

**Electronically Filed
Intermediate Court of Appeals
CAAP-19-0000406
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NO. CAAP-19-0000406

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

RSM INC., Plaintiff-Appellee, v.
WILLIAM MIDDLETON AND TATIANA MIDDLETON,
Defendants-Appellants

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
(NORTH AND SOUTH HILO DIVISION)
(CASE NO. 3RC 17-1-000320)

ORDER DISMISSING APPEAL

(By: Ginoza, Chief Judge, Chan and Wadsworth, JJ.)

Upon consideration of the February 5, 2020 motion for relief from default of the opening brief, and February 10, 2020 motion for leave to file a late transcript request, by self-represented litigants Defendants-Appellants William and Tatiana Middleton (collectively, **Middletons**), the papers in support and in opposition, and the record, it appears that:

(1) On May 23, 2019, the Middletons filed the Notice of Appeal.

(2) On July 12, 2019, the clerk of the District Court of the Third Circuit (**District Court**) filed the record on appeal, making the opening brief due on August 21, 2019.

(3) On August 8, 2019, the appellate clerk granted the Middletons an extension of time to file the opening brief, to September 20, 2019.

(4) On September 3, 2019, the court granted the Middletons' motion for a second extension of time to file the opening brief, extending the deadline to October 21, 2019. The grounds for the motion were that a necessary transcript had not been filed; to review the issues on appeal, the court needed to consider evidence that would be adduced at a District Court hearing on post-judgment matters; the Middletons lacked access to the internet at the home they were house-sitting until about the first week in October; the Middletons had lifelong medical issues; and the Middletons needed to care for their special needs child.

(5) On October 8, 2019, the court granted another motion by the Middletons for a third extension of time to file the opening brief, extending the deadline to November 20, 2019. The grounds for the motion were substantially similar to those presented in the prior motion, except that the transcript was no longer missing and the Middletons stated that they could not move to a new residence until November.

(6) On November 14, 2019, the court granted another motion for a fourth extension of time to file the opening brief, extending the deadline to December 20, 2019, noting there would be no further extensions absent extraordinary circumstances. The grounds for the motion were substantially similar to those in the prior motion, with an update that the District Court had scheduled a hearing on post-judgment issues, and the Middletons were in the process of purchasing a home and would be unable to leave their current residence until late December.

(7) On December 9, 2019, the court granted in part another motion for a fifth extension of time to file the opening brief, and extended the deadline to January 21, 2020, again noting there would be no further extensions absent extraordinary circumstances. The Middletons had requested an extension to March 20, 2020, on grounds that were similar to those in the prior motion. The Middletons also informed the court that on

November 15, 2019, the District Court had held a hearing on the post-judgment matters; the Middletons were awaiting a supplemental record on appeal from the District Court with exhibits admitted at the November 15, 2019 hearing; and the Middletons were awaiting transcripts of the hearing and a decision(s) by the District Court. The Middletons also explained that they were close to finalizing their purchase of a home.

(8) On December 23, 2019, the Middletons filed a motion for reconsideration of the December 9, 2019 order, in which they appear to have contested the court's refusal to grant an extension to March 20, 2020, and the court's refusal to grant further extensions absent extraordinary circumstances, among other things.

(9) On December 31, 2019, the court denied the motion for reconsideration.

(10) The Middletons failed to file their opening brief by the January 21, 2020 deadline.

(11) On January 27, 2020, the appellate clerk notified the Middletons that the time for filing the opening brief had expired, the matter would be brought to the court's attention on February 6, 2020, for appropriate action pursuant to Hawai'i Rules of Appellate Procedure Rule 30, and the appeal may be dismissed. The appellate clerk explained that any request for relief from default should be made by motion.

(12) On February 5, 2020, the Middletons filed their motion for relief from default.

(13) The Middletons seek relief from default of the opening brief primarily on the same grounds raised in their December 23, 2019 motion for reconsideration.

(14) The Middletons have failed to present good cause for their motion for relief from default.

(15) The Middletons have been given multiple extensions for their opening brief totalling an additional 154 days. Further, they were cautioned twice that no further extensions

would be granted absent extraordinary circumstances. However, the Middletons failed to file their opening brief.

Therefore, IT IS HEREBY ORDERED that the appeal in Case No. CAAP-19-0000406 is dismissed.

IT IS FURTHER ORDERED that all pending motions are dismissed as moot in light of the dismissal of the appeal.

DATED: Honolulu, Hawai'i, May 19, 2020.

/s/ Lisa M. Ginoza
Chief Judge

/s/ Derrick H.M. Chan
Associate Judge

/s/ Clyde J. Wadsworth
Associate Judge