

FSM SUPREME COURT APPELLATE DIVISION

HAMLIN SAIMON, JOSIAH SAIMON, and	)	APPEAL CASE NO. K2-2016
LENORA SIGRAH,	)	(Civil Action No. 39-13)
	)	
Appellants,	)	
	)	
vs.	)	
	)	
GINN P. NENA and his Immediate Family,	)	
	)	
Appellees.	)	
_____	)	

ORDER OF DISMISSAL

Decided: July 30, 2021

BEFORE:

Hon. Dennis K. Yamase, Chief Justice  
Hon. Larry Wentworth, Associate Justice  
Hon. Dennis L. Belcourt, Associate Justice

APPEARANCE:

For the Appellants: Snyder H. Simon, Esq.  
P.O. Box 1017  
Tofol, Kosrae FM 96944

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HEADNOTES

Appellate Review – Dismissal

Since a court, even an appellate court, has the right to control its own docket, FSM Appellate Rule 31(c) does not prevent the appellate court, in an effort to control its own docket, from moving to dismiss an appeal for an appellant's failure to timely file a brief. Saimon v. Nena, 23 FSM R. 364, 365 (App. 2021).

Appellate Review – Dismissal

When the court, through a single justice, has made its own motion to dismiss an appeal as a matter of docket management, that motion cannot be decided without first giving the parties notice and opportunity to be heard because that would violate the litigant's due process rights guaranteed under the Constitution since notice and an opportunity to be heard is the essence of due process. Saimon v. Nena, 23 FSM R. 364, 365 (App. 2021).

Appellate Review – Dismissal

When a single justice gave the appellants time to file their brief after receiving their requested English translation(s); when the appellants were given an opportunity to report on the status of the requested English translation(s) and on their ability to submit a brief; and when they were provided notice that their appeal is subject to dismissal for failure to file a brief and were given an opportunity to show cause why it should not be dismissed, but, despite the time, notice, and opportunity given, the appellants have repeatedly failed to respond to court orders or to take further action in their appeal, the appellants have abandoned their appeal,

and the court will dismiss the appeal for lack of prosecution. Saimon v. Nena, 23 FSM R. 364, 365-66 (App. 2021).

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#### COURT'S OPINION

DENNIS K. YAMASE, Chief Justice:

On January 26, 2016, Appellants Hamlin Saimon et al. filed their notice of appeal and request for excerpt transcript of the trial in Kosrae [State Court] Civil Case No. 39-13, and further request for English translation of said excerpt transcript of trial. On December 15, 2016, a notice of briefing schedule was entered notifying the parties that the ready record notice and copies of certified lists of document and docket entries from the court appealed from have been received by the appellate division and that the Appellants' brief and appendices were due on or before January 27, 2017.

Having missed the briefing deadline, Appellants Hamlin Saimon et al. filed motions seeking enlargement of time on two separate occasions. The Court granted both motions giving more time to Appellants Hamlin Saimon et al. to file their opening brief with the last order granting enlargement of time entered on March 29, 2017, providing that their brief would be due no later than 10 days after an English translation was served upon them or their counsel.

Two years having passed with no further activity in this appeal, an order to report was entered on September 27, 2019, directing Appellants Hamlin Saimon et al. to report by October 18, 2019 on the status of their English translation(s) and on their ability to submit their brief. The order to report was served on Appellants' counsel of record, Snyder Saimon, and on Appellees' counsel, Sasaki George, on September 30, 2019. Appellants Hamlin Saimon et al. did not file any report by that deadline.

Nearly a year later, on September 2, 2020, an order of possible dismissal was entered directing Appellants Hamlin Saimon et al. to show cause, no later than 40 days after they were served with this order, why their appeal, now subject to dismissal for failure to submit a brief, should not be dismissed. Additionally, the order of possible dismissal contained instructions for the clerk to serve the order on the parties themselves in the instance that they do not have counsel representing them or on the counsel of record for any party that do have counsel. The certificates of service show that the order of possible dismissal was served in Kosrae on Nelyn R. Jonah and on Sasaki George on September 3, 2020, and then on Lenor T. Sigrah and Hosea Saimon on December 29, 2020. That deadline to show cause has long passed, Appellants Hamlin Saimon, et al. did not respond to the order of possible dismissal.

Since a court, even an appellate court, has the right to control its own docket, FSM Appellate Rule 31(c) does not prevent the appellate court, in an effort to control its own docket, from also moving to dismiss an appeal for an appellant's failure to timely file a brief. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 112-13 (App. 2008). Consequently, when the court, through a single justice, has made its own motion to dismiss as a matter of docket management, that motion cannot be decided without first giving the parties notice and opportunity to be heard because that would violate the litigant's due process rights guaranteed under the FSM Constitution since notice and an opportunity to be heard is the essence of due process. *Id.* at 113.

It is evident that the appellate division, through a single justice, has given Appellants Hamlin Saimon, et al. time to file their brief after receiving their requested English translation(s). Additionally, they were given an opportunity to report on the status of the requested English translation(s) and on their ability to submit a brief. Furthermore, they were provided notice that their appeal is now subject to dismissal for failure to file a brief and were given an opportunity to show cause why it should not be dismissed. However, despite time, notice and opportunity given to Appellants Hamlin Saimon et al, they have repeatedly failed

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to respond to court orders, or ultimately, to take further action in their appeal. Consequently, in light of the above and based upon the actions of Appellants Hamlin Saimon et al. or the lack thereof, it appears to be that Appellants Hamlin Saimon et al. have abandoned their appeal.

Accordingly, we hereby dismiss this appeal for lack of prosecution.

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