

NO. CAAP-12-0000826

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

HUI Z. CHEN, Plaintiff-Appellant, v.
THOMAS J. HOEFLINGER, Defendant-Appellee

APPEAL FROM THE FAMILY COURT OF THE THIRD CIRCUIT
(FC-D NO. 05-1-0279)

SUMMARY DISPOSITION ORDER

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

Plaintiff-Appellant Hui Z. Chen ("Chen") appeals from the September 17, 2012 Order Denying Plaintiff's Motion for an Order to Mark Related Above-Captioned Files As "Confidential" Including Opinion of the Intermediate Court of Appeals on March 9, 2012, S.C. No. 28808 Filed September 4, 2012, ("Order Denying Motion to Mark Appellate Case as Confidential") entered in the Family Court of the Third Circuit ("Family Court").¹

On March 9, 2012, this court issued a published opinion ("Opinion") in appellate case number 28808 ("Appellate Case"), which vacated several findings in Family Court case number FC-D No. 05-1-279 ("Family Court Case") and remanded the case for further proceedings. *Chen v. Hoeflinger*, 127 Hawai'i 346, 368, 279 P.3d 11, 33 (App. 2012). On May 11, 2012, this court issued its corresponding judgment ("Judgment"). On July 19, 2012, and again on July 27, 2012, Chen filed motions with this court to have the Appellate Case records sealed, including the Opinion.

¹

The Honorable Ben H. Gaddis presided.

On August 6, 2012, this court issued a pair of orders denying those motions for want of jurisdiction, citing the Hawai'i Rules of Appellate Procedure ("HRAP") as terminating this court's jurisdiction and returning jurisdiction to the lower court upon the thirty-first day after entry of the Judgment.

On August 2, 2012, the Family Court ordered the Family Court Case file sealed.² On September 4, 2012, Chen filed a motion with the Family Court to have the Appellate Case file, including the Opinion, marked as confidential ("Motion to Mark Appellate Case as Confidential"). Despite the Family Court's decision to mark the Family Court Case file as confidential, the appellate decision remained readily accessible online. Because of the Appellate Case's close relation to the Family Court Case, Chen argues, the appellate decision and the Appellate Case file should be treated similarly.

On September 17, 2012, the Family Court issued its Order Denying Motion to Mark Appellate Case as Confidential. The corresponding minutes from the hearing explained that this court had elected to publish the Opinion without keeping certain information confidential, and that the Family Court "does not have the power to cancel the publication or is not sure if it can be done[, as] these cases go into the books for publication[.]"

On September 28, 2012, Chen timely appealed from the Order Denying Motion to Mark Appellate Case as Confidential.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Chen's point of error as follows:

As a threshold matter, Chen's opening brief largely fails to conform with HRAP Rule 28(b). Nevertheless, given our policy of "permit[ting] litigants . . . to have their cases heard on the merits, where possible," we proceed to address the merits of Chen's appeal. *O'Connor v. Diocese of Honolulu*, 77 Hawai'i 383, 386, 885 P.2d 361, 364 (1994).

² That order was subsequently vacated by the Family Court.

The Family Court did not abuse its discretion in denying Chen's Motion to Mark Appellate Case as Confidential. Chen grounded her motion, as well as this appeal, in Rule 9 of the Hawai'i Court Records Rules ("HCRR").³ She fails, however, to explain how HCRR Rule 9 guides, compels, or even permits a lower court to order that an appellate case file be marked confidential. As we find no authority therein or elsewhere that would permit the Family Court to have ruled in Chen's favor, we hold that the Family Court did not abuse its discretion. See Haw. Ct. Rec. R. 9.

Therefore,

IT IS HEREBY ORDERED that the September 17, 2012 Order Denying Plaintiff's Motion for an Order to Mark Related Above-Captioned Files As "Confidential" Including Opinion of the Intermediate Court of Appeals on March 9, 2012, S.C. No. 28808 Filed September 4, 2012, in the Family Court of the Third Circuit is affirmed.

DATED: Honolulu, Hawai'i, February 7, 2014.

On the briefs:

Hui Z. Chen
Pro Se Plaintiff-Appellant.

Presiding Judge

Associate Judge

Associate Judge

³ Chen has subsequently filed a similar motion in appellate case number CAAP-13-0000034. On February 4, 2014, that motion was denied without prejudice to Chen filing a timely motion with enough specificity to permit the court to rule.