

DISSENTING OPINION BY NAKAMURA, C.J.

I respectfully dissent. In this case, the trial court "approved and so ordered" a stipulation Plaintiffs-Appellants obtained to extend the deadline for filing their notice of appeal for two weeks. The stipulation was secured by Plaintiffs-Appellants and ordered by the trial court before the original deadline¹ for filing the notice of appeal had expired. Thus, if the trial court had denied the stipulation for extension, Plaintiffs-Appellants could have filed their notice of appeal before the original deadline. In reliance on the trial court's extension order, Plaintiffs-Appellants filed their notice of appeal after the original deadline and within the extended deadline.²

I agree with the majority that the trial court erred in approving the stipulation and ordering the extension because there was no showing of good cause for the extension. However, in the limited circumstances presented here -- where (1) an appellant seeks and obtains a court order extending the filing deadline before the expiration of the original deadline; (2) the appellant files the notice of appeal in compliance with the court's order; and (3) there is no showing that the extension prejudiced the appellee -- I would recognize an equitable

¹ With respect to Plaintiffs-Appellants, I am using the term "original deadline" to refer to the deadline to file their notice of appeal that Plaintiffs-Appellants faced after the trial court entered its order denying their motion for reconsideration.

² The Plaintiffs-Appellants' original deadline for filing their notice of appeal was July 9, 2007, based on the following calculation: (1) the trial court entered its order denying Plaintiffs-Appellants' timely motion for reconsideration on June 6, 2007; (2) under Hawai'i Rules of Appellate Procedure (HRAP) Rule 4(a)(3) (2006), a party has thirty days to file a notice of appeal after the entry of an order disposing of a timely motion for reconsideration; (3) however, because the thirty-day period ended on July 7, 2007, which was a Saturday, Plaintiffs-Appellants' original deadline for filing their notice of appeal became the following Monday, or July 9, 2007, pursuant to HRAP 26(a) (2000). On July 6, 2007, the trial court approved the parties' stipulation and ordered a two-week extension of the time to file a notice of appeal, which extended the deadline to July 23, 2007. Plaintiffs-Appellants filed their notice of appeal on July 23, 2007, within the extended deadline ordered by the trial court.

exception to the strict enforcement of time limits for filing a notice of appeal.

I.

The United States Supreme Court had previously recognized such an equitable exception, known as the unique circumstances doctrine, to the time limits under federal law for filing a notice of appeal. Harris Truck Lines, Inc. v. Cherry Meat Packers, Inc., 371 U.S. 215 (1962); Thompson v. Immigration and Naturalization Service, 375 U.S. 384 (1964). In Harris, the trial court, prior to the expiration of the original thirty-day deadline, granted the appellant a two-week extension to file its notice of appeal. Harris, 371 U.S. at 216. Appellant filed its notice of appeal after the original deadline had expired but within the new extended deadline. Id. The Court of Appeals dismissed the appeal for lack of appellate jurisdiction, ruling that there had been no showing of excusable neglect based on the failure of a party to learn of the entry of the judgment, which was required by the applicable statute and rule to extend the time for appeal, and thus, the appeal was untimely. Id.

The Supreme Court disagreed with the Court of Appeals, holding as follows:

In view of the obvious great hardship to a party who relies upon the trial judge's finding of "excusable neglect" prior to the expiration of the 30-day period and then suffers reversal of the finding, [the trial judge's finding] should be given great deference by the reviewing court. Whatever the proper result as an initial matter on the facts here, the record contains a showing of unique circumstances sufficient that the Court of Appeals ought not to have disturbed the motion judge's ruling. The judgment is vacated and the case is remanded to the Court of Appeals so that petitioner's appeal may be heard on its merits.

Id. at 217.

In Thompson, the appellant served post-trial motions, including a new trial motion, two days late. Thompson, 375 U.S. at 385, 388. The trial court, however, "specifically declared that the 'motion for new trial' was made 'in ample time.'" Id. at 385. If any question had been raised about the timeliness of appellant's post-trial motions, the appellant could have filed

his notice of appeal within the original deadline. Id. at 386. Relying on the trial court's assurance that his new trial motion had been made "in ample time," appellant filed his notice of appeal after the original deadline but within the extended time applicable to timely post-trial motions. Id. at 386. The Court of Appeals dismissed the appeal on the ground that it was untimely. Id. at 385.

