

intent is clear and unambiguous. "If the intent of Congress is clear, that is the end of the matter." *Id.*

III. CONCLUSION

It is this Court's considered opinion that the Public Service System Act and the FSM Immigration Act, read together, require that actual hours worked form the basis for calculation of overtime benefits. For many years, immigration officials received the benefit of overtime compensation to which they were not legally entitled. The August 25, 2011 Legal Opinion on Overtime Issues authored by the Department of Justice served as a long overdue correction to a regulation, Pub. Serv. Sys. Reg. pt. 8.6(d)(3), that is in clear contravention of its enabling statute. As the Department of Justice has correctly interpreted the statute governing the calculation of overtime compensation, this Court must grant summary judgment to Defendants.

* * * *

FSM SUPREME COURT APPELLATE DIVISION

KINO RUBEN, next of kin to Rubeñ Kino Ruben,)	APPEAL CASE NO. C1-2012
)	Civil Action No. 2011-1005
)	
Appellant,)	
)	
vs.)	
)	
CHUUK STATE, JIMMY JOSEPH, GIBSON KUN,)	
STEPHAN SOS, JASON KONINOS, and KERSON)	
RIZAL in his official capacity as Director of Public)	
Safety, Department of Public Safety,)	
)	
Appellees.)	
_____)	

ORDER

Decided: July 4, 2013

BEFORE:

Hon. Dennis K. Yamase, Associate Justice, FSM Supreme Court
Hon. Bealeen Carl-Worswick, Associate Justice, FSM Supreme Court
Hon. Camillo Noket, Temporary Justice, FSM Supreme Court*

*Chief Justice, Chuuk State Supreme Court, Weno, Chuuk

APPEARANCE:

For the Appellant: Salomon Saimon, Esq.
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* * * *

HEADNOTES

Appellate Review – Notice of Appeal

A properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court. Ruben v. Chuuk, 19 FSM R. 78, 79 (App. 2013).

Appellate Review – Dismissal; Appellate Review – Notice of Appeal – Extension of Time

The FSM Supreme Court appellate division has no authority to waive or extend FSM Appellate Rule 4(a)'s time requirements or to grant a motion to extend time to appeal, and in the absence of a timely notice of appeal, the appellate court has no jurisdiction over an appeal and must then dismiss it. Ruben v. Chuuk, 19 FSM R. 78, 79 (App. 2013).

* * * *

COURT'S OPINION

PER CURIAM:

On March 18, 2013, an order was entered dismissing this appeal because this court lacks jurisdiction over the matter. [Ruben v. Chuuk, 18 FSM Intrm. 604 (App. 2013).] On March 25, 2013, the Appellant Kino Ruben (Ruben), filed a Motion for Enlargement of Time to File Notice of Appeal in the Trial Division. On April 12, 2013, this motion was denied for the lack of jurisdiction. [Ruben v. Chuuk, 18 FSM Intrm. 637, 640 (Chk. 2013).] On April 17, 2013, Ruben filed a Motion for Enlargement of Time to File Notice of Appeal, *nunc pro tunc*, at the Appellate Division.

The issue of jurisdiction has been decided at both the Trial Division on April 12, 2013, and at the Appellate Division on March 18, 2013. Both courts concluded that the Notice of Appeal was untimely, therefore, both courts lacked jurisdiction over the matter. The position of this court on the issue of lack of jurisdiction over this matter remains unchanged.

The jurisdiction of the FSM Supreme Court Appellate Division is established in FSM Const. art. XI, § 7. Generally, a properly filed notice of appeal transfers jurisdiction from the lower court to the appellate court. Department of the Treasury v. FSM Telecomm. Corp., 9 FSM Intrm. 465, 466-67 (App. 2000); Damarlane v. Pohnpei, 9 FSM Intrm. 114, 119 (App. 1999).

The FSM Supreme Court Appellate Division has no authority to waive or extend FSM Appellate Rule 4(a)'s time requirements or to grant a motion to extend time to appeal. Bualuay v. Rano, 11 FSM Intrm. 139, 146 (App. 2002). In the absence of a timely notice of appeal, an appellate court has no jurisdiction over an appeal. It is then properly dismissed. Pohnpei v. AHPW, Inc., 13 FSM Intrm. 159, 161 (App. 2005); O'Sonis v. Bank of Guam, 9 FSM Intrm. 356, 360 (App. 2000).

THEREFORE, the Appellant's Motion for Enlargement of Time to File Notice of Appeal is HEREBY DENIED.

* * * *