

IV. CONCLUSION

Accordingly, Social Security's denial of disability benefits for Athanasius Thalman is affirmed.

Thalman asserts that his condition has worsened and that he now requires dialysis treatment to survive. If this is so, the court urges Thalman to provide Social Security the necessary supporting evidence and to either reapply for or, if it is possible, amend his application for Social Security benefits and proceed based on his current condition.

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FSM SUPREME COURT APPELLATE DIVISION

TADASY ANDREW and HEIRS OF)
EDMOND TULENKUN,)
)
 Appellants,)
)
 vs.)
)
 HEIRS OF TULENSRU SEYMOUR,)
)
 Appellees.)
_____)

APPEAL CASE NO. K5-2016

ORDER OF DISMISSAL

Decided: September 28, 2016

BEFORE:

Hon. Dennis K. Yamase, Chief Justice, FSM Supreme Court
Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court
Hon. Camillo Noket, Specially Assigned Justice, FSM Supreme Court*

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

APPEARANCES:

For the Appellants: Yoslyn G. Sigrav, Esq.
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For the Appellees: Harry A. Seymour, Esq.
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HEADNOTES

Appellate Review – Motions

When a motion is served on opposing counsel by mail, the seven days allowed for responses to motions is enlarged by six more days. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

Courts – Judges

Kosrae State Court judges are constitutionally required to retire upon attaining the age of sixty-five years. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 & n.2 (App. 2016).

Appellate Review – Decisions Reviewable

An appellate court may receive proof of or take notice of facts outside the record to determine whether a question presented to it is moot, and, if events after an appeal is filed make the issue presented moot, no justiciable dispute is presented and the court is without jurisdiction to consider the appeal – it must dismiss a moot appeal. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

Appellate Review – Decisions Reviewable; Constitutional Law – Case or Dispute – Mootness

Since no justiciable case or dispute is presented when events after the filing of an appeal make the issues presented moot, the appellate court lacks jurisdiction to consider or decide moot appeals. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

Appellate Review – Decisions Reviewable – Interlocutory; Appellate Review – Dismissal

When an appeal is moot, the appellate court must dismiss it without considering whether the court would also lack jurisdiction because it is an interlocutory appeal. That is an issue to be left for another day. Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

Appellate Review – Motions; Costs – Disallowed

When a motion for costs and attorney's fees contains no supporting grounds for this request in the motion's text, the motion will be denied without prejudice to any claim for costs taxable under Appellate Rule 39(a). Andrew v. Heirs of Seymour, 20 FSM R. 629, 631 (App. 2016).

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COURT'S OPINION

PER CURIAM:

This came before the court on the appellants' Motion to Stay Proceeding in Kosrae State Court Civil Action No. 45-12. The presiding single appellate justice asked the parties to address two questions before that motion could be considered:

1) whether, since this is not a petition for a writ of prohibition or mandamus, the appellate court has jurisdiction over an "interlocutory appeal" from an order denying the disqualification of the presiding trial court judge because it is not from a final order or judgment; and

2) whether this appeal should be dismissed as moot since Chief Justice Aliksa B. Aliksa has retired.

The appellants, Tadasy Andrew and the Heirs of Edmond Tulenkun, were asked to file a memorandum on these points no later than September 2, 2016, with the appellees, the Heirs of

Tulensru Seymour, given until September 9, 2016 to respond with their own memorandum. No memorandums were filed, but the Heirs of Tulensru Seymour, filed, on September 9, 2016, their Motion for Dismissal of Appeal; Motion for Costs, Including Attorney's Fees. They served their motion on the appellants' counsel by mail.¹ Therefore, the seven days allowed for responses to motions, FSM App. R. 27(a), was, by rule, enlarged by six more days, FSM App. R. 26(c). The opposition was thus due on September 22, 2016. No opposition was filed.

This is an interlocutory appeal from Kosrae State Court Chief Justice Alikxa B. Alikxa's trial court order denying his disqualification from hearing Kosrae State Court Civil Action No. 45-12. The Heirs of Tulensru Seymour move to dismiss this appeal on two grounds. First, they contend that the court lacks jurisdiction over this appeal because an order denying the disqualification of the presiding trial court judge's recusal is not a final order or judgment, because such an order is not appealable under the collateral order doctrine, and because such an order is not an interlocutory appeal permitted either by the FSM Rules of Appellate Procedure or by Kosrae State Code § 6.404(2), (3), or (6). Second, they contend that this appeal must be dismissed because Chief Justice Alikxa B. Alikxa, the trial court judge whose disqualification was being sought, has retired from the bench, and thus this appeal is moot.

Although outside the record, we take notice that Kosrae State Court Chief Justice Alikxa B. Alikxa has, as required by the Kosrae Constitution,² retired from the bench. We may receive proof or take notice of facts outside the record to determine whether a question presented to us is moot, and, if events after an appeal is filed make the issue presented moot, no justiciable dispute is presented and we are without jurisdiction to consider the appeal – we therefore must dismiss a moot appeal. Helgenberger v. Bank of Hawaii, 19 FSM R. 139, 143-44 (App. 2013); Reddy v. Kosrae, 11 FSM R. 595, 596-97 (App. 2003). Since no justiciable case or dispute is presented when events subsequent to the filing of an appeal make the issues presented moot, we lack jurisdiction to consider or decide moot appeals. Kosrae v. Jim, 17 FSM R. 97, 99 (App. 2010); Kosrae v. Benjamin, 17 FSM R. 1, 4 (App. 2010); Wainit v. FSM, 14 FSM R. 476, 478 (App. 2006).

Since this appeal is moot, we must dismiss it without considering whether we would also lack jurisdiction because this is an interlocutory appeal from an order denying a trial judge's disqualification. That is an issue left for another day.

Accordingly, the motion to dismiss is granted. Although the motion's caption included a motion for costs and attorney's fees, no supporting grounds for this request was included in the motion's text. We therefore deny the motion for costs and attorney's fees without prejudice to any claim for costs taxable under Appellate Rule 39(a).

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¹ It was also sent by e-mail.

² "Justices shall retire upon attaining the age of sixty-five years." Kos. Const. art. VI, § 3.