPELLATE DIVISION

WILLIAM IRIARTE, LILLY-JEAN IRIARTE,)	APPEAL CASE NO. P1-2009
EMMY SANTOS, and AMBROS & CO.,)	CIVIL ACTION NO. 2003-023
)	
Appellants,)	
)	
vs.)	
)	
INDIVIDUAL ASSURANCE CO.,)	
)	
Appellee.)	
)	

ORDER

Decided: March 10, 2010

BEFORE:

Hon. Martin G. Yinug, Associate Justice, FSM Supreme Court
Hon. Dennis K. Yamase, Associate Justice, FSM Supreme Court
Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court

APPEARANCE:

For the Appellants:	Mary Berman, Esq.
(the Iriartes)	P.O. Box 163
	Kolonia, Pohnpei FM 96941

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HEADNOTES

Appellate Review – Briefs, Record, and Oral Argument

Appellate Rule 10(b) is instructive in designating the specific portions of the trial transcript that comprise the record on appeal and it requires that, within 10 days after filing the notice of appeal from a final judgment of a trial court, the appellant request a transcript only of such parts of the proceedings not already on file as the appellant deems necessary. Iriarte v. Individual Assurance Co., 17 FSM Intrm. 78, 79 (App. 2010).

Appellate Review – Briefs, Record, and Oral Argument

The record on appeal includes the transcript of proceedings designated and ordered by the parties, as specified in Appellate Rule 10(a), and the clerk must transmit the record when requested, but, when there is more than one set of appellants in a case, there may not be a single record on appeal. Iriarte v. Individual Assurance Co., 17 FSM Intrm. 78, 80 (App. 2010).

Appellate Review – Briefs, Record, and Oral Argument

When each set of appellants' actions are separate, one set of appellants may not access the portions of the trial transcript created specifically for use in the separate appeal initiated by another appellant. Allowing one set of appellants to do so would permit them to make an end run around the

transcript request and payment mechanism provided for in Appellate Rule 10(b), and would permit them to unfairly benefit from the proper transcript request and payment made by another appellant. Iriarte v. Individual Assurance Co., 17 FSM Intrm. 78, 80 (App. 2010).

Appellate Review – Briefs, Record, and Oral Argument

If one set of appellants wants to access portions of the transcript they had not properly requested and paid for but which was ordered by a different appellant, they are free to either request portions of the trial transcript from the other appellant if they work out an equitable payment scheme with that appellant or they may submit a supplemental transcript order to obtain the requested portions of the transcript from the court reporter at the fee set by General Court Order No. 1991-3. Neither the Rules of Appellate Procedure nor the general principles of equity permit appellants to obtain from the Clerk's Office portions of the trial transcript they did not request in their original transcript order and for which they have not compensated the court reporter. Iriarte v. Individual Assurance Co., 17 FSM Intrm. 78, 80 (App. 2010).

* * * *

COURT'S OPINION

PER CURIAM:

Appellants William Iriarte and Lilly Iriarte ("Appellants Iriarte") filed a Motion for Order to the Chief Clerk to Permit Counsel to Inspect the Record on January 15, 2010. Appellants Iriarte claim that the Chief Clerk has refused to allow them access to the complete trial transcript, and that as a result, they are unable to provide the appellate court with complete citations in their opening brief. Appellants Iriarte claim that FSM Rules of Appellate Procedure 10(a) and 11(d) provide authority for their motion, and allege that the complete trial transcript constitutes part of the record on appeal. For reasons discussed below, the Court hereby denies the motion and directs the Chief Clerk to refrain from producing any portion of the trial transcript to any appellant unless specifically requested and paid for by that appellant as required by FSM Appellate Rule 10(b)(4).

