

Electronically Filed
Intermediate Court of Appeals
CAAP-18-0000664
19-MAR-2019
08:50 AM

NO. CAAP-18-0000664

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

BS, Plaintiff-Appellee, v.
NS, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE SECOND CIRCUIT
(FC-D NO. 17-1-0249)

ORDER GRANTING MOTION TO DISMISS APPEAL

(By: Reifurth, Presiding Judge, Chan and Hiraoka, JJ.)

Upon consideration of Plaintiff-Appellee BS's (BS) March 7, 2019 "Motion to Dismiss Appeal Pursuant to Rule [sic] 12.1(e) and 30 of the Hawai['i] Rules of Appellate Procedure" (Motion), the papers in support, the record, and there being no opposition, it appears that:

(1) On October 16, 2018, the family court clerk filed the record on appeal;

(2) On October 17, 2018, the appellate clerk notified the parties that the statement of jurisdiction and opening brief were due on or before October 26, 2018, and November 26, 2018, respectively;

(3) Following two extensions, the opening brief was due on or before February 4, 2019;

(4) Defendant-Appellant NS (NS) failed to file the statement of jurisdiction and opening brief, or request an extension for the statement of jurisdiction or a third extension for the opening brief;

(5) On February 13, 2019, the appellate clerk entered a notice of default for the statement of jurisdiction and opening brief, indicating the matter would be called to the court's attention on February 25, 2019, for action that could include dismissal, under Hawai'i Rules of Appellate Procedure (HRAP) Rules 12.1(e) and 30, and NS could seek relief from default by motion;

(6) On March 7, 2019, BS filed the instant Motion to dismiss the appeal, under HRAP Rules 12.1(e) and 30, for failure to file the statement of jurisdiction and opening brief;

(7) A response to the Motion was due on or before March 14, 2019. See HRAP Rules 26(a) & 27(a);

(8) NS did not respond to the default notice or the Motion; and

(9) HRAP Rule 12.1(e) (2016) states, "Failure to file a statement of jurisdiction may result in sanctions, including dismissal of the appeal following notice and a meaningful opportunity to be heard." HRAP Rule 30 (2015) provides, in part:

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 NS failed to file the statement of jurisdiction and opening brief within the time required and received notice that the appeal could be dismissed as a result, through both the

instant Motion and the default notice, the court will grant the instant Motion and dismiss the appeal.

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

DATED: Honolulu, Hawai'i, March 19, 2019.


Presiding Judge


Associate Judge


Associate Judge