

FSM SUPREME COURT APPELLATE DIVISION

SOHNEL JOHNSON,)	APPEAL CASE NO. P20-2016
)	(Civil Action No. 2010-022)
Appellant,)	
)	
vs.)	
)	
WINCENER DAVID, in his capacity as Director)	
of Pohnpei Department of Health and Social)	
Services, and the POHNPEI GOVERNMENT,)	
)	
Appellees.)	
_____)	

OPINION

Argued: October 16, 2020
Decided: December 9, 2020

BEFORE:

Hon. Dennis K. Yamase, Chief Justice, FSM Supreme Court
Hon. Larry Wentworth, Associate Justice, FSM Supreme Court
Hon. Chang B. William, Specially Assigned Justice, FSM Supreme Court*

*Chief Justice, Kosrae State Court, Tofol, Kosrae

APPEARANCE:

For the Appellant: Danally Daniel, Esq.
Micronesia Legal Services Corporation
P.O. Box 129
Kolonias, Pohnpei FM 96941

* * * *

HEADNOTES

Appellate Review – Decisions Reviewable; Appellate Review – Notice of Appeal; Judgments – Relief from Judgment

When a notice of appeal was filed within 42 days of the trial court’s denial of relief from judgment, but not within 42 days of its order of dismissal, the only issue properly before the appellate court, and the only issue over which it has jurisdiction, is the trial court’s denial of relief from judgment. Johnson v. David, 23 FSM R. 104, 108 (App. 2020).

Appellate Review – Decisions Reviewable; Appellate Review – Notice of Appeal; Judgments – Relief from Judgment

An order denying a Rule 60(b) motion is final and appealable, and an appeal from the denial of a Rule 60(b) motion must be filed separately from the appeal from the final judgment. Johnson v. David, 23 FSM R. 104, 108 (App. 2020).

Appellate Review – Standard – Abuse of Discretion; Judgments – Relief from Judgment

Since Rule 60(b) relief from judgment is addressed to the court's sound discretion, the standard of review of a trial court's denial of a Rule 60(b) motion is whether the trial court abused its discretion. An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court could have rationally based its decision. Johnson v. David, 23 FSM R. 104, 109 (App. 2020).

Judgments – Relief from Judgment – Grounds

Relief under Rule 60(b)(6) requires extraordinary circumstances, and can only be used when the ground for relief is not one included in Rule 60(b) paragraphs (1) through (5). Johnson v. David, 23 FSM R. 104, 109 (App. 2020).

Judgments – Relief from Judgment – Grounds

When no extraordinary circumstances were presented and the only ground argued for relief – mistake – is not available under Rule 60(b)(6) because it is a Rule 60(b)(1) ground for relief, the trial court did not err in denying relief under Rule 60(b)(6). Johnson v. David, 23 FSM R. 104, 109 (App. 2020).

Judgments – Relief from Judgment – Time Limit

If a court's legal error were considered a "mistake" under Rule 60(b)(1), or if relief is sought under Rule 60(b)(6) for an error involving a fundamental misconception of law, the "reasonable time" for a Rule 60(b) motion of this kind may not exceed the time in which an appeal might have been taken; thus, a reasonable time for a motion for relief from a trial court's mistake cannot exceed the 42-day time limit in FSM Appellate Rule 4(a)(1). Johnson v. David, 23 FSM R. 104, 110 (App. 2020).

Civil Procedure – Motions – For Enlargement

A timely filed motion for enlargement of time can be granted for cause shown and this is an easily met requirement because the Rule 6(b)(1) "cause shown" standard is an even lower standard than the "good cause shown" standard, but it is not so low a standard as to be no standard at all, as when the motion does not present an adequate explanation or a legally sufficient reason for the enlargement of time. Johnson v. David, 23 FSM R. 104, 110 (App. 2020).

Civil Procedure – Parties – Substitution of

Rule 25 does not require that a probate case be completed before a Rule 25 motion to substitute a proper party for the deceased party can be made. The proper party to be substituted for a deceased party must be designated by a probate court, but that does not mean that the probate court must complete the case before the motion to substitute a designated proper party can be made. Johnson v. David, 23 FSM R. 104, 110 (App. 2020).

