

NO. CAAP-12-0000641

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

ALEXANDER Y. MARN, Plaintiff-Appellant,
v.
McCULLY ASSOCIATION, a Hawai'i registered Limited Partnership;
ALA WAI INVESTMENT, INC., a Hawai'i corporation, a general
partner of McCully Association, et al., Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 12-1-0553-02)

ORDER DISMISSING THE APPEAL
(By: Nakamura, C.J., Foley and Ginoza, JJ.)

Upon review of the Motion for Relief From Default, filed on March 21, 2013, by Plaintiff-Appellant Alexander Y. Marn (Appellant), through counsel Joseph W. Huster, the Memorandum in Opposition to the Motion for Relief From Default, filed on March 25, 2013, by Defendants-Appellees Liquidating Receiver Thomas E. Hayes, McCully Associates, Ala Wai Investment, Inc., and Thomas E. Hayes, Individually, the Joinder to Liquidating Receiver

Thomas E. Hayes' Memorandum in Opposition to Motion for Relief From Default, filed on March 25, 2013, by Defendant-Appellee James K.M. Dunn, Successor Trustee of the Annabelle Y. Dunn Trust dated June 18, 1991, and James Y. Marn, Jr., the papers in support and in opposition, and the record and files herein, it appears that:

(1) On July 16, 2012, Appellant, then proceeding pro se, filed a notice of appeal;

(2) The record on appeal was filed on November 30, 2012, and the appellate court clerk informed Appellant that the statement of jurisdiction was due by December 10, 2012, and the opening brief was due by January 9, 2013;

(3) Appellant did not file a statement of jurisdiction;

(4) On December 16, 2012, the appellate court clerk granted Appellant an extension until February 8, 2013, to file the opening brief;

(5) Appellant did not file an opening brief;

(6) On March 4, 2013, the appellate court clerk informed Appellant that the time for filing the statement of jurisdiction and opening brief had expired and, pursuant to Rule 30 of the Hawai'i Rules of Appellate Procedure, the matter would be called to the court's attention on March 25, 2013, for such action as the court deems proper, which could include dismissal;

(7) Counsel entered an appearance on March 21, 2013;

(8) Appellant seeks relief from default of the statement of jurisdiction and opening brief due to his "excusable neglect as an unassisted pro-se plaintiff," yet the record

reflects Appellant timely sought and received from the appellate court clerk the first extension for the opening brief in this appeal, and Appellant has successfully managed pro se about ten (10) different appeals in this court, having requested and obtained extensions of time to file opening briefs on numerous occasions; and

(9) Appellant fails to demonstrate good cause why he should be relieved from default of the statement of jurisdiction and opening brief. Therefore,

IT IS HEREBY ORDERED that the appeal is dismissed.

DATED: Honolulu, Hawai'i, April 9, 2013.

Chief Judge

Associate Judge

Associate Judge