

or in part, in his Chuuk State Supreme Court case, he may then refile his complaint against PII.

III. CONCLUSION

Pius Setik's motion for a preliminary injunction is denied. PII's motion for judgment on the pleadings or for dismissal for failure to state a claim is denied. The parties shall file memorandums on whether this case ought to be dismissed without prejudice because of the existence of an earlier-filed case in the Chuuk State Supreme Court that directly addresses the underlying land title dispute vital to the resolution of this case.

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FSM SUPREME COURT APPELLATE DIVISION

MARTIN JANO d/b/a MARTIN JANO)	APPEAL CASE NO. P2-2009
LAW OFFICES,)	Civil Action No. 2005-014
)	
Appellant,)	
)	
vs.)	
)	
KAZUHIRO FUJITA,)	
)	
Appellee.)	
_____)	

ORDER GRANTING MOTION TO DISMISS APPEAL

Decided: November 5, 2010

BEFORE:

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

APPEARANCES:

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HEADNOTES

Appellate Review – Decisions Reviewable

The general rule is that appellate review of a trial court is limited to final orders and judgments because a policy of judicial economy dictates against allowing piecemeal appeals. A final decision is one that leaves nothing open to further dispute and which ends the litigation on the merits, leaving the trial court with no alternative but to execute the judgment. Jano v. Fujita, 17 FSM Intrm. 281, 283 (App. 2010).

Appellate Review – Decisions Reviewable

When the trial court's order granting an award of attorney's fees was simply the beginning of a process since the order itself required the movant to submit evidence of the reasonable fees incurred, and when the key fact was that the trial court had not yet fixed on an amount for the attorney's fees and without fixing the amount, there was nothing for the trial court to execute, the movant's contention that the appeal was not from a final order is dispositive and the appeal will be dismissed because only once the fees have been fixed will the order become final and appealable. Jano v. Fujita, 17 FSM Intrm. 281, 283 (App. 2010).

* * * *

COURT'S OPINION

PER CURIAM:

This matter comes before us on appellee Fujita's request to rule on his motion to dismiss the appeal. We conclude that this appeal does not arise from a final order in the court below and therefore grant Fujita's motion to dismiss on that ground, without prejudice to appellant Jano.

BACKGROUND

The underlying case, FSM Civil Action No. 2005-014, involved allegations of libel, slander and interference with contract and prospective economic advantage. On February 24, 2009, the trial court found in favor of the defendant, and entered judgment accordingly. On March 2, 2009, Fujita moved the trial court to award attorney's fees, arguing that Jano's claim "showed a complete absence of any good faith effort . . . to prosecute this case." R. 45-199. On July 6, 2009, the trial court agreed and granted the motion, and ordered Fujita to submit, on or before July 20, 2009, an affidavit of attorney's fees in compliance with the standard set out in People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM Intrm. 403, 421 (Yap 2006). Jano v. Fujita, 16 FSM Intrm. 502, 504 (Pon. 2009).

Jano filed his notice of appeal on August 18, 2009, and a motion to dismiss the award of fees on August 21, 2009. The notice of appeal stated that the order being appealed was the July 6, 2009 order granting the motion for award of attorney's fees. R. 48-209. The motion to dismiss the award of fees gave as its ground the fact that Fujita had not submitted an affidavit of attorney's fees on or before July 20, 2009, in compliance with the July 6, 2009 order. R. 49-211.

On April 19, 2010, Jano filed a motion for an enlargement of time for filing his opening brief. The appellate division did not rule on that motion. On May 19, 2010, Jano filed his opening brief. On June 21, 2010, Fujita filed a motion for an enlargement of time. On June 28, 2010, Fujita filed the pending motion to dismiss. On July 29, 2010, the appellate division granted Fujita's motion for enlargement, extending the deadline for filing the appellee's reply brief to August 6, 2010. On August 13, 2010, Fujita filed the pending request for the court to rule on his motion to dismiss the appeal.

THE MOTION TO DISMISS

Fujita's motion to dismiss the appeal rests on two arguments: (1) Jano did not timely file his opening brief; and (2) the appellate division lacks jurisdiction because the appeal is not from a final order.

DISCUSSION

We note the similarity between this case and Santos v. Bank of Hawaii, 9 FSM Intrm. 285 (App. 1999). In that case, the trial court issued an order in aid requiring Santos to make payments to the Bank. Santos motioned the trial court for relief from that order. The Bank opposed and requested attorney's fees for having to defend a motion it considered totally devoid of merit. The trial court agreed and awarded reasonable attorney's fees to the Bank, and gave the Bank 30 days to submit evidence of reasonable fees incurred. The Bank submitted its request within 30 days; Santos appealed about a week later, but before the trial court had fixed on an amount for the attorney's fees. The Bank's motion to dismiss the appeal cited as its second contention that the appeal was not from a final order. The appellate court agreed:

The general rule is that appellate review of a trial court is limited to final orders and judgments. A policy of judicial economy dictates against allowing piecemeal appeals. A final decision is one that leaves nothing open to further dispute and which ends the litigation on the merits, leaving the trial court with no alternative but to execute the judgment.

Santos, 9 FSM Intrm. at 287 (citations omitted).

Here, as in Santos, the trial court's order granting award of attorney's fees was simply the beginning of a process. The order itself required Fujita to submit evidence of reasonable fees incurred. Unlike in Santos, here, the appellee, Fujita, had not submitted that evidence by the time the appellant, Jano, filed the notice of appeal. Nevertheless, the key fact is that, as in Santos, the trial court had not yet fixed on an amount for the attorney's fees. Without fixing the amount, there was nothing to execute. "Only once the fees have been fixed will the order become final and appealable." Santos, 9 FSM Intrm. at 287.

We note also that Jano filed a motion to vacate the award on August 21, 2009, under the title of "Motion to dismiss Defendant's motion for attorney's fees." This cannot be characterized as a motion to dismiss the original motion for award, because that motion for award had been ruled on and granted. The motion to vacate alleged that the "Defendant's motion for attorney's fees" was "issued on July 6, 2009," which was the date of the order granting the award and requiring Fujita to submit evidence of reasonable attorney's fees incurred. Although the finality of an order in the trial division is objective, we feel Jano must have intuitively grasped that the July 6, 2009 order was not final, based on the August 21, 2009 motion to vacate the award, which betrays a subjective view that the July 6, 2009 order was not final.

We do not reach Fujita's other contention in his motion to dismiss this appeal, because his contention that the appeal was not from a final order is dispositive.

CONCLUSION

We conclude that the order from which Jano appeals is not a final order, and therefore GRANT Fujita's motion to dismiss this appeal, without prejudice.