

NO. 30658

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

H. ISABELLE MCGARRY TRUST OF MARCH 19, 1971,
Plaintiff-Appellant,

v.

STATE OF HAWAI'I, STEPHEN WHITTAKER,
DAVID KAAPU, CARL VINCENTI, DAVID LACY, and BARBARA LACY,
Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 09-1-0337K)

ORDER DENYING MOTION FOR RECONSIDERATION OF DISMISSAL ORDER
(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon review of (1) the November 22, 2010 order dismissing appellate court case number 30658 for lack of appellate jurisdiction, (2) Howard Hofelich's (Hofelich) December 13, 2010 motion for reconsideration of the November 22, 2010 dismissal order pursuant to Rule 40 of the Hawai'i Rules of Appellate Procedure (HRAP), and (3) the record, it appears that Howard Hofelich's December 13, 2010 motion for reconsideration of the November 22, 2010 dismissal order is untimely and lacks merit.

"A motion for reconsideration may be filed by a party only within 10 days after the filing of the opinion, dispositional order, or ruling unless by special leave additional time is granted during such period by a judge or justice of the appellate court involved." Hawai'i Rules of Appellate Procedure (HRAP) Rule 40(a). Hofelich did not file his December 13, 2010 HRAP Rule 40 motion for reconsideration within ten days after the filing of the November 22, 2010 dismissal order, as HRAP Rule 40(a) requires. Therefore, Hofelich's December 13, 2010 HRAP Rule 40 motion for reconsideration is untimely.

Furthermore, this court did not overlook or misapprehend any points of law or fact in entering the November 22, 2010 dismissal order. Therefore, Hofelich's December 13, 2010 HRAP Rule 40 motion for reconsideration lacks merit. Accordingly,

Hofelich's December 13, 2010 HRAP Rule 40 motion for reconsideration of the November 22, 2010 dismissal order is denied.

DATED: Honolulu, Hawai'i, December 17, 2010.

Presiding Judge

Associate Judge

Associate Judge