

NO. CAAP-13-0002916

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

MICHAEL S. GIBSON, Plaintiff-Appellant, v.  
KATHRYN K. WIESE, Defendant-Appellee

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT  
(FC-M NO. 09-1-0013)

ORDER

(1) DENYING WITHOUT PREJUDICE PLAINTIFF-APPELLANT'S  
SEPTEMBER 17, 2013 MOTION TO EXTEND TIME TO FILE APPEAL;

(2) DISMISSING THE APPEAL PURSUANT TO HRAP RULE 24(c);

AND

(3) ALL OTHER PENDING MOTIONS ARE DENIED AS MOOT  
(By: Nakamura, C.J., Leonard and Reifurth, JJ.)

Upon consideration of the "Motion to Extend Time to File Appeal," filed September 17, 2013, by Plaintiff-Appellant Michael S. Gibson (Appellant), pro se, the "Affidavit in Support of Motion for Leave to Proceed on Appeal In Forma Pauperis, Amended," filed September 18, 2013, by Appellant, which the court construes as a second motion for leave to proceed on appeal in forma pauperis, and the record, it appears that,

(1) Appellant filed a notice of appeal on August 20, 2013;

(2) To the extent Appellant seeks an extension of time to file a notice of appeal in this appellate court case, the request is moot;

(3) To the extent Appellant seeks an extension of time to file another notice of appeal from the same underlying family court proceedings, FC-M No. 09-1-0013, Hawai'i Rules of Appellate Procedure (HRAP) Rule 4(a)(4) requires requests for extensions of time to file a notice of appeal to be filed in the court or agency appealed from;

(4) On September 4, 2013, the court denied without prejudice Appellant's request to proceed on appeal in forma pauperis, and ordered Appellant to pay the required filing fee, pursuant to HRAP Rule 24(c), within ten days from the date of the order, or the appeal could be dismissed;

(5) Appellant did not file a motion for reconsideration of the September 4, 2013 order;

(6) Appellant's second motion for leave to proceed on appeal in forma pauperis, filed September 18, 2013, appears to restate the grounds stated in the aforementioned initial request except that the first motion indicated that Appellant had \$7,000 in cash, checking or savings accounts, whereas the second motion indicates that Appellant has about \$500 in both accounts, but does not explain when, how, or why those funds depleted so quickly, and therefore does not establish good cause.

(7) Even if the September 18, 2013 second motion for leave to proceed on appeal in forma pauperis is construed as a motion for reconsideration, which it is not, it is untimely, as a

motion for reconsideration of the September 4, 2013 order would have been due by September 16, 2013. See HRAP Rule 26(c) & 40(a); and

(8) In any event, the filing and docketing fees have not been paid. Therefore,

IT IS HEREBY ORDERED that the September 17, 2013 motion for an extension of time to file a notice of appeal is denied without prejudice to any relief that might be available in the underlying family court case, FC-M No. 09-1-0013.

IT IS FURTHER ORDERED that the appeal is dismissed for failure to pay the filing docketing fee. All other pending motions are denied as moot.

DATED: Honolulu, Hawai'i, October 7, 2013.

Chief Judge

Associate Judge

Associate Judge