

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 FOR RECONSIDERATION
(By: Ginoza, Chief Judge, Wadsworth and Nakasone, JJ.)

Upon consideration of self-represented Plaintiff-Appellant Howard Hofelich's (Hofelich) June 2, 2023 "Motion for Relief of the Order of Default Denying Howard Hofelich's Appeal by filing *Forma Pro Pauperis* and Being Unable to Pay the Appellant Court Fee of \$315" (Motion),¹ which the court construes as a motion for relief from default of the record on appeal and reconsideration of the Order Granting Motion to Dismiss Appeal, filed May 30, 2023 (Dismissal Order), the papers in support, and the record, it appears that:

¹ Hofelich is cautioned that the flyleaf of each separately filed document shall include a three-inch top margin, or a three-inch-by-three-inch space in the top right corner of the flyleaf. Hawai'i Rules of Appellate Procedure (HRAP) Rule 32(a).

(1) Hofelich seeks relief from the default of the record on appeal and reconsideration of the Dismissal Order, and tenders full payment for the appellate filing fees;

(2) Hofelich offers no explanation for why he failed to timely respond to the default notice entered by the appellate clerk on May 8, 2023, or oppose the motion to dismiss appeal filed by Defendants-Appellees David Lawton and Jung & Vassar P.C. on April 25, 2023; and

(3) Nonetheless, in deference to Hofelich's self-represented status, Waltrip v. TS Enterprises, Inc., 140 Hawai'i 226, 239, 398 P.3d 815, 828 (2016) (requiring courts to construe pro se filings in a reasonable manner that promotes access to justice), and because Hawai'i's appellate courts have "consistently adhered to the policy of affording litigants the opportunity to have their cases heard on the merits, where possible," Schefke v. Reliable Collection Agency, Ltd., 96 Hawai'i 408, 420, 32 P.3d 52, 64 (2001) (citation and quotation marks omitted), the court will grant the Motion, and accept the late-tendered payment for the filing fees.

Therefore, IT IS HEREBY ORDERED that the Motion is granted. The Dismissal Order is vacated and the appeal is reinstated. HRAP Rules 26(b), (e).

IT IS FURTHER ORDERED that within sixty days from the date of this order, the Clerk of the Circuit Court of the Third Circuit shall file the record on appeal.

IT IS FURTHER ORDERED that the appellate clerk shall serve a copy of this order on the Clerk of the Circuit Court of the Third Circuit.

DATED: Honolulu, Hawai'i, June 13, 2023.

/s/ Lisa M. Ginoza
Chief Judge

/s/ Clyde J. Wadsworth
Associate Judge

/s/ Karen T. Nakasone
Associate Judge