

Iron v. Chuuk State Election Comm'n
20 FSM R. 39 (Chk. S. Ct. App. 2015)

CHUUK STATE SUPREME COURT APPELLATE DIVISION

JEFFREY IRON,)	CIVIL APPEAL CASE NO. 002-2015
)	
Petitioner,)	
)	
vs.)	
)	
CHUUK STATE ELECTION COMMISSION,)	
)	
Respondent,)	
)	
vs.)	
)	
ESTAK ESEUK and KAPIER KAMINAGA,)	
)	
Real Parties in Interest.)	

ORDER DISMISSING PETITION WITHOUT PREJUDICE

Hearing: April 9, 2015
Decided: April 17, 2015

BEFORE:

Hon. Jayson Robert, Associate Justice, Presiding
Hon. Brian Dickson, Temporary Justice*
Hon. Derensio Konman, Temporary Justice**

*Attorney at Law, Legislative Counsel, Weno, Chuuk
** Attorney at Law, Micronesian Legal Services Corporation, Chuuk

APPEARANCES:

For the Petitioner:	Johnny Meippen, Esq. P.O. Box 705 Weno, Chuuk FM 96942
For Respondent:	Bethwell O'Sonis Esq. Assistant Attorney General Office of the Attorney General P.O. Box 1050 Weno, Chuuk FM 96942
For Real Party in Interest: (Estak Eseuk)	Ben K. Enlet P.O. Box 1650 Weno, Chuuk FM 96942

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HEADNOTES

Appellate Review – Briefs, Record, and Oral Argument

An appellant must include a transcript of all evidence relevant to the trial court's decision if the appellant argues on appeal that a finding or conclusion is not supported by the evidence or is contrary to the evidence. The burden is on the appellant to ensure that he brings an adequate record to support his argument. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

Appellate Review – Briefs, Record, and Oral Argument; Appellate Review – Standard – Civil Cases

In meeting the standard of review, the appellant must ensure an adequate record because, if the record does not demonstrate error, the appellant cannot prevail. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

Appellate Review – Briefs, Record, and Oral Argument; Appellate Review – Standard – Civil Cases – Factual Findings

An appellant's failure to include a transcript in the record on an appeal based upon a claim of insufficiency of evidence warrants dismissal of the appeal. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

Appellate Review – Briefs, Record, and Oral Argument; Elections – Contests

Without the Chuuk State Election Commission case record, including but not limited to the complaint and the Commission's decision, the court cannot determine whether certain requirements before retaining jurisdiction were met: 1) whether the Chuuk State Election Commission case was filed within the prescribed time and 2) whether the Chuuk State Election Commission case was filed as a verified complaint. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

Elections – Contests

Whether an election complaint is timely filed is a matter of great importance in election, as an untimely complaint will prevent an adjudicator from ruling on the contest for lack of jurisdiction. An adjudicator's jurisdiction over election contest is limited to the constitutional or statutory provision expressly or impliedly giving it that authority. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of a proceeding. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

Elections – Contests

When the appellant cannot verify to the court that the election contest requirements were met, the court lacks the jurisdiction. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

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COURT'S OPINION

PER CURIAM:

On March 26, 2015, Petitioner Jeffrey Iron ("Petitioner") filed a notice of appeal and appellant's memorandum of law in support of appeal (appellant's brief) against Chuuk State Election Commission ("Respondent"), and Real Parties in Interests, Estak Eseuk and Kapier Kaminaga.

This is an election appeal resulted from the Chuuk State mid-term election held on March 3, 2015. This election appeal came before the Court for a hearing on April 9, 2015.

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Per a review of the appellate record, no record of the lower court or commission in which this case was appealed from was included or provided upon filing this appeal. An appellant must include a transcript of all evidence relevant to the trial court's decision if the appellant argues on appeal that a finding or conclusion is not supported by the evidence or is contrary to the evidence. The burden is on the appellant to ensure that he brings an adequate record to support his argument. Cheida v. FSM, 9 FSM Intrm. 183, 189 (App. 1999). In meeting the standard of review, the appellant must ensure an adequate record. If the record does not demonstrate error, the appellant cannot prevail. *Id.* Failure of the appellant to include a transcript in the record on an appeal based upon a claim of insufficiency of evidence warrants dismissal of the appeal. Kephas v. Kosrae, 3 FSM Intrm. 248, 254 (App. 1987). Thus, without the record of this case before the Chuuk State Election Commission, including but not limited to the complaint and the decision of the Commission, the Court was not capable to determine whether certain requirements before retaining jurisdiction was met: (1) whether the case before the Chuuk State Election Commission was filed within the prescribed time and (2) whether the case before the Chuuk State Election Commission was filed as a verified complaint. Chk. S.L. No. 3-95-26, § 127; *also see Doone v. Chuuk State Election Comm'n*, 16 FSM Intrm. 459, 463 (Chk. S. Ct. App. 2009).

Whether an election complaint is timely filed is a matter of great importance in election, as an untimely complaint will prevent an adjudicator from ruling on the contest for lack of jurisdiction. An adjudicator's jurisdiction over election contest is limited to the constitutional or statutory provision expressly or impliedly giving it that authority. David v. Uman Election Comm'r, 8 FSM Intrm. 300d, 300h (Chk. S. Ct. App. 1998); Mathew v. Silander, 8 FSM Intrm. 560, 562 (Chk. S. Ct. Tr. 1998); Phillip v. Phillip, 9 FSM Intrm. 226, 228 (Chk. S. Ct. Tr. 1999). A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of a proceeding. David, 8 FSM Intrm. at 300h; Mathew, 8 FSM Intrm. at 562.

Without the appellant to verify to the Court that such requirements were met, the Court lacks the jurisdiction.

Based on the foregoing, this appeal is hereby DISMISSED without prejudice.

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