

NO. CAAP-18-0000140  
(Consolidated with CAAP-18-0000037)

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

LORNA SOUZA, Trustee of the Irene K. Takahama Trust Dated  
November 19, 1992, as Amended, and the  
Lawrence I. Takahama Trust Dated November 19, 1992,  
Plaintiff-Counterclaim-Defendant/Appellee, v. ELIZABETH FISHER,  
Defendant-Counterclaim-Plaintiff/Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT  
HONOLULU DIVISION  
(CASE NO. 1RC12-1-925)

ORDER GRANTING IN PART MOTION TO DISMISS APPEAL  
(By: Ginoza, Chief Judge, Fujise and Leonard, JJ.)

Upon consideration of Plaintiff-Counterclaim  
Defendant/Appellee Lorna Souza, Trustee's (Souza) August 31, 2018  
Motion to Dismiss Elizabeth Fisher's Appeals and for Sanctions  
(Motion), the papers in support, the record, and there being no  
opposition, it appears that:

(1) On May 1, 2018, the circuit court clerk filed the  
record on appeal, and the appellate clerk notified the parties  
that, among other things, the opening brief was due on or before  
June 12, 2018;

(2) After two extensions, the opening brief was due on  
or before August 13, 2018;

(3) Fisher failed to file the opening brief or timely  
request another extension;

(4) On August 28, 2018, the appellate clerk entered a notice of default for the opening brief, indicating the matter would be called to the court's attention on or before September 7, 2018, for action that could include dismissal, under Hawai'i Rules of Appellate Procedure (HRAP) Rule 30, and Fisher could seek relief from default by motion;

(5) On August 31, 2018, Souza filed the instant Motion to dismiss the appeal, under HRAP Rule 30, and for sanctions, because Fisher failed to file the opening brief and the consolidated appeals are frivolous. Souza also requested a ruling indicating the district court had jurisdiction to file the December 18, 2017 amended order for damages and the February 9, 2018 order granting Souza's motion to correct the amended order for damages;

(6) A response to the Motion was due on or before September 10, 2018. See HRAP Rule 26(a) & 27(a);

(7) On January 11, 2019, the court granted Fisher's (a) September 10, 2018 motion for an extension of time to file an opposition to the Motion to dismiss the appeal, (b) September 10, 2018 motion for an extension of time to file a motion for relief from default of the opening brief, (c) September 24, 2018 motion and amended motion for an additional extension of time to file an opposition to the Motion to dismiss the appeal, (d) September 24, 2018 motion for an additional extension of time to file a motion for relief from default of the opening brief and renewed motion to stay appellate proceedings, and (e) October 8, 2018 motion for a third extension of time to file an opposition to the Motion to dismiss the appeal. The court ordered Fisher to file, within ten days, an opposition to the Motion to dismiss the appeal and a separate motion for relief from default of the opening brief. The court cautioned Fisher that failure to file either document may result in sanctions authorized by HRAP Rule 30, including, without limitation, monetary sanctions, the appeal being dismissed, or both. The court also issued an order to show cause to Fisher concerning her failure to timely file the opening brief

or request an extension, and ordered Fisher to file a response within ten days. The court cautioned Fisher that failure to timely respond to the order to show cause or to show good cause may result in sanctions;

(8) The three documents required by the January 11, 2019 order and order to show cause were due on or before January 22, 2019;

(9) On January 25, 2019, the court granted Fisher's January 22, 2019 motion for an extension of time to file the documents required by the January 11, 2019 order and order to show cause. The court ordered Fisher to file the documents within ten days from the order, which would have been February 4, 2019, and that no further extensions would be granted absent extraordinary circumstances. The court cautioned Fisher that failure to timely file the documents may result in sanctions described in the January 11, 2019 order and order to show cause;

(10) On February 7, 2019, the court granted Fisher's February 5, 2019 motion for another extension of time to file the documents required by the January 11, 2019 order and order to show cause. The court ordered Fisher to file the documents within ten days from the order, which would have been February 19, 2019, and that no further extensions would be granted absent extraordinary circumstances. The court again cautioned Fisher that failure to timely file the documents may result in sanctions described in the January 11, 2019 order and order to show cause; and

(11) Fisher has not filed the three documents required by the January 11, 2019 order and order to show cause, that is, she has not filed a response to the August 28, 2018 notice of default of the opening brief, an opposition to Souza's August 31, 2018 Motion to dismiss the appeal, or a response to the January 11, 2019 order to show cause concerning her failure to

timely file the opening brief or request an extension. HRAP Rule 30 provides, in part:

**Rule 30. BRIEFS NOT TIMELY FILED OR NOT IN CONFORMITY WITH THESE RULES.**

When the brief for appellant is not filed within the time required, the appellate clerk shall forthwith give notice to the parties that the matter will be called to the attention of the appellate court on a day certain for such action as the appellate court deems proper and that the appeal may be dismissed.

Because Fisher failed to file the opening brief within the time required and received notice that the appeal could be dismissed as a result, through both Souza's Motion to dismiss the appeal and the default notice, the court will grant in part Souza's Motion to dismiss the appeal, and dismiss the appeal.

Therefore, IT IS HEREBY ORDERED that the Motion is granted in part and denied in part as follows:

(1) The request to dismiss this consolidated appeal is granted, and the appeal is dismissed.

(2) All other requested relief is denied.

DATED: Honolulu, Hawai'i, March 8, 2019.

Chief Judge

Associate Judge

Associate Judge