

VI. CONCLUSION

THEREFORE the Plaintiff's Motion for Summary Judgment is DENIED for all three claims including breach of contract, defamation, and defamation per se. Contrawise, Defendant's Motion for Summary Judgment is GRANTED in part, for two claims, including defamation and defamation per se. Ultimately, however, the court finds that there is a material issue of fact with regard the breach of contract claim that must be resolved through a full trial on the merits.

ACCORDINGLY, the parties are directed to confer and submit a joint submission on three possible trial dates and deadline dates for filing of pretrial statements no later than Friday, June 6, 2014. Upon receipt of the joint submission, an order will be issued setting the trial date and deadline date for filing of pretrial statements.

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FSM SUPREME COURT TRIAL DIVISION

EMANUEL "MANNY" MORI,)	APPEAL CASE NO. C1-2011
)	Civil Action No. 2008-1111
Appellant,)	
)	
vs.)	
)	
MYRON HASIGUCHI and TRUK)	
TRANSPORTATION CO., INC.,)	
)	
Appellees.)	
)	

OPINION

Argued: February, 14, 2014
Decided: June 3, 2014

BEFORE:

Hon. Martin G. Yinug, Chief Justice, FSM Supreme Court
Hon. Bealeen Carl-Worswick, Associate Justice, FSM Supreme Court
Hon. Cyprian J. Manmaw, Specially Assigned Justice, FSM Supreme Court*

*Chief Justice, State Court of Yap

APPEARANCES:

For the Appellant:	Sabino S. Asor, Esq. (briefed and argued) P.O. Box 95 Weno, Chuuk FM 96942
For the Appellees:	Stephen V. Finnen, Esq. (motion to dismiss) P.O. Box 1450 Kolonias, Pohnpei FM 96941

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HEADNOTES

Appellate Review – Motions; Judgments – Alter or Amend; Judgments – Relief from Judgment

A motion to alter, or amend, under FSM Civil Rule 59(e), or reconsideration of a mistake through inadvertence under FSM Civil Rule 60(b) are post-judgment motions that are appropriately filed in the trial division, not the appellate division, and, under the final judgment rule, these post-judgment motions prohibit filing an appeal until they have been either granted or denied. Mori v. Hasiguchi, 19 FSM R. 416, 418 (App. 2014).

Appellate Review – Decisions Reviewable

The well established general rule is that only final judgment decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. An order is not final when the substantial rights of the parties involved in the action remain undetermined and when the cause is retained for further action. A decision reserving certain questions for future determination or direction cannot ordinarily be final for the purposes of appeal. Mori v. Hasiguchi, 19 FSM R. 416, 418-19 (App. 2014).

Appellate Review – Decisions Reviewable

The general rule is that appellate review of a trial court is limited to final orders and judgments. The exceptions to this rule include: review of injunctions, appointment of receivers, admiralty decisions, or other statutory rights. Mori v. Hasiguchi, 19 FSM R. 416, 419 (App. 2014).

Appellate Review – Decisions Reviewable

When no formal sanction was issued, when no fines were assigned, when no disciplinary action was ordered, when there was not an explicit finding of wrongdoing by the court, when there is only a footnote instructing the opposing party they have the right to investigate the matter and file a request for disciplinary action if they find reason, this is a non-decision, and as such, it is not appealable. Mori v. Hasiguchi, 19 FSM R. 416, 419 (App. 2014).

Attorney and Client – Attorney Discipline and Sanctions

An FSM judge is required to memorialize proceedings, and in many cases, the appropriate action is an instructional footnote, rather than calling for full disciplinary hearing. Mori v. Hasiguchi, 19 FSM R. 416, 419 n.1 (App. 2014).

Appellate Review – Decisions Reviewable

An appellant may not complain of an error in his favor in the rendition of a judgment. Mori v. Hasiguchi, 19 FSM R. 416, 419 (App. 2014).

Appellate Review – Decisions Reviewable

The most distinctive feature of the doctrine of appellate standing to emerge from the adverse impact requirement is that a prevailing party cannot appeal from a favorable judgment to secure a review of unfavorable findings. Mori v. Hasiguchi, 19 FSM R. 416, 419 (App. 2014).