Civil Procedure – Parties – Substitution of

Rule 25(a) clearly contemplates appointment of legal representatives, such as an executor or an administrator. Relatives of the deceased who are not legal representatives cannot be substituted as parties. The identity of an administrator is not presumed from an intestacy statute. There must be some designation by a court. The proper party for substitution is either the executor or the administrator of the deceased's estate ("representative"), or, if the estate has been distributed by the time the motion to substitute is made, the distributee ("successor"). Johnson v. David, 23 FSM R. 104, 110 (App. 2020).

Civil Procedure – Parties – Substitution of; Domestic Relations – Probate

The usual proper party for substitution is the deceased party's representative – the executor or administrator of the decedent's estate since the appointment of an administrator is usually either the probate court's first act, or one of its first acts, once a probate case is filed. Once that designation is made, a Rule

25(a)(1) motion to substitute the proper party may be made. Rarely, the proper party for substitution will be the deceased party's successor(s) – distributee(s) because it often takes a significant amount of time to wind up a decedent's estate – to satisfy the decedent's just debts, identify the decedent's heirs, and distribute any remaining assets to the decedent's heirs or devisees. Johnson v. David, 23 FSM R. 104, 111 (App. 2020).

Civil Procedure – Motions – For Enlargement; Civil Procedure – Parties – Substitution of

The trial court is within its discretion to deny a motion for more time to file a substitution motion when the movant has not even taken the first step of filing a probate case, even though it is 11½ months after the court was first notified of the party's death and 7 months since a formal suggestion of death was filed (and 3¼ years since the party died) and the movant's explanation for why there was no substitution motion was false. Johnson v. David, 23 FSM R. 104, 111 (App. 2020).

Civil Procedure – Dismissal; Civil Procedure – Parties – Substitution of

When the trial court had previously given notice of a probable dismissal for the failure to file a substitution motion, and when the trial court later denied a motion for more time, it then had no choice but to dismiss the case for the plaintiff's utter failure to timely file a Rule 25(a) substitution motion. Johnson v. David, 23 FSM R. 104, 111 (App. 2020).

Judgments – Relief from Judgment – Grounds

When the trial court's dismissal was not based on an erroneous conclusion of law, the trial court did not have a legal basis on which to grant the plaintiff's Rule 60(b)(1) motion for relief from the trial court's alleged legal mistake in dismissing the case. Johnson v. David, 23 FSM R. 104, 111 (App. 2020).

Attorney and Client – Legal Malpractice; Judgments – Relief from Judgment – Grounds

Generally, attorney negligence or mistake is not a basis for Rule 60(b)(1) relief because clients must be held accountable for their attorney's acts or omissions, but that does not leave the client without a possible remedy. If the client would have prevailed in the case but for their counsel's inexcusable neglect, the client still has an available avenue of relief – a legal malpractice action. Johnson v. David, 23 FSM R. 104, 111 (App. 2020).

Attorney and Client – Legal Malpractice; Civil Procedure – Dismissal

Legal malpractice is a generic term for at least three distinct causes of action available to clients who suffer damages because of their lawyers' misbehavior. Clients wronged by their lawyers may sue for damages based on breach of contract, breach of fiduciary duty, or negligence. Thus, a client whose civil case was dismissed for inexcusable neglect in prosecuting the case, has, if the client is thereby aggrieved, a possible remedy against the law firm that represented that party. Johnson v. David, 23 FSM R. 104, 111 (App. 2020).

Attorney and Client – Legal Malpractice

When a case was dismissed for the plaintiff's failure to prosecute and neither an appeal nor a Rule 60(b) motion for relief from judgment are an available (or were a successful) remedy, the plaintiff, depending on the plaintiff's ability to prove that he or she would have prevailed at trial, may have a cause of action against the law firm that represented the plaintiff. The most frequent attorney error subject to a successful legal malpractice action (assuming the plaintiff can prove he or she would have prevailed) is an attorney's failure to comply with timing requirements. Johnson v. David, 23 FSM R. 104, 111-12 (App. 2020).

COURT'S OPINION

LARRY WENTWORTH, Associate Justice:

This appeal is from the trial court's November 16, 2016 order, Johnson v. Rosario, 21 FSM R. 7 (Pon. 2016), that denied the plaintiff's October 3, 2016 motion to set aside the trial court's September 16, 2016 order dismissing the case because no one had been substituted for the deceased plaintiff. We affirm that denial. Our reasons follow.

