

NO. 30115

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

DAVID KERSH, Plaintiff-Appellant, v. FRANCES T. O'BRIEN and
RANDALL Y.K. CHAR, Jointly and Severally,
Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 06-1-2208)

ORDER DENYING SEPTEMBER 7, 2010 HRAP RULE 40
MOTION FOR RECONSIDERATION OF AUGUST 17, 2010
ORDER GRANTING JULY 20, 2010 MOTION TO DISMISS APPEAL
(By: Fujise, Presiding Judge, Reifurth and Ginoza, JJ.)

Upon review of (1) the August 17, 2010 order granting Defendants-Appellees Francis T. O'Brien and Randall Y.K. Char's (Appellees O'Brien and Char) July 20, 2010 motion to dismiss this appeal for lack of appellate jurisdiction, (2) Plaintiff-Appellant David Kersh's (Appellant Kersh) September 7, 2010 motion to reconsider the August 17, 2010 dismissal order and (3) the record, it appears that Appellant Kersh's September 7, 2010 motion for reconsideration of the August 17, 2010 dismissal order is untimely and lacks merit.

"A motion for reconsideration may be filed by a party only within 10 days after the filing of the . . . dispositional order[.]" Hawai'i Rules of Appellate Procedure (HRAP) Rule 40(a). Appellant Kersh did not file his September 7, 2010 motion for reconsideration within ten days after the filing of the August 17, 2010 dismissal order. Therefore, Appellant Kersh's September 7, 2010 HRAP Rule 40 motion for reconsideration is untimely under HRAP Rule 40(a).

Furthermore, the court did not overlook or misapprehend any points of law or fact when entering the August 17, 2010 order granting Appellees O'Brien and Char's July 20, 2010 motion to dismiss this appeal for lack of appellate jurisdiction. Therefore, Appellant Kersh's September 7, 2010 motion for reconsideration of the August 17, 2010 dismissal order lacks merit. Accordingly,

IT IS HEREBY ORDERED that Appellant Kersh's September 7, 2010 motion for reconsideration of the August 17, 2010 dismissal order is denied.

DATED: Honolulu, Hawai'i, September 14, 2010.

Presiding Judge

Associate Judge

Associate Judge