

NO. CAAP-16-0000846

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

DAVID RUDACILLE AND CAROL ZIMMERMAN, Plaintiffs-Appellees,
v.
SHARMAN O'SHEA, Defendant-Appellee,
and
WILLIAM GILROY, for Hawaii Food Forest Project,
Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
(CASE NO. 3RC-16-1-473K)

ORDER DENYING THE FEBRUARY 13, 2017 MOTION

AND

ORDER DISMISSING THE APPEAL

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

Upon consideration of the Affidavit in Support of Motion for Leave to Proceed on Appeal In Forma Pauperis, filed February 13, 2017, by Defendant-Appellee Sharman G. O'Shea (O'Shea), pro se, the papers in support, and the record, it appears that:

(1) On December 2, 2016, Defendant-Appellant William Gilroy (Gilroy), pro se, filed a notice of appeal. The notice of appeal identifies Gilroy as the appellant, and Gilroy apparently signed the document. Although O'Shea was a defendant in the underlying case, 3RC16-1-473K, O'Shea did not sign the notice of

appeal, and the document does not identify O'Shea as an appellant;

(2) On December 2, 2016, the district court in the underlying case denied Gilroy's request for a fee waiver, which the court construes as a denial of a motion for leave to proceed on appeal in forma pauperis;

(3) Thereafter, Gilroy did not ask this court for leave to proceed on appeal in forma pauperis. See Hawai'i Rules of Appellate Procedure (HRAP) Rule 24(a);

(4) On February 1, 2017, the appellate clerk notified Gilroy that the time to docket the record on appeal expired on January 31, 2017, the filing and docketing fees had not been paid, the record on appeal cannot be prepared without payment of the fees or an order authorizing Gilroy to proceed on appeal in forma pauperis, the matter would be called to the court's attention on February 11, 2017, for action that may include dismissal, and Gilroy may file a motion requesting relief from default;

(5) Gilroy did not pay the filing fees or take any further action in this appeal;

(6) An appeal may be dismissed where the record on appeal has not been prepared because the appellant failed to pay the required fees or obtain an order allowing the appellant to proceed in forma pauperis. HRAP Rule 11(b)(2) & (c)(2); and

(7) O'Shea seeks leave to proceed on appeal in forma pauperis, but he is not the appellant in this appeal, which is subject to dismissal as discussed above. Thus, the court will deny his request for relief.

Therefore, IT IS HEREBY ORDERED that O'Shea's February 13, 2017 motion for leave to proceed on appeal in forma pauperis is denied.

IT IS FURTHER ORDERED that the appeal is dismissed.

Dated: Honolulu, Hawai'i, February 23, 2017.

Presiding Judge

Associate Judge

Associate Judge