

NO. CAAP-16-0000426

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

KAHUKU VILLAGE ASSOCIATION, INC.,
Plaintiff-Appellee,
v.
GUY EUGENIO and LYNN MAINA-AUPO-EUGENIO,
Defendants-Appellants,
and
JOHN ERRETT, et al., Counterclaim Plaintiffs/Appellees,
and
KAHUKU VILLAGE ASSOCIATION, INC.,
a Hawaii non-profit corporation (KVA), et al.,
Counterclaim Defendants/Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 12-1-2985-11)

ORDER DISMISSING APPEAL

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

Upon review of the record here and in Office of Disciplinary Counsel v. Anthony P. Locricchio, No. SCAD-16-0000218,¹ it appears that:

(1) On May 24, 2016, Defendants-Appellants Guy Eugenio and Lynn Maina-Aupo-Eugenio (the Eugenios) filed the notice of appeal, through counsel, Anthony P. Locricchio (Locricchio);

(2) The Eugenios failed to pay the appellate filing and docketing fees with the notice of appeal, consistent with Hawai'i

¹ The court takes judicial notice of the documents filed in Office of Disciplinary Counsel v. Locricchio, No. SCAD-16-0000218.

Rules of Appellate Procedure (HRAP) Rule 3(a);

(3) On August 1, 2016, the appellate clerk entered a default of the record on appeal, informing the Eugenios that the time to docket the appeal expired on July 25, 2016, they had not paid the filing fee or obtained an order allowing them to proceed on appeal *in forma pauperis*, the matter would be brought to the court's attention on August 11, 2016, for action that may include dismissal of the appeal, and they could seek relief from default by motion;

(4) On August 18, 2016, the Eugenios filed what the court ultimately construed as a motion for relief from default and extension of time for the record on appeal;

(5) On October 18, 2016, the Hawai'i Supreme Court disbarred Locricchio, which ultimately became effective December 26, 2016;

(6) Pursuant to Rule 2.16(b) of the Rules of the Supreme Court of the State of Hawai'i, Locricchio was required to promptly notify his clients of his disbarment;

(7) On February 28, 2018, the court granted the August 18, 2016 motion in part, and ordered the Eugenios either to pay the appellate filing fees or file a motion for leave to proceed on appeal *in forma pauperis* within twenty days from the order. The court cautioned the Eugenios that failure to pay the filing fee or file a motion for leave to proceed on appeal *in forma pauperis* may result in the appeal being dismissed. The court noted that because the supreme court had disbarred Locricchio, the Eugenios were proceeding *pro se*, unless substitute counsel entered an appearance. The court ordered the appellate clerk to serve the order on the Eugenios at their mailing address listed in the appellate record. The appellate clerk mailed the order to the Eugenios at a P.O. Box and a residential address. The U.S. Postal Service returned the envelope addressed to the residential address, marked "Return to Sender, No Mail Receptacle, Unable to Forward," but the envelope addressed to the P.O. Box was not returned;

(8) The Eugenios have not taken any further action in this appeal; and

(9) 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 Rules 11(b)(2), (c)(2).

Therefore, IT IS HEREBY ORDERED that the appeal is dismissed.

IT IS FURTHER ORDERED that the appellate clerk shall mail this order to the Eugenios at their P.O. Box on record in this appeal.

Dated: Honolulu, Hawai'i, May 17, 2018.

Chief Judge

Associate Judge

Associate Judge