Appellate Review – Decisions Reviewable

Under the doctrine of appellate standing, an attorney cannot raise an appeal to revise the reasoning, or verbiage, of a decision if that decision is favorable to his client. Mori v. Hasiguchi, 19 FSM R. 416, 419 (App. 2014).

Appellate Review – Decisions Reviewable; Appellate Review – Parties

The basic rule that a nonparty cannot appeal the judgment in an action between others is well established. Mori v. Hasiguchi, 19 FSM R. 416, 419 (App. 2014).

Appellate Review – Decisions Reviewable – Collateral Orders; Attorney and Client – Attorney Discipline and Sanctions

A nonparty attorney who is held in contempt or otherwise sanctioned by the court in the course of litigation may appeal from the order imposing sanctions, either immediately or as part of the final judgment in the underlying case. Mori v. Hasiguchi, 19 FSM R. 416, 419-20 (App. 2014).

Appellate Review – Decisions Reviewable; Appellate Review – Parties

When no formal judicial action was taken and no disciplinary action was ordered against the appellant or his counsel and when there was no formal finding of wrongdoing, the attorney lacks standing to bring an appeal under the attorney exception to the nonparty rule. Mori v. Hasiguchi, 19 FSM R. 416, 420 (App. 2014).

Attorney and Client

An attorney's reputation is an important and valuable professional asset. Mori v. Hasiguchi, 19 FSM R. 416, 420 (App. 2014).

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COURT'S OPINION

MARTIN G. YINUG, Chief Justice:

On February 14, 2014, the appellate panel heard oral arguments in this matter. Appellant Emanuel Mori (Mori) was not present, but was represented by his attorney Sabino Asor (Asor). None of the Appellees were present. On January 21, 2013, Appellees Myron Hasiguchi, and Truk Transportation Company Inc., represented by attorney Stephen Finnen, filed a Waiver of Oral Argument and a Motion to Dismiss. This appeal is unusual because on May 13, 2013, the FSM Trial Division granted a Motion for Summary Judgment in favor of Mori, but he nevertheless filed this appeal.

In truth, Mori is not opposed to the lower court's decision, rather it is his attorney, Asor, who seeks review of an omission by the lower court for failing to directly address his request to "strike," "expunge," or "delete," any reference to a disciplinary action regarding him. Appellant's Br. at 6-8. Asor uses each of those words at various times, but does not cite a specific rule, and it is unclear to the court whether he was seeking a motion to strike under FSM Civil Rule 12(f) or a motion to correct a clerical mistake arising from an oversight or omission under FSM Civil Rule 60(a). At the core of the request, Asor seems to be seeking a motion to alter, or amend, under FSM Civil Rule 59(e), or reconsideration of a mistake through inadvertence under FSM Civil Rule 60(b). In either case, these post judgment motions are appropriately filed in the Trial Division, not the Appellate Division. In fact, these post judgment motions prohibit filing an appeal under the final judgment rule until they have been either granted or denied. Only then is the decision final and therefore appealable.

I. FINAL JUDGMENT RULE

Appeals may only be taken "from all final decisions of the trial divisions of the Federated States of Micronesia Supreme Court." FSM App. R. 4(a)(1)(A). This court has explained, "[t]he well established general rule is that only final judgment decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but

execute the judgment." In re Extradition of Jano, 6 FSM Intrm. 23, 24 (App. 1993). Furthermore, "an order is not final where the substantial rights of the parties involved in the action remain undetermined and where the cause is retained for further action. Accordingly, a decision reserving certain questions for future determination or direction cannot ordinarily be final for the purposes of appeal." Mori v. Hasiguchi, 18 FSM Intrm. 83, 84 (App. 2011); 4 AM. JUR. 2D *Appellate Review* § 90, at 714 (rev. ed. 1995) (footnote omitted). Thus, "[t]he general rule is that appellate review of a trial court is limited to final orders and judgments." Chuuk v. Davis, 9 FSM Intrm. 471, 473 (App. 2000). The exceptions to this rule include: review of injunctions, FSM App. R. 4(a)(1)(B), appointment of receivers, FSM App. R. 4(a)(1)(C), admiralty decisions, FSM App. R. 4(a)(1)(D), or other statutory rights, FSM App. R. 4(a)(1)(E).

