

FSM SUPREME COURT APPELLATE DIVISION

DORINDA JONAH,)	APPEAL CASE NO. K1-2011
)	(Civil Action No. 2002-2000)
Appellant,)	
)	
vs.)	
)	
FSM DEVELOPMENT BANK,)	
)	
Appellee.)	
_____)	

ORDER OF DISMISSAL

Decided: May 6, 2011

BEFORE:

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

APPEARANCES:

For the Appellant: Canney Palsis, Esq.
Micronesia Legal Services Corporation
P.O. Box 38
Tofol, Kosrae FM 96944

For the Appellee: Nora Sigrah, Esq.
P.O. Box M
Kolonias, Pohnpei FM 96941

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HEADNOTES

Appellate Review – Motions

Motions, even motions to dismiss an appeal, may be decided without oral argument. Jonah v. FSM Dev. Bank, 17 FSM Intrm. 506, 507 (App. 2011).

Appellate Review – Notice of Appeal

Since, when appealing an FSM Supreme Court trial division decision, a party may, at its option, file the notice of appeal either with the clerk of the FSM Supreme Court trial division in the state in which the decision appealed from was made or directly with the clerk of the FSM Supreme Court appellate division, where that party, appealing an FSM Supreme Court trial division decision, files a notice of appeal with the FSM Supreme Court trial division clerk in the Kosrae venue on February 22, 2011, and on February 25, 2011, files a notice of appeal with the appellate division clerk, the earlier, February 22, 2011 notice of appeal that was filed with the trial division clerk in Kosrae is the operative one. Jonah v. FSM Dev. Bank, 17 FSM Intrm. 506, 507 (App. 2011).

Appellate Review – Notice of Appeal

An appeal in a civil case may be taken by the filing of a notice of appeal as provided in Rule 3 within 42 days after the date of the entry of the order appealed from, and the court appealed from may extend this 42-day period upon a motion, filed not later than 30 days after the expiration of the 42-day time period, showing excusable neglect or good cause. Jonah v. FSM Dev. Bank, 17 FSM Intrm. 506, 507-08 (App. 2011).

Appellate Review – Decisions Reviewable; Appellate Review – Notice of Appeal

The requirement that a notice of appeal be timely filed is mandatory and jurisdictional, and, since the Rule 4(a)(1) time limit is jurisdictional, if that time is not extended by the grant of a timely Rule 4(a)(5) motion to extend that time period, the appellate court will lack jurisdiction to hear the case. An untimely filed appeal must be dismissed. Jonah v. FSM Dev. Bank, 17 FSM Intrm. 506, 508 (App. 2011).

Appellate Review – Dismissal; Appellate Review – Motions

A full panel is not needed to grant a motion to dismiss since a single article XI, section 3 justice may dismiss an appeal upon a party's failure to comply with the appellate rules' timing requirements, including the time requirement to file the notice of appeal within 42 days after the entry of the order appealed from. Jonah v. FSM Dev. Bank, 17 FSM Intrm. 506, 508 (App. 2011).

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COURT'S OPINION

PER CURIAM:

On March 24, 2011, the appellee, the FSM Development Bank, filed and served by mail its Motion to Dismiss Appeal, with accompanying affidavit and exhibits. Parties have "7 days after service of the motion" within which to "file a response in opposition to a motion other than one for a procedural order," FSM App. R. 27(a), to which six days are added when the service was accomplished by mail, FSM App. R. 26(c). The appellant, Dorinda Jonah, thus had until April 6, 2011, to file an opposition to the bank's motion. No response was filed.

The bank moves to dismiss the appeal because it was not timely filed and the court therefore lacks jurisdiction. Motions, even motions to dismiss an appeal, may be decided without oral argument. Kosrae v. Jim, 17 FSM Intrm. 97, 98 (App. 2010).

The order appealed from was entered on January 6, 2011. See FSM Dev. Bank v. Jonah, 17 FSM Intrm. 318 (Kos. 2011). On February 22, 2011, Jonah filed her Notice of Appeal with the FSM Supreme Court trial division clerk in the Kosrae venue, and on February 25, 2011, also filed a notice of appeal with the appellate division clerk. Since a party, when appealing an FSM Supreme Court trial division decision, may, at its option, file the notice of appeal either "with the clerk of the FSM Supreme Court trial division in the State in which the decision appealed from was made or . . . directly with the clerk of the FSM Supreme Court appellate division," FSM App. R. 3(a), the earlier, February 22, 2011 notice of appeal that was filed with the trial division clerk in Kosrae is the operative one.

An appeal in a civil case may be taken "by the filing of a notice of appeal as provided in Rule 3 within forty-two (42) days after the date of the entry of the . . . order appealed from." FSM App. R. 4(a)(1). Since the trial court order appealed from was entered on January 6, 2011, the last day to file a notice of appeal within the 42-day limit would have been February 16, 2011. The court appealed from may extend this 42-day period upon a motion, filed not later than 30 days after the expiration of

the 42-day time period, showing excusable neglect or good cause. FSM App. R. 4(a)(5). No such motion was filed in the trial division. (March 18, 2011 was the last day it could have been filed.)

The February 22, 2011 notice of appeal was therefore untimely. The requirement that a notice of appeal be timely filed is mandatory and jurisdictional. Bualuay v. Rano, 11 FSM Intrm. 139, 145 (App. 2002). Since the Rule 4(a)(1) time limit is jurisdictional, if that time is not extended by the grant of a timely Rule 4(a)(5) motion to extend that time period, we lack jurisdiction to hear the case. Goya v. Ramp, 13 FSM Intrm. 100, 104-05 (App. 2005); Hartman v. Bank of Guam, 10 FSM Intrm. 89, 95 (App. 2001). An untimely filed appeal must be dismissed. Bualuay, 11 FSM Intrm. at 145.

A full panel is not needed to grant the bank's motion since a single article XI, section 3 justice may dismiss an appeal upon failure of a party to comply with the appellate rules' timing requirements, FSM App. R. 27(c), including the time requirement to file the notice of appeal within 42 days after the entry of the order appealed from. Pohnpei v. AHPW, Inc., 13 FSM Intrm. 159, 161 (App. 2005).

We accordingly dismiss this appeal because it was not timely filed.

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CHUUK STATE SUPREME COURT TRIAL DIVISION

CHUUK STATE,)	CSSC - CRIMINAL CASE NO. 103-2008
)	
Plaintiff,)	
vs.)	
)	
GEORGE HAUk,)	
)	
Defendant.)	
_____)	

ORDER DISMISSING DEFENDANT'S MOTION TO SUPPRESS AFFIDAVIT SUPPORTING INFORMATION, ORDER DENYING DEFENDANT'S MOTION TO DISMISS PROSECUTION AND ORDER TO SHOW CAUSE

Midasy O. Aisek
Associate Justice

Decided: May 13, 2011

APPEARANCES:

For the Plaintiff:	Charleston Bravo Assistant Attorney General Office of the Chuuk Attorney General P.O. Box 1050 Weno, Chuuk FM 96942
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