

FSM SUPREME COURT APPELLATE DIVISION

ADILIHNA IKALAP, a minor, through ELISE)	APPEAL CASE NO. P15-2016
IKALAP, Next of Kin,)	
)	
Appellants,)	
)	
vs.)	
)	
FEDERATED STATES OF MICRONESIA SOCIAL)	
SECURITY ADMINISTRATION,)	
)	
Appellee.)	
_____)	

GRANTING APPELLEE’S MOTION TO DISMISS

Dennis K. Yamase
Chief Justice

Decided: October 6, 2020

APPEARANCES:

For the Appellant:	Salomon M. Saimon, Esq. Staff Attorney Micronesia Legal Services Corporation P.O. Box 129 Kolonias, Pohnpei FM 96941
--------------------	--

For the Appellee:	Stephen V. Finnen, Esq. P.O. Box 1450 Kolonias, Pohnpei FM 96941
-------------------	--

* * * *

HEADNOTES

Appellate Review – Briefs, Record, and Oral Argument; Appellate Review – Dismissal

An appellant is required to file and serve a brief within 40 days after the date of the court clerk’s notice that the record is ready, and if the appellant fails to file a brief within that time frame, or within the time as extended, an appellant may move for dismissal of the appeal. Ikalap v. FSM Social Sec. Admin., 23 FSM R. 63, 64 (App. 2020).

Appellate Review – Dismissal

The appellate court has discretion to dismiss an appeal when the appellant has failed to file an opening brief within the time prescribed, and the appellee has moved for dismissal. When an appellee moves for dismissal under Rule 31(c), the court considers the following factors: the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason(s) for the appellant’s failure to file on time; and the extent of the appellant’s efforts in mitigation. Ikalap v. FSM Social Sec. Admin., 23 FSM R. 63, 64 (App. 2020).

Appellate Review – Dismissal

When the appellants sought a second 30-day enlargement of time, which was granted extending the briefing deadline to July 18, 2019; when no brief was filed by then, and no further enlargement of time was sought; when, two months later, the appellee moved for the appeal to be dismissed and contends that it is prejudiced by the delay; and when no brief was ever filed and the appellants did not respond to the motion to dismiss, the court will grant the appellee's motion to dismiss. Ikalap v. FSM Social Sec. Admin., 23 FSM R. 63, 64 (App. 2020).

* * * *

COURT'S OPINION

DENNIS K. YAMASE, Chief Justice:

On September 19, 2019, Appellee FEDERATED STATES OF MICRONESIA SOCIAL SECURITY ADMINISTRATION filed a motion to dismiss appeal pursuant to FSM Appellate Rules 27 and 31(c). This motion to dismiss remains unopposed.

In accordance with appellate rules and case law, an appellant is required to file and serve a brief within 40 days after the date of the court clerk's notice that the record is ready, and if the appellant fails to file a brief within that time frame, or within the time as extended, an appellant may move for dismissal of the appeal. Walter v. FSM Dev. Bank, 21 FSM R. 1, 3 (App. 2016). The appellate court has discretion to dismiss an appeal when the appellant has failed to file an opening brief within the time prescribed, and the appellee has moved for dismissal. *Id.*

When an appellee moves for dismissal under Rule 31(c), the court considers the following factors: the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the reason(s) for the appellant's failure to file on time; and the extent of the appellant's efforts in mitigation. Pacific Skylite Hotel v. Penta Ocean Constr. Co., 20 FSM Intrm. 251, 253 (App. 2015). It is within the power of a single justice to dismiss an appeal when an appellant has failed to comply with the Rule's timing requirements of serving and filing a brief. *Id.*

Pursuant to the briefing schedule, Appellants were to file its opening brief on May 18, 2019. On May 17, 2019, Appellants sought an additional 30 days enlargement of time to file its brief and appendix. On June 18, 2019, Appellants sought a second 30-day enlargement of time, which was granted extending the briefing deadline to July 18, 2019. No brief was served and filed on July 18, 2019. No further enlargement of time was sought by Appellants. Two months later with no brief having been filed, Appellee moved for this appeal to be dismissed. Appellee contends that it is prejudiced by the delay because Appellants are claiming benefits which would accrue during any delay.

The Court finds that it has been over a year since the briefing deadline, and about a year since Appellee filed its motion to dismiss. As of date, no brief has been served and filed by Appellants, and Appellants did not respond to Appellee's motion to dismiss. Appellee claims prejudice because of the delay, and no reason has been provided by Appellants to show cause as to why they failed to file a brief. No reasonable efforts have been made by Appellants to mitigate its failure.

In light of the above, the Court HEREBY GRANTS Appellee's motion to dismiss appeal. This appeal is ACCORDINGLY DISMISSED.

* * * *