

NO. CAAP-23-0000106

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

HOWARD HOFELICH, Plaintiff-Appellant, and
SOUTH PACIFIC SCUBA TOURS, INC., Intervenor-Appellant, v.
STATE OF HAWAII, DCCA and DLNR; DENNIS KRUEGER, ESQ.;
ASHFORD AND WRISTON LAW CORPORATION; DAVID KAAPU, ESQ.;
STEPHEN D. WHITTAKER, ESQ.; CARL VINCENTI;
JUNG & VASSAR LAW CORPORATION; RONALD IBARRA;
UNITED STATES COAST GUARD VESSEL DOCUMENTATION CENTER (USCGVDC);
DAVID LAWTON, ESQ.; DOE CORPORATIONS 1-10; JOHN DOES 1-10;
JANE DOES 1-10; DOE GOVERNMENTAL AGENCIES 1-10;
DOE PARTNERSHIPS 1-10; DOE LLC CORPORATIONS 1-10,
Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CASE NO. 3CCV-21-0000297)

ORDER GRANTING MOTION TO DISMISS APPEAL
(By: Ginoza, Chief Judge, Wadsworth and Chan, JJ.)

Upon consideration of Defendants-Appellees David Lawton and Jung & Vassar P.C.'s (**Appellees**) April 25, 2023 Motion to Dismiss Appeal (**Motion**), the papers in support, the record, and there being no opposition, it appears that:

(1) On March 6, 2023, self-represented Plaintiff-Appellant Howard Hofelich (**Hofelich**), filed the notice of appeal without paying the fee required by Hawai'i Rules of Appellate Procedure (**HRAP**) Rule 3(a);

(2) The same day, the appellate clerk notified Hofelich to pay the filing fee or file a motion for leave to proceed on appeal *in forma pauperis* on or before March 16, 2023, or the appeal could be dismissed;

(3) On April 25, 2023, Appellees filed the Motion, seeking dismissal of the appeal due to, among other things, Hofelich's failure to pay filing fees.

(4) The record on appeal was due on or before May 5, 2023, see HRAP Rule 11(b)(1), but was not filed because Hofelich failed to pay the filing fee or obtain a fee waiver;

(5) On May 8, 2023, the appellate clerk entered a default of the record on appeal, informing Hofelich that the time to docket the appeal had expired, Hofelich had not paid the filing fee or obtained an order allowing him to proceed on appeal *in forma pauperis*, the matter would be brought to the court's attention on May 18, 2023, for action that may include dismissal of the appeal, and Hofelich could seek relief from default by motion; and

(6) Hofelich has not taken any further action in this appeal. 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 Motion is granted and the appeal is dismissed.

IT IS FURTHER ORDERED that all pending motions are dismissed.

DATED: Honolulu, Hawai'i, May 30, 2023.

/s/ Lisa M. Ginoza
Chief Judge

/s/ Clyde J. Wadsworth
Associate Judge

/s/ Derrick H.M. Chan
Associate Judge