

NO. CAAP-20-0000368

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

ASSOCIATION OF OWNERS OF ORCHID MANOR,
by its Board of Directors, Plaintiff-Appellee, v.
EUGENE GEORGE WARNER, Defendant-Appellant,
and UNITED STATES ATTORNEY'S OFFICE FOR THE DISTRICT OF HAWAI'I,
Defendant-Appellee, and JOHN DOES 1-5, JANE DOES 1-5,
DOE PARTNERSHIPS 1-5, DOE CORPORATIONS 1-5, DOE ENTITIES 1-5,
and DOE GOVERNMENTAL UNITS 1-5, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CIVIL NO. 3CC171000164)

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that:

(1) On May 1, 2020, self-represented Defendant-Appellant Eugene George Warner (**Warner**) inadvertently filed the notice of appeal in an existing, related appeal in CAAP-19-0000568, without paying the fees required by Hawai'i Rules of Appellate Procedure (HRAP) Rule 3(a);

(2) On May 12, 2020, the appellate clerk refiled the May 1, 2020 notice of appeal to create this appeal in CAAP-20-0000368. The same day, the appellate clerk filed a May 1, 2020 letter to Warner, informing him that the May 1, 2020 notice of appeal was refiled in CAAP-20-0000368, and instructing him to pay the filing fees or file a request for a fee waiver;

(3) On May 21, 2020, the appellate clerk filed a notice of non-payment, informing Warner that he had not paid the filing fees or filed a motion for leave to proceed on appeal *in forma pauperis*, and that failure to do either by June 1, 2020, could result in dismissal of the appeal;

(4) On July 17, 2020, the appellate clerk entered a default of the record on appeal, informing Warner that the time to docket the appeal expired on June 30, 2020, he had not paid the filing fees, the record on appeal cannot be filed without payment of fees or an order allowing him to proceed on appeal *in forma pauperis*, the matter would be brought to the court's attention on July 27, 2020, for action that may include dismissal of the appeal, and he could seek relief from default by motion;

(5) Warner took no further action in the appeal; and

(6) An appeal may be dismissed where the record on appeal has not been prepared because the appellant failed to pay the required fees or obtain an order allowing the appellant to proceed *in forma pauperis*. HRAP Rule 11(b)(2), (c)(2).

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

DATED: Honolulu, Hawai'i, September 25, 2020.

/s/ Derrick H.M. Chan
Presiding Judge

/s/ Keith K. Hiraoka
Associate Judge

/s/ Clyde J. Wadsworth
Associate Judge