

FSM SUPREME COURT APPELLATE DIVISION

HEIRS OF ISAIAH BENJAMIN,)	APPEAL CASE NO. K4-2014
)	
Appellants,)	
)	
vs.)	
)	
HEIRS OF CLINTON BENJAMIN,)	
)	
Appellees.)	

ORDER

Decided: June 21, 2016

BEFORE:

Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court
Hon. Beaulen Carl-Worswick, Associate Justice, FSM Supreme Court
Hon. Camillo Noket, Specially Assigned Justice, FSM Supreme Court*

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

APPEARANCE:

For the Appellant: Canney Palsis, Esq.
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HEADNOTES

Appellate Review – Mandate: Appellate Review – Rehearing

A petition for rehearing which is filed after the mandate has been issued is not only considered a petition for rehearing, but also a motion to enlarge time, within which to file such petition and recall the mandate. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 468, 469 (App. 2016).

Appellate Review – Rehearing

A summary denial of a petition for rehearing is proper when the court has ruled on those issues necessary to decide an appeal and has neither overlooked nor misapprehended any points of law or fact. Notwithstanding, when the court considers that clarification may be helpful, reasons may be given. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 468, 469 (App. 2016).

Appellate Review – Briefs, Record, and Oral Argument

Appellate Rule 30(a) requires an appellant to file with the appellant’s brief, an appendix that must contain the relevant and essential portions of the record, including those parts to which the parties wish to direct the particular attention of the court, and a document that should be included is any portion,

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relied upon by counsel, of the transcript of the proceeding in the court appealed from, unless it was reproduced in a transcript filed. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 468, 470 (App. 2016).

Appellate Review – Briefs, Record, and Oral Argument

Clear identification of parts of the record containing matter that forms the basis for appellant's argument is the brief writer's responsibility, as the court is not required to search the record for errors. It is not the court's responsibility to cobble those relevant sections of the transcript which constitute the gravamen of the appellants' claim. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 468, 470 (App. 2016).

* * * *

COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

Our Opinion in this matter was issued on September 25, 2015. On October 22, 2015, Appellants filed a Petition for Rehearing, pursuant to Rule 40(a) of the FSM Appellate Rules of Procedure. Petitioners: Heirs of Isaiah Benjamin contend, that in rendering its Opinion, we overlooked the Findings of Fact and Opinion generated by the erstwhile Kosrae Land Registration Team on September 27, 1988 (in favor of the Appellees: Heirs of Isaiah Benjamin), along with the July 7, 2010 Memorandum of Decision issued by the Land Court (which conversely, awarded the three parcels of land in issue to the Appellees: Heirs of Clinton Benjamin).

Our Mandate, informing the Kosrae State Court, that its Decision was affirmed and thus, returning this matter to that Court, was issued on October 16, 2015. The instant Petition was filed on October 22, 2015 and therefore, untimely. A Petition for Rehearing which is filed after the Mandate has been issued is, not only considered a Petition for Rehearing, but a Motion to Enlarge Time, within which to file such Petition and Recall the Mandate. Jano v. FSM, 12 FSM R. 633, 634 (App. 2004). Such a Petition may be denied, as untimely filed. *Id.*

In addition, Appellants filed a Motion to Enlarge Time to Petition for a Rehearing on the ground, that the prospect of retaining new Counsel was being contemplated. That basis however, is deemed insufficient, with respect to warrant an enlargement at this juncture. Nevertheless, we will further consider the Petition.

A summary denial of a petition for rehearing is proper when the Court has ruled on those issues necessary to decide [an] appeal and has neither overlooked[,] nor misapprehended any points of law or fact. Berman v. Santos, 7 FSM R. 658, 659 (App. 1996). Notwithstanding, "when the court considers that clarification may be helpful, reasons may be given." Jano, 12 FSM R. at 634.

As set forth in the September 25th Appellate Opinion, the Heirs of Isaiah Benjamin "failed to include either the Memorandum of Decision from the Land Court or the twelve documents, to which reference is made, within their Appellate Brief or the Appendix." [Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 196 (App. 2015).] We proceeded to cite Rule 10(b)(2) of the FSM Appellate Rules of Procedure, that provides:

"If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or contrary to the evidence, the appellant shall include[,] in the Record[,] a transcript of all evidence relevant to such finding or conclusion." . . . It was clearly the

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duty of Counsel for the Appellants to affix the various documents referred to in the Record proper, yet for some inexplicable reason this did not occur.

[Heirs of Benjamin, 20 FSM R. at 196 (App. 2015).]

Within the present filing, Petitioners reiterate, that we neglected to take into account the aforementioned Findings of Fact, as well as the Memorandum of Decision. Notwithstanding, Appellants/Petitioners once again, fail to produce the relevant documentation. In addition, at this late juncture, Petitioners notify us, that the Kosrae Land Registration Team's Findings of Fact and Opinion had been transcribed in Kosrae and as such, request that it be translated "at an accelerated rate."¹

Appellate Rule 30(a) requires an Appellant to file "with appellant's brief[,] an appendix to the brief which shall contain relevant and essential portions of the [R]ecord, including those parts to which the parties wish to direct the particular attention of the [C]ourt." Further delineating the exact documents that should be included, subsection (8) of this Rule states: "any portions, relied upon by [C]ounsel, of the transcript of the proceeding in the [C]ourt appealed from[,] unless these are reproduced in a transcript filed." Appellants/Petitioners have been remiss, in terms of producing the transcripts for our review, upon which their arguments are predicated, within their brief, appendix or instant petition.

As succinctly expressed in Chuuk v. Davis, 13 FSM R. 178 (App. 2005): "Clear identification of parts of the record containing matter that forms the basis for Appellant's argument is the responsibility of the brief writer, as the court is not required to search the record for errors." *Id.* at 183. It is similarly, not the responsibility of this Court, to cobble those relevant sections of the transcript which constitute the gravamen of Petitioners' claim herein.

We have carefully considered the arguments marshaled by Appellants and have neither overlooked, nor misapprehended any points of law or fact. The issues necessary to decide this appeal have been ruled upon. A summary denial is therefore proper.

Accordingly, Appellants' Petition for Rehearing is hereby DENIED.

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¹ Appellants' Pet. for Reh'g at 4.