Appellants Iriarte cite to FSM Appellate Rule 10(a) as support for their position that the complete trial transcript should be made available to them for use in preparing their opening brief. While it is true that portions of the trial transcript that have been requested by a party constitute the record on appeal under Appellate Rule 10(a), the language of Appellate Rule 10(b) is instructive in designating the specific portions of the trial transcript that comprise the record on appeal. In particular, Rule 10(b)(1) requires that, within 10 days after filing the notice of appeal from a final judgment of a trial court, the appellant request from the Court a transcript *only of such parts of the proceedings not already on file as the appellant deems necessary* (emphasis added). Appellants Iriarte complied with this requirement in the Notice of Issues Raised on Appeal; Transcript Order that they filed on June 16, 2009. Specifically, Appellants Iriarte requested "that part of Emmy Santos's testimony given at about 4:30 p.m. on Thursday, March 19, 2009, in which Emmy Santos describes all of the details of the first time that she allegedly was instructed by Lilly Iriarte to sign Lilly Iriarte's name to an IAC check and to cash it at Ambros & Co." Appellants Iriarte also listed the issues they intended to raise on appeal, in compliance with Appellate Rule 10(b)(3). The Court prepared the designated portions of the trial transcript for Appellants Iriarte, who paid the court reporter for only those portions of the transcript at the rate designated in General Court Order No. 1985-7 (amended and replaced by General Court Order No. 1991-3).

Subsequently, on June 17, 2009, Appellant Ambros & Company, Inc. ("Appellant Ambros") filed

its Notice of Appeal and Statement of Issues and ordered a complete transcript of the trial.¹ Appellant Ambros paid the court reporter at the rate designated in General Court Order No. 1991-3 for production of the complete trial transcript pursuant to its individual request.

Appellants Iriarte are correct that the record on appeal includes the transcript of proceedings designated and ordered by the parties, as specified in Appellate Rule 10(a), and that the Clerk must transmit the record when requested, as specified in Appellate Rule 11(d). However, what Appellants Iriarte apparently fail to appreciate is that in this case, there is not a single record on appeal, but three. Each set of appellants (Appellants Iriarte, Appellant Ambros, and Appellant Emmy Santos ("Appellant Santos")) have compiled its own record on appeal, each narrowly crafted to address the specific issues on appeal by each party. Appellants Iriarte may have complete access to the record on appeal that they have compiled for their appellate proceedings, including those portions of the trial transcript that they requested in their Transcript Order of June 16, 2009. However, the appellants in this case have each filed their own individual appeals, and their cases have not been joined or consolidated. As a result, each set of appellants' actions are separate, and Appellants Iriarte may not access the portions of the trial transcript created specifically for use in the separate appeal initiated by Appellant Ambros. By allowing Appellants Iriarte to do so would permit them to make an end run around the transcript request and payment mechanism provided for in Appellate Rule 10(b), and would permit them to unfairly benefit from the proper transcript request and payment made by Appellant Ambros. Had Appellant Ambros not initiated its own appellate proceedings, and had it not requested the complete trial transcript for its own individual use, the Clerk's Office would not have in its possession a copy of the complete transcript, as the portions of the transcript which Appellants Iriarte seek to access would not have been transcribed. For this reason, the Chief Clerk properly denied Appellants Iriarte access to the complete trial transcript, absent their formal request and payment therefor.

The Court hereby finds that efforts by Appellants Iriarte to utilize the portions of the trial transcript produced on behalf of Appellant Ambros exceed the Transcript Order submitted by Appellants Iriarte on June 16, 2009, and that the Chief Clerk acted properly in preventing Appellants Iriarte from accessing portions of the transcript they had not properly requested and paid for. Appellants Iriarte are free to request portions of the trial transcript from Appellant Ambros, and may work out an equitable payment scheme with counsel for Appellant Ambros for the production of such portions of the transcript. In the alternative, Appellants Iriarte may submit a supplemental transcript order, and may obtain the requested portions of the transcript from the court reporter at the fee set by General Court Order No. 1991-3. However, neither the Rules of Appellate Procedure nor the general principles of equity permit Appellants Iriarte to obtain from the Clerk's Office portions of the trial transcript not requested in their original Transcript Order, and for which they have not compensated the court reporter.

The motion is DENIED.

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¹On July 16, 2009, Appellant Emmy Santos ("Appellant Santos") filed her Notice of Appeal and Statement of Issues and ordered a complete transcript of the trial, but subsequently withdrew her request for the complete transcript and has taken no further action to pursue her appeal.