

NO. CAAP-13-0003841

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

DARLENE GRACE BACULPO, Plaintiff-Appellant,
v.
RODNEY BACULPO, Defendant-Appellee.

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT
(FC-D NO. 08-1-0063)

ORDER DISMISSING APPEAL

(By: Fujise, Presiding Judge, Reifurth and Chan, J.)

Upon review of the record, it appears that:

(1) On July 13, 2010, Plaintiff-Appellant Darlene Grace Baculpo (Appellant) filed in the underlying case, FC-D No. 08-1-0063, a notice indicating she had filed a bankruptcy petition in the United States Bankruptcy Court, District of Hawaii, case number 10-02010, and the proceedings were stayed, pursuant to 11 U.S.C. § 362(a) (2010);

(2) On May 11, 2011, Defendant-Appellee Rodney Baculpo (Appellee) filed in the underlying case a bankruptcy court order modifying the automatic stay to permit the family court to determine the nature and extent of Appellant's interest in the Uluwai Street property, but maintaining the stay as to any disposition of the property;

(3) On November 15, 2017, the court ordered the parties to notify the court about the status of Appellant's bankruptcy case, and to show cause why the appeal should not be dismissed for failure to prosecute;

(4) On November 20, 2017, Appellee's counsel, Douglas L. Halsted (Halsted), filed a response to the November 15, 2017 order and order to show cause, indicating, among other things, the bankruptcy court entered a final decree in Appellant's bankruptcy case on June 7, 2016, but he did not have a copy of the decree;

(5) Appellant did not file a response to the November 15, 2017 order and order to show cause;

(6) On February 14, 2018, the court ordered Halsted to file certified copies of the appropriate bankruptcy court documents indicating the stay in Appellant's bankruptcy case had been vacated, modified, lifted, or terminated, including, without limitation, the bankruptcy court's June 7, 2016 final decree. Because it appeared Appellant's counsel, Lionel M. Riley (Riley), is deceased, and it was unclear when Riley passed away, whether he received the November 15, 2017 order and order to show cause, or whether Appellant knew her appeal could be dismissed, the court ordered the appellate clerk to mail a copy of the November 15, 2017 order and order to show cause and the February 14, 2018 order to Riley's physical addresses on file in this case and with the Hawaii State Bar Association, and Appellant at her last known physical address in the record on appeal. The court also ordered that within fifteen days from the order, Appellant shall update her contact information with the court, consistent with Hawai'i Rules of Appellate Procedure Rule 25(f), and file a response to the November 15, 2017 order to show cause. The court cautioned Appellant that failure to timely comply with the order could result in sanctions;

(7) That same day, the appellate clerk mailed copies of the November 15, 2017 order and order to show cause, and the February 14, 2018 order to Riley and Appellant, as directed in the February 14, 2018 order;

(8) On February 20, 2018, Halsted filed a certified copy of the bankruptcy court's June 7, 2016 final decree, indicating Appellant's bankruptcy estate had been fully

administered, and the bankruptcy case is closed; and

(9) Because Appellant's bankruptcy case is closed, the automatic stay in this appeal is terminated. The United States Postal Service returned the envelopes containing the orders that the appellate clerk mailed to Riley as undeliverable, but did not return the envelopes containing the orders mailed to Appellant. Appellant did not file a response to the November 15, 2017 order to show cause, as directed in the February 14, 2018 order, and took no further action in this appeal.

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

DATED: Honolulu, Hawai'i, November 5, 2018.

Presiding Judge

Associate Judge

Associate Judge