I. PROCEDURAL BACKGROUND

On October 1, 2010, Sohnel Johnson filed suit against Elizabeth Keller, in her capacity as the Director of the Pohnpei Department of Health Services, the Pohnpei state government, and the Pohnpei Community Health Center governing board. Johnson alleged that his civil rights and due process rights had been violated because Keller and Pohnpei had terminated his employment as the Executive Director of the Pohnpei Community Health Center without the authority to do so since the Health Center's board had just renewed his contract.

During a September 15, 2015 status conference, Johnson's counsel informed the trial court that Johnson had died,¹ that this would be corroborated once a death certificate was obtained, and that his heirs intended to supplant (that is, substitute for) him. Another status conference was held on January 7, 2016, after which Johnson's counsel filed a more formal, written Suggestion of Death on January 22, 2016.

On February 5, 2016, the trial court granted Johnson's January 15, 2016 motion to dismiss the Pohnpei Community Health Center governing board and granted Johnson's motion to enlarge time to file a suggestion of death on record, which made the January 22, 2016 filing of the suggestion of Johnson's death timely. No motion to substitute a party for Johnson was filed.

On July 27, 2016, the trial court issued an order that recited the case's recent (from September 15, 2015 on) procedural history; that noted the absence of any activity since the January 22, 2016 suggestion of death; and that notified Johnson's counsel that the case was subject to dismissal under Civil Procedure Rule 41(b) for the failure to prosecute if no further steps were taken to prosecute it within the next 30 days.

On August 26, 2016, Johnson's counsel filed a motion to enlarge time for 30 days, within which he would "hopefully complete the probate of the estate of the deceased plaintiff." Mot. for Enlargement of Time at 2 (Aug. 26, 2016). He stated that a "probate needs to be filed and completed as required by Rule 25." and that "[c]ounsel needs the time to hopefully continue the process begun to complete the probate of the late Sohnel Johnson." *Id.*

In its September 2, 2016 order, the trial court noted that it had been almost a year since it was first informed that Johnson had died and that a substitution motion would be forthcoming. It also noted that Civil Procedure Rule 25(a)(1) provided that the motion for substitution of parties be made within 90 days after the suggestion of a party's death on the record. The trial court held that the completion of probate was not necessary for a substitution motion; noted that the 90-day time period to file one, started by the January 22, 2016 suggestion of death, had long since passed; and noted that no substitution motion had been filed. The trial court therefore denied the motion to enlarge time and dismissed the case with prejudice.

On October 3, 2016, Johnson's counsel filed a motion, under Rule 60(b)(1) and (6), to set aside the

¹ Sohnel Johnson's actual date of death was May 25, 2013.

order of dismissal. He contended that, balancing the policy in favor of hearing a litigant's claims against the policy favoring finality, the trial court should grant relief because counsel asserted that Damarlane v. FSM, 8 FSM R. 10, 12 (Pon. 1997) differed from the trial court's conclusion that probate did not have to be wound up before a substitution of the deceased party could be made. He further asserted that the relief sought could be granted under Rule 60(b)(1), for mistake, or Rule 60(b)(6), for any other reason justifying relief, and argued that "counsel's inability to fully understand Rule 25 should not be ground to punish heirs of Johnson. . . . Lack of knowledge of an unfamiliar and rarely used Rule 25 should not be ground to punish those in front of the court." Mot. to Set Aside Order of Dismissal at 4 (Oct. 3, 2016).

On November 16, 2016, the trial court denied this motion. It found that the delay in filing a probate action for Sohnel Johnson and thus the failure to file a timely (or any) motion for substitution of the deceased party was "solely attributable to procrastination *per se*." Johnson v. Rosario, 21 FSM R. 7, 11 (Pon. 2016). It held that an attorney's mistakes were not a ground for which relief was available under Rule 60(b)(1), *id.* at 11-12, and that there were no extraordinary circumstances present that could justify relief under Rule 60(b)(6), *id.* at 12-13. The trial court therefore denied the motion as devoid of merit. *id.* at 14.

Johnson timely appealed the November 16, 2016 denial.