In vacating the Court of Appeal's Judgment, the Supreme Court held:

The instant cause fits squarely within the letter and spirit of Harris. Here, as there, petitioner did an act which, if properly done, postponed the deadline for the filing of his appeal. Here, as there, the District Court concluded that the act had been properly done. Here, as there, the petitioner relied on the statement of the District Court and filed the appeal within the assumedly new deadline but beyond the old deadline. And here, as there, the Court of Appeals concluded that the District Court had erred and dismissed the appeal. Accordingly, in view of these "unique circumstances," Harris Truck Lines, Inc., v. Cherry Meat Packers, Inc., *supra*, 371 U.S. at 217, 83 S.Ct. at 285, 9 L.Ed.2d 261, we grant the writ of certiorari, vacate the judgment, and remand the case to the Court of Appeals so that petitioner's appeal may be heard on the merits.

Id. at 387.

II.

Recently, in Bowles v. Russell, 551 U.S. 205, 214 (2007), the United States Supreme Court, in a five to four decision, overruled Harris and Thompson, "to the extent they purport to authorize an exception to a jurisdictional rule." The Supreme Court majority concluded that "[b]ecause this Court has no authority to create equitable exceptions to jurisdictional requirements, use of the 'unique circumstances' doctrine is illegitimate." Id.

However, I agree with the four dissenting Justices who concluded that (1) the Court did have the authority to recognize an equitable exception to a time limit for filing a notice of appeal and (2) should do so in Bowles, where the appellant relied on an extension order issued by the trial court in filing his notice of appeal that was later deemed to be untimely. Id. at

220-21 (Souter, J., dissenting). The dissent reasoned that "it certainly seems reasonable to rely on an order from a federal judge." Id. at 220.

In the present appeal, it was reasonable for Plaintiffs-Appellants to rely on the trial court's order that was issued before the original deadline expired and extended for two weeks their deadline for filing their notice of appeal. Had the trial court denied the stipulation for the two-week extension, Plaintiffs-Appellants could have filed their notice of appeal before the original deadline expired. We require and expect parties to comply with court orders. We should permit them to rely on court orders in determining whether the time for filing a notice of appeal has expired.

III.

Enos v. Pac. Transfer & Warehouse, Inc., 80 Hawai'i 345, 910 P.2d 116 (1996), the principal case on which the majority relies, is distinguishable. In Enos, after the original thirty-day deadline for filing its notice of appeal had expired, the appellant filed a motion for extension of time to file its notice of appeal. Id. at 347-48, 910 P.2d 118-19. The trial court granted the motion pursuant to the former version of Hawai'i Rules of Appellate Procedure Rule 4(a)(5), which authorized a court to extend the deadline for filing a notice of appeal for thirty days "upon a showing of excusable neglect or good cause." Id. at 348-49, 910 P.2d at 119-20. The Hawai'i Supreme Court held that appellant's extension motion had not been supported by good cause or excusable neglect; that the trial court had abused its discretion by granting the motion; and that the supreme court had no jurisdiction to consider the appeal because the appeal was untimely. Id. at 349-56, 910 P.2d at 120-27.

In Enos, the appellant moved for the extension after the original thirty-day deadline had already expired. Thus, the appellant could not have relied upon the trial court's extension order in failing to meet the original filing deadline or been

induced by the trial court's extension order to miss that deadline. Instead, appellant sought an extension order from the trial court to cure appellant's mistake in missing the original filing deadline.

The absence of any detrimental reliance on the trial court's order is what distinguishes Enos from the present case. Here, Plaintiffs-Appellants could have, and presumably would have, filed their notice of appeal on time if the trial court had not approved and ordered the two-week extension. Plaintiffs-Appellants sought and obtained the trial court's order extending the filing deadline before the expiration of the original deadline. It was reasonable for the Plaintiffs-Appellants to rely upon and trust the order issued by the trial court. In justifiable reliance on the extension ordered by the trial court, Plaintiffs-Appellants waited to file their notice of appeal until after the original deadline but in compliance with the new extended deadline. There is no indication that the extension prejudiced Defendant-Appellee as it stipulated to the extension.

IV.

I do not read Enos as precluding the application of an equitable exception to the time limits for filing a notice of appeal under the "unique circumstances" of this case. In view of the particular circumstances of this case and "the obvious great hardship" that would result to Plaintiffs-Appellants if their reliance on the trial court's extension order was ruled invalid on appeal, I would apply an equitable exception and allow their appeal to be considered on the merits. See Harris, 371 U.S. at 217. Accordingly, I respectfully dissent from the decision to dismiss Plaintiffs-Appellants' appeal for lack of jurisdiction.