

**Electronically Filed
Intermediate Court of Appeals
CAAP-24-0000558
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NO. CAAP-24-0000558

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

MICHAEL MATTHEWS, Plaintiff-Appellee, v.
JAMES C. CARVALHO, Defendant-Appellant, and
APRIL T. CARVALHO; IKAIKA BUILDERS, INC., Defendants-Appellees,
and JOHN DOES 1-10; JANE DOES 1-10; DOE ENTITIES 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 1CCV-21-0000958)

ORDER DISMISSING APPEAL

(By: Leonard, Acting Chief Judge, Hiraoka and Wadsworth, JJ.)

Upon consideration of the Notice of Withdrawal and Substitution of Counsel for Defendants-Appellants John C. Carvalho, April T. Carvalho, and Ikaika Builders, Inc. (Notice), filed October 16, 2024, by attorney Frederick J. Arensmeyer (Arensmeyer), the papers in support, and the record in Matthews v. Carvalho, CAAP-24-0000557, CAAP-24-0000558, and CAAP-24-0000559, it appears that:

(1) Arensmeyer filed the identical Notice in CAAP-24-0000557, CAAP-24-0000558, and CAAP-24-0000559;

(2) In CAAP-24-0000558, Defendant-Appellant James C. Carvalho (James) is the self-represented Defendant-Appellant, and April T. Carvalho (April) and Ikaika Builders, Inc. (Ikaika Builders) are Defendants-Appellees, represented by attorney Randall Y. Kunn Char (Char);

(3) The Notice states that under Hawaii Rules of Appellate Procedure (HRAP) Rule 50(b), Char withdraws as counsel and Arensmeyer substitutes as counsel for "Defendants-Appellants

John C. Carvalho,^[1] April T. Carvalho, and Ikaiki Builders, Inc." The Notice is signed by Char and Arensmeyer, includes Arensmeyer's contact information, and is signed by April and James as "Defendant-Appellant," "Each individually and on behalf of Defendant-Appellant Ikaika Builders, Inc.";

(4) The court construes and approves the Notice as Char withdrawing as counsel and Arensmeyer substituting as counsel for April and Ikaika Builders as appellees in CAAP-24-0000558, and Arensmeyer entering an appearance as counsel for James as the appellant in CAAP-24-0000558;

(5) On August 20, 2024, James filed the notice of appeal, self-represented, which created the appeal in CAAP-24-0000558;

(6) The record on appeal in CAAP-24-0000558 was due on or before October 21, 2024, but was not filed because James did not pay the filing fee or obtain a fee waiver. See HRAP Rules 3(a), 11(b)(1), (3), 24, 26(a);

(7) On October 23, 2024, the appellate clerk entered a default of the record on appeal in CAAP-24-0000558, informing James, through Arensmeyer, that the time to docket the appeal had expired, James had not paid the filing fee or obtained an order allowing James to proceed on appeal *in forma pauperis*, the matter would be brought to the court's attention on November 4, 2024, for action that may include dismissal of the appeal, and James could seek relief from default by motion;

(8) James has not paid the filing fee or filed a motion for relief from default in CAAP-24-0000558. 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); and

(9) In addition, the notices of appeal that James filed in CAAP-24-0000558 and CAAP-24-0000559² are nearly identical,

¹ "John C. Carvalho" is not party to this appeal. The court construes the reference to "John C. Carvalho" to mean "James C. Carvalho."

² The court takes judicial notice of the notice of appeal in CAAP-24-0000559, filed August 21, 2024. Hawai'i Rules of Evidence Rule 201.

containing only minor technical differences, which effectively render the appeals duplicative and ensure James will not be prejudiced by dismissal of the appeal in CAAP-24-0000558.

Therefore, IT IS HEREBY ORDERED that the Notice is approved as follows:

1. Char withdraws as counsel and Arensmeyer substitutes as counsel for April and Ikaika Builders as the appellees in CAAP-24-0000558.

2. Arensmeyer enters an appearance as counsel for James as the appellant in CAAP-24-0000558.

IT IS FURTHER ORDERED that the appeal in CAAP-24-0000558 is dismissed.

IT IS FURTHER ORDERED that all pending motions in CAAP-24-0000558 are dismissed.

DATED: Honolulu, Hawai'i, December 23, 2024.

/s/ Katherine G. Leonard
Acting Chief Judge

/s/ Keith K. Hiraoka
Associate Judge

/s/ Clyde J. Wadsworth
Associate Judge