Sometime afterward in early 2017, a Johnson heir filed a probate case for Sohnel Johnson in the Pohnpei Supreme Court. A probate hearing was held on April 26, 2017, and by the Pohnpei Supreme Court's May 24, 2017 order,² the petitioner (Johnson's oldest daughter and a Pohnpei resident) was appointed the administratrix of Johnson's estate and directed to conclude the administration of the estate within 60 days.

II. ISSUE ON APPEAL

Johnson presents the sole issue on appeal as whether the trial court erred and abused its discretion by denying the August 26, 2016 motion to enlarge time and dismissing this case based on Civil Procedure Rule 25's timing requirement for the substitution for a deceased party.

Since Johnson's notice of appeal was filed within 42 days of the trial court's November 16, 2016 denial of relief from judgment, but not within 42 days of the September 2, 2016 order of dismissal, the only issue properly before us, and the only issue over which we have jurisdiction, is the trial court's denial of relief from judgment. See Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 131 (App. 2008). "An order denying a motion under Rule 60(b) is final and appealable, and an appeal from the denial of a Rule 60(b) motion must be filed separately from the appeal from the final judgment." 11 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2871, at 587-88 (3d ed. 2012) (footnote omitted); *cf.* Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008); Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

Thus, the trial court's November 16, 2016 denial of the Rule 60(b) motion is the only final order that was appealed. There was no appeal filed from the September 2, 2016 order of dismissal – from the final judgment. Therefore, the Rule 25 issue comes before us only in considering whether the trial court's denial of Rule 60(b) relief from the Rule 25 order of dismissal was proper.

² This order was included in the appellant's appendix as Exhibit No. 4. This was thus not part of the trial court record. But its presence, or absence, does not change the result.

III. STANDARD OF REVIEW

Since Rule 60(b) relief from judgment is addressed to the court's sound discretion, the standard of review of a trial court's denial of a Rule 60(b) motion is whether the trial court abused its discretion. Setik v. FSM Dev. Bank, 21 FSM R. 505, 514 (App. 2018); Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506 (App. 2016); Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004); Senda v. Mid-Pacific Constr. Co., 6 FSM R. 440, 445 (App. 1994). An abuse of discretion occurs when 1) the court's decision is clearly unreasonable, arbitrary, or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous; or 4) the record contains no evidence on which the court could have rationally based its decision. Edmond v. FSM Dev. Bank, 22 FSM R. 77, 80 (App. 2018); Ehsa, 20 FSM R. at 506; Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 434 (App. 2011); Jano v. King, 5 FSM R. 326, 330 (App. 1992).

IV. ANALYSIS

A. Appellant's Arguments

Johnson contends that the trial court abused its discretion because its decision was, in his view, based on an erroneous conclusion of law – that completion of a probate case was not necessary for a Rule 25(a) substitution motion. Johnson argues that the case's dismissal was also erroneous because the trial court had been informed, in the August 26, 2016 motion for an enlargement of time, that a probate case would be filed. Johnson further contends that, based on this assertion in the enlargement motion, the trial court's only proper ruling would have been to grant the motion to enlarge, and thus, presumably, that, because of this, the trial court had no discretion but to grant his later request for relief from the Rule 25 dismissal. In Johnson's view, this was a mistake by the trial court. Johnson states that it is clear why a substitution motion was not filed – the need to settle Johnson's estate by obtaining the consent of Johnson's heirs to the appointment of an administrator and only one of his three children lived on Pohnpei, making obtaining agreement difficult. Johnson further asserts that the trial court should not have subjected this tardiness or any mistake by his counsel to the sanction of the dismissal of his case, but should have instead sanctioned Johnson's counsel for disobedience.

B. Whether Any Relief Is Available

1. Rule 60(b)(6) Relief for Any Other Reason Justifying Relief

Johnson contends that the trial court's dismissal could have been set aside under Rule 60(b)(6). Relief under Rule 60(b)(6) requires "extraordinary circumstances," Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009); Farata v. Punzalan, 11 FSM R. 175, 178 (Chk. 2002), and can only be used when the ground for relief is not one included in Rule 60(b) paragraphs (1) through (5), In re Contempt of Jack, 20 FSM R. 452, 459 (Pon. 2016). No extraordinary circumstances were presented here and the only ground argued for relief – mistake – is not available under Rule 60(b)(6) because it is a Rule 60(b)(1) ground for relief. The trial court did not err in denying relief under Rule 60(b)(6). We will therefore consider whether relief should have been granted under Rule 60(b)(1).