In this case, no formal sanction was issued, no fines were assigned, and no disciplinary action was ordered. There was not an explicit finding of wrongdoing by the court. There is only a footnote instructing the opposing party they have the right to investigate the matter and file a request for disciplinary action if they find reason.¹ In short, this is a non-decision, and as such, it is not appealable.

II. DOCTRINE OF APPELLATE STANDING

"An appellant may not complain of an error in his favor in the rendition of a judgment." Nakamura v. Moen Municipality, 8 FSM Intrm. 552, 554 (Chk. S. Ct. App. 1998). "The most distinctive feature of the doctrine of appeal standing to emerge from the adverse impact requirement is found in the proposition that a prevailing party cannot appeal from a favorable judgment" to secure a review of unfavorable findings. 15A CHARLES ALAN WRIGHT, ARTHUR R. MILLER, & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3902, at 79 (2d ed. 1984).

Under the doctrine of appellate standing Asor cannot raise an appeal to revise the reasoning, or verbiage, of a decision if that decision is favorable to his client. The court's use of the descriptive words "dubious and murky" cannot be appealed simply because they offend the sensibilities of the attorney in the case. Even if a perfectly forthright reason exists to explain those circumstances, the Trial Division has an uncompromised right to articulate the reasoning behind its decisions. Although Asor might have preferred alternative words, the court ultimately decided in his client's favor, and as a result, he cannot appeal. Notwithstanding the manner in which the trial court expressed its findings, an attorney may not complain about a favorable judgment for his client.

III. NONPARTY RULE

Although this court has heard appeals for monetary sanctions and disciplinary proceedings, it has never ruled on the appealability of lesser court actions. Thus, this is a case of first impression. "The basic rule that a nonparty cannot appeal the judgment in an action between others is well established." 15A CHARLES ALAN WRIGHT, ARTHUR R. MILLER, & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3902.1, at 102 (2d ed. 1984). One of the exceptions to this rule, however, is the attorney exception. There are many articulations of this rule, and this court adopts an approach similar to that

¹ Judges on the FSM Supreme Court are bound by the American Bar Association Code of Judicial Conduct incorporated into law by 4 F.S.M.C. 122. Andohn v. FSM, 1 FSM Intrm. 433, 444 (App. 1984). Canon 3 of the code states, "A judge should initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a judge or lawyer." American Bar Association Code of Judicial Conduct Canon 3, § (B)(3). Accordingly, an FSM judge is required to memorialize proceedings, and in many cases, the appropriate action is an instructional footnote, rather than calling for full disciplinary hearing.

of a court of appeals in the United States, which found after a lengthy analysis, that "a nonparty such as an attorney who is held in contempt or otherwise sanctioned by the court in the course of litigation may appeal from the order imposing sanctions, either immediately or as part of the final judgment in the underlying case." Nisus Corp. v. Perma-Chink Sys., Inc., 497 F.3d 1316, 1319 (Fed. Cir. 2007). Under this definition, an attorney who has been sanctioned by "a formal judicial action" may appeal in his own name as a real party of interest. *Id.* at 1320. An attorney, therefore, may appeal judicial actions such as a suspension, a monetary sanction, a finding of contempt, or even an expressly stated reprimand for wrongdoing, but not merely "critical comments." *Id.* at 1319. That court found, and we agree, that even though those comments may have an incidental effect on the nonparty attorney, they do not fundamentally alter legal rights and are not a final legal decision within the meaning of FSM Appellate Rule 4(a)(1)(A). Notably, it is customary to file an appeal from a formal judicial action in the name of the attorney, not the name of the party the attorney represents, unless the client's interests are jointly implicated by the action.

Asor is Mori's attorney, but as discussed earlier, no formal judicial action was taken in this case. No disciplinary action was ordered against Mori, or his counsel. Nor was there any formal finding of wrongdoing. Thus, Asor lacks standing to bring this appeal under the attorney exception to the nonparty rule.

IV. CONCLUSION

The court would like to conclude by acknowledging the sincerity of Mori's counsel in seeking to protect his reputation, and affirms that an attorney's reputation is an important and valuable professional asset. The court would also like to remind counsel that no finding of wrongdoing was actually made in the FSM Trial Division, and in reading that case with objective distance, one is not compelled to infer wrongdoing at all.

Upon CONSIDERATION, of the oral arguments, and of the record and file contained herein, the appeal is DISMISSED.

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