

NO. CAAP-14-0000451

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

IN THE MATTER OF THE SAMUEL R. HURWITZ
REVOCABLE LIVING TRUST DATED DECEMBER 19, 2011

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(TRUST NO. 12-1-0132)

ORDER GRANTING THE MAY 12, 2014
MOTION FOR RECONSIDERATION OF DISMISSAL
OF APPEAL FOR NON-PAYMENT OF FILING FEES

(By: Fujise, Presiding Judge, Leonard and Reifurth, JJ.)

Upon consideration of the Motion for Reconsideration of Dismissal of Appeal for Non-Payment of Filing Fees, filed May 12, 2014, by Petitioner-Appellant Nina Savino (Appellant), through counsel Joseph W. Huster (Counsel), the papers in support, and the record, it appears that:

(1) Appellant seeks reconsideration of the court's April 30, 2014 order dismissing the appeal, pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 11(b)(2) and (c)(2), for

failure to pay appellate filing and docketing fees within sixty days after the notice of appeal was filed;

(2) Appellant, proceeding pro se, conventionally filed the notice of appeal in the First Circuit Court (circuit court) on February 5, 2014;¹

(3) The next day, the circuit court clerk conventionally filed a notice for payment of fees,² notifying Appellant to pay the appellate filing and docketing fees to the circuit court by February 18, 2014, or the appeal may be dismissed, and the fees are "payable in the form of a money order or cashier's check - no personal checks";

(4) Counsel represents that Appellant, a New York resident, "attempted to mail the filing fee to the Court, but her payment was returned to her because it was not in the form of a check from a business account";

(5) Neither the appellate record nor the electronic record in the Hawai'i State Judiciary's Ho'ohiki website for the underlying case, No. 1TR12-1-000132, reflect that the appellate court or circuit court clerks returned Appellant's fee payment;

(6) Nonetheless, the Court Administrator for the First Circuit Court, Legal Documents Branch 1, informally reported to this court that the circuit court clerk returned Appellant's personal check by certified mail, which Appellant received on February 14, 2014;

¹ The circuit court clerk electronically filed the notice of appeal on February 21, 2014.

² The circuit court clerk electronically filed the notice for payment of fees on February 21, 2014.

(7) Appellant retained Counsel on April 28, 2014, and Counsel paid the filing and docketing fees at the Supreme Court Clerk's Office on April 30, 2014, a few hours after the court entered the dismissal order; and

(8) Considering Appellant's prior-albeit unsuccessful-attempt to pay timely the filing and docketing fees when she was proceeding pro se, and there being no apparent prejudice to Respondents-Appellees First Hawaiian Bank and the Hurwitz Family Beneficiaries, reconsideration of the April 30, 2014 dismissal order is warranted.

Therefore, IT IS HEREBY ORDERED that the Motion for Reconsideration of Dismissal of Appeal for Non-Payment of Filing Fees is granted. The circuit court clerk shall file the record on appeal within sixty days from the date of this order, unless otherwise extended by the court.

DATED: Honolulu, Hawai'i, May 16, 2014.

Presiding Judge

Associate Judge

Associate Judge