2. Rule 60(b)(1) Relief for Mistake

Johnson contends that the trial court should have, under Rule 60(b)(1), set aside its order of dismissal because the trial court made a mistake by not granting the motion to enlarge time to allow probate to be completed (instead of dismissing the case) or because his counsel made a mistake in interpreting an infrequently used rule.

a. *Mistake by the Trial Court*

If a court's legal error were considered a "mistake" under Rule 60(b)(1), or if relief is sought under Rule 60(b)(6) for an error involving a fundamental misconception of law, the "reasonable time" for a motion of this kind may not exceed the time in which an appeal might have been taken; thus, a reasonable time for a motion for relief from a trial court's mistake cannot exceed the 42-day time limit in FSM Appellate Rule 4(a)(1). *In re Contempt of Jack*, 20 FSM R. 452, 460-61 (Pon. 2016); *FSM Dev. Bank v. Arthur*, 15 FSM R. 625, 632 n.4 (Pon. 2008). Johnson's October 3, 2016 motion to set aside the dismissal was within that Rule 4(a)(1) time limit, so the trial court could have granted the relief sought if, as Johnson contends, the trial court had made a legal mistake in dismissing Johnson's case. However, we can find no legal error in the trial court's September 2, 2016 denial of an enlargement of time or in its dismissal for the failure to file a substitution motion.

Johnson directs our attention to *Beal Bank S.S.B. v. Maras*, 11 FSM R. 351 (Chk. 2003). The *Beal Bank* court ruled that, once a party's death has been suggested on the record under Civil Procedure Rule 25(a)(1), the ninety-day deadline for making a motion for substitution of that deceased party starts running, and then dismissed a defendant because the ninety days had run and no motion for substitution or for enlargement of time had been filed. *Beal Bank S.S.B.*, 11 FSM R. at 354. Johnson asserts that since a timely motion to enlarge was filed on August 26, 2016, and that since that motion showed cause, the trial court could not deny that motion and dismiss the case.

Johnson is correct that a timely filed motion for enlargement of time can be granted for cause shown and that this is an easily met requirement because the Rule 6(b)(1) "cause shown" standard is an even lower standard than the "good cause shown" standard. *Jackson v. Siba*, 22 FSM R. 224, 233 (App. 2019). But it is not so low a standard as to be no standard at all. As will be seen below, the August 26, 2016 motion did not present an adequate explanation or a legally sufficient reason for the enlargement of time, because the explanation or reason given was that a "probate [case] need[ed] to be filed and completed as required by Rule 25."

Rule 25 does not require that a probate case be completed before a Rule 25 motion to substitute a proper party for the deceased party can be made. Rule 25 provides that:

If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

FSM Civ. R. 25(a)(1). As Johnson notes, the proper party to be substituted for the deceased party must be designated by a probate court. But that does not mean that the probate court must complete the case before a motion to substitute a designated proper party can be made. We hold that:

Rule 25(a) clearly contemplates appointment of legal representatives, such as an executor or an administrator. Relatives of the deceased who are not legal representatives cannot be substituted as parties. The identity of an administrator is not presumed from an intestacy statute. There must be some designation by a court. The proper party for substitution is either the executor or the administrator of the deceased's estate ("representative"), or, if the estate has been distributed by the time the motion to substitute is made, the distributee ("successor").

Damarlane v. FSM, 8 FSM R. 10, 12 (Pon. 1997) (citations omitted).

The usual proper party for substitution is the deceased party's representative – the executor or administrator of the decedent's estate. This is because the appointment of an administrator is usually either the probate court's first act, or one of its first acts, once a probate case is filed. Once that designation is made, a Rule 25(a)(1) motion to substitute the proper party may be made. Rarely, the proper party for substitution will be the deceased party's successor(s) – distributee(s).³ That would be because it often takes a significant amount of time to wind up a decedent's estate – to satisfy the decedent's just debts, identify the decedent's heirs, and distribute any remaining assets to the decedent's heirs or devisees.

