

FSM SUPREME COURT APPELLATE DIVISION

MARIKO SETIK and ORAN SETIK,) APPEAL CASE NO. C6-2008
)
Appellants,)
)
vs.)
)
HERSIN RUBEN and MORIA RUBEN,)
)
Appellees.)
_____)

ORDER AND MEMORANDUM

Martin G. Yinug
Acting Chief Justice

. Decided: December 7, 2010

APPEARANCE:

For the Appellees: Stephen V. Finnen, Esq.
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HEADNOTES

Appellate Review – Motions

Since a single justice may entertain and may grant or deny any request for relief which under the appellate rules may properly be sought by motion, a motion to strike the appellant’s appendix or require the submission of translation properly falls within such request for relief. Setik v. Ruben, 17 FSM Intrm. 301, 302 (App. 2010).

Appellate Review – Briefs, Record, and Oral Argument

Since the appellate record must be sufficient to permit the court to insure that the issues on appeal were properly raised before the trial court, the appellants are responsible for presenting a record sufficient to permit the court to decide the issues raised on appeal, and the record must be one which provides the court with a fair and accurate account of what transpired in the trial court. They therefore have the burden of providing an appendix that is reviewable by the court – a certified translation of the Chuukese transcript. Setik v. Ruben, 17 FSM Intrm. 301, 303 (App. 2010).

Appellate Review – Briefs, Record, and Oral Argument

Among the documents which an appendix may include are any exhibits relied upon by either party, or at issue, in the appeal. Setik v. Ruben, 17 FSM Intrm. 301, 303 (App. 2010).

Appellate Review – Briefs, Record, and Oral Argument

When an appellant argues that some of the trial court’s legal and factual findings are incorrect, specifically its factual findings about the ownership of a particular piece of land, the issue is certainly

relevant to the appeal, but without a translation of the deposition transcript, the appellate court cannot conclude that the deposition transcript is relevant. Thus, if the deposition transcript's assertions are part of the reported case, there is no need to include it in the appendix but if the assertions are not part of the reported case, the appellants have the burden of providing a certified translation of the deposition transcript. Setik v. Ruben, 17 FSM Intrm. 301, 303 (App. 2010).

Appellate Review – Briefs, Record, and Oral Argument

When the trial transcript and a deposition transcript relied upon by the appellants are in Chuukese and have not been translated, the court may order the appellants: 1) to provide a certified translation of the trial transcript and either a certified translation of the deposition transcript or a statement that the appellants will not rely on the deposition transcript; or 2) to stipulate to a continuation of oral argument and move for enlargement of time to file a certified translation; or 3) to proceed with oral argument as scheduled without the benefit of the appendix. Setik v. Ruben, 17 FSM Intrm. 301, 303 (App. 2010).

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COURT'S OPINION

MARTIN G. YINUG, Acting Chief Justice:

This matter is before the court on Appellees' July 1, 2010 Motion to Strike Appellant's Appendix or Require Submission of Translation. Appellees Hersin and Moria Ruben ("Ruben") argue that the trial transcript contained in Appendix A of the Appellants' Brief ("Trial Transcript") should be stricken or translated, because the current form of the transcript, nearly 300 pages worth of Chuukese, is not "in such a manner that the court can review the claims made." Ruben further argues that the transcript of the deposition of Filong Bossy contained in Appendix B of the Appellants' Brief ("Deposition Transcript") should also be stricken, because it is unsigned and undated, and from a different case, or if it is not stricken, it should be translated.

I. ANALYSIS

A. *Power of a Single Justice to Entertain Motions*

A single justice "may entertain and may grant or deny any request for relief which under these rules may properly be sought by motion," with certain limitations. FSM App. R. 27(c). This motion properly falls within such request for relief.

B. *Trial Transcript*

As Ruben notes, the question of whether or not a trial transcript in a language other than English should be translated to be considered by an appellate court appears to be one of first impression in the FSM Supreme Court. Certainly, in the Chuuk State Supreme Court, there is no such need. Reselap v. Chuuk, 8 FSM Intrm. 584, 586 (Chk. S. Ct. App. 1998) (since the Constitution of Chuuk State provides that both Chuukese and English are official languages, a criminal defendant does not have a constitutional right to an English transcript where he did not request one in trial court within three years after the completion of the Chuukese transcript). However, the FSM has not adopted any particular language as official language. Further, two of the three justices on this panel do not understand Chuukese.

This court agrees with Ruben's argument that the appellants, Mariko and Oran Setik ("Setik"),

should have the burden of providing an appendix that is reviewable by the court, in this case, a certified translation.

The record must be sufficient to permit the court to insure that the issues on appeal were properly raised before the trial court. Appellants are responsible for presenting to the court a record sufficient to permit it to decide the issues raised on appeal, and one which provides the court with a fair and accurate account of what transpired in the trial court proceedings.

Damarlane v. United States, 7 FSM Intrm. 510, 513 (App. 1996) (citations omitted).

C. Deposition Transcript

Under FSM App. R. 30(a)(7), among the documents which an appendix may include are "any exhibits relied upon by either party, or at issue, in the appeal." Setik argues that some of the legal and factual findings of the trial court are incorrect. Specifically, Setik argues that the trial court erred in its factual findings about the ownership of a particular piece of land. Appellants' Br. at 3. This issue is certainly relevant to this appeal; however, without a translation, the appellate court cannot conclude that the Deposition Transcript is relevant. Further, Setik cites In re Lot No. 014-A-21, 11 FSM Intrm. 582 (Chk. S. Ct. Tr. 2003) in some factual assertions. Appellants' Br. at 2. If the assertions in the Deposition Transcript are part of the reported case, there is no need for including the Deposition Transcript in the Appellants' Appendix. If the assertions are not part of the reported case, however, by the same reasoning set out for the Trial Transcripts, *supra*, Setik has the burden of providing a certified translation of the Deposition Transcript.

CONCLUSION

The court HEREBY ORDERS the appellants to: (1) provide a certified translation of the Trial Transcript, and either a certified translation of the Deposition Transcript or a statement that the appellants will not rely on the Deposition Transcript, on or before January 4, 2011; (2) stipulate to a continuation of oral arguments, and move for enlargement of time to file a certified translation; or (3) proceed with oral argument as scheduled on January 11, 2011 without benefit of the appendix.

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