The trial court was within its discretion to deny a motion for more time to file a substitution motion because the movant had not even taken the first step of filing a probate case, even though it was 11½ months after the court was first notified of Johnson's death and 7 months since a formal suggestion of death had been filed (and 3¼ years since Johnson had died). As seen above, the movant's explanation (heirs had not yet agreed to a settlement) for why there was no substitution motion was false because at that late point, no probate case had even been filed, let alone a request made to appoint (even a temporary) administrator, and a designated administrator was all that was needed for a proper party substitution motion. Thus, no cause had been shown for more time.

Because the trial court had previously given notice of a probable dismissal for the failure to file a substitution motion, and because the trial court had denied the motion for more time, the trial court then had no choice but to dismiss the case for the plaintiff's utter failure to timely file a Rule 25(a) substitution motion. And, since the trial court's dismissal was not based on an erroneous conclusion of law, the trial court did not have a legal basis on which to grant Johnson's Rule 60(b)(1) motion for relief from the trial court's alleged legal mistake.

b. *Mistake by Johnson's Counsel*

Johnson contends that, if it was his counsel who made the mistake in applying Rule 25(a)(1), and not the court, he should still be afforded relief from the dismissal. Generally, attorney negligence or mistake is not a basis for Rule 60(b)(1) relief because clients must be held accountable for their attorney's acts or omissions. Elymore v. Walter, 10 FSM R. 267, 269 (Pon. 2001); Mid-Pacific Constr. Co. v. Senda, 7 FSM R. 129, 135 (Pon. 1995). That does not leave Johnson, or his heirs, without a possible remedy.

If Johnson, or his heirs, would have prevailed in this case but for their counsel's inexcusable neglect in not filing a probate case and having an administrator appointed and then moving for substitution, they still have an available avenue of relief – a legal malpractice action. Legal malpractice is a generic term for at least three distinct causes of action available to clients who suffer damages because of their lawyers' misbehavior. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 644 (Kos. S. Ct. Tr. 2009). Clients wronged by their lawyers may sue for damages based on breach of contract, breach of fiduciary duty, or negligence. *Id.*

A party whose civil case was, as Johnson's was, dismissed for inexcusable neglect in prosecuting the case, has, if the party is thereby aggrieved, a possible remedy against the law firm that represented that party. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 130 (App. 2008); Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 114 (App. 2008). When a case has been dismissed for the plaintiff's failure to prosecute and neither an appeal nor a Rule 60(b) motion for relief from judgment are an available (or were a successful) remedy, the plaintiff, depending on the plaintiff's ability to prove that he or she would have prevailed at trial, may have a cause of action against the law firm that represented the plaintiff. Kishida v.

³ That could have happened in this case, if Sohnel Johnson's probate case had been filed promptly after he died in 2013, and had been closed and his assets distributed to his heirs before the trial court was notified in 2015 (and a suggestion of death filed then) that he had died.

Aizawa, 13 FSM R. 281, 284 (Chk. 2005). We also note that the most frequent attorney error that may be the subject of a successful legal malpractice action (assuming the plaintiff can prove he would have prevailed) is the attorney’s failure to comply with timing requirements. See Aunu v. Chuuk, 18 FSM R. 467, 469 n.2 (Chk. 2012) (failed to comply with statute of limitation).

We, however, can express no view on whether Johnson would or could have prevailed in this suit.

V. CONCLUSION

Accordingly, we hereby affirm the trial court’s denial of the Rule 60(b) motion to set aside its dismissal of this case.

* * * *

FSM SUPREME COURT TRIAL DIVISION

FSM DEVELOPMENT BANK,)	CIVIL ACTION NO. 2014-021
)	
Plaintiff,)	
)	
vs.)	
)	
BERYSIN SALOMON and NANCY SALOMON,)	
)	
Defendants.)	
_____)	

ORDER DENYING STAY

Larry Wentworth
Associate Justice

Decided: December 16, 2020

APPEARANCES:

For the Plaintiff: Nora E. Sigrah, Esq.
P.O. Box M
Kolonias, Pohnpei FM 96941

For the Defendants: Yoslyn G. Sigrah, Esq.
P.O. Box 3018
Kolonias, Pohnpei FM 96941

* * * *

HEADNOTES

Appellate Review – Notice of Appeal; Appellate Review – Stay – Civil Cases – Money Judgment; Attachment and Execution

A notice of appeal neither automatically stays the enforcement – collection – of a money judgment