

Estate of Masang v. Marsil, 13 ROP 1 (2005)
ESTATE OF MASANG,
Appellant,

v.

WILHELM MARSIL,
Appellee.

CIVIL APPEAL NO. 05-020
LC/B 04-52 through 04-55

Supreme Court, Appellate Division
Republic of Palau

Decided: October 4, 2005

Counsel for Appellant: Mark Doran

Counsel for Appellee: Raynold B. Oilouch

BEFORE: LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice;
LOURDES F. MATERNE, Associate Justice.

PER CURIAM:

This matter is before the Court on appellant's motion to vacate the order dismissing this appeal for lack of prosecution. For the reasons stated herein, but with the warning explained below, the motion will be granted.

This appeal was filed on May 26, 2005. Because no transcript was ordered, appellant's opening brief was due on July 11. ROP R. App. Pro. 31(b). No brief was filed, and on the following day appellee filed a motion to dismiss the appeal for lack of prosecution. No response to that motion was filed within the seven days permitted by Rule 27(a) and on July 22, the appeal was dismissed. On August 8, appellant filed the instant motion.

Appellant's motion lays out in some detail the propositions that dismissal is a harsh remedy, that it is preferable that appeals be decided on their merits, and that this appeal, in particular, raises substantial issues of law. As to the question why the opening brief was not filed on time, however, the motion devotes comparatively less attention because there was little to say: Appellant did not file its brief, nor ask for an extension of time to do so, because appellant's counsel "did not 12 properly calendar the due date for the brief."

We agree that dismissal is a harsh remedy, and we recognize that a party who files an appeal surely wishes to have that appeal decided on its merits and not in an order of dismissal. But we also believe strongly that the deadlines for filing appeals, and for filing briefs, are clearly

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set forth in the Rules of Appellate Procedure, and that the excuse of “I forget to write it down” (or sometimes “I wrote it down but I counted wrong”) is no excuse at all.¹

Because we have not heretofore followed a consistent approach, sometimes enforcing deadlines strictly,² but other times not, we do not believe it appropriate to make an example of this appeal, and we will grant appellant’s motion to vacate the order of dismissal. But we take this opportunity to warn all appellants and their counsel, and we direct the Clerk of Courts to provide a copy of this Order to all active members of the Palau Bar, that while we will continue to consider timely and reasonable requests for extensions of time, any failure to timely file an appeal or opening brief, or to pay the estimated cost of a transcript when due, will result in the dismissal of the appeal without further notice³ and that such dismissal will not be undone absent truly extraordinary and unanticipated circumstances.

Appellant’s motion to vacate the order of dismissal is hereby granted. In accordance with the representations of appellant’s counsel, the opening brief may be filed not later than three business days from the date of this Order.

¹ Although appellants proceeding *pro se* cannot be presumed to know the Court’s rules, they nevertheless have a duty to inform themselves of the requirements for proceeding with an appeal. To that end, the Clerk of Courts is directed to inform any appellant proceeding *pro se* that the deadlines for the filing of briefs are contained in the Rules of Appellate Procedure and to explain that those rules are available for purchase or review in the Court’s library.

² *E.g.*, *Ngirarengi v. Nakamura*, 8 ROP Intrm. 301 (2001) (dismissing appeal and recommending the initiation of disciplinary proceedings against appellant’s counsel).

³ Pursuant to Rule 31(c), the failure of an appellee to timely file a response brief does not default the appeal in favor of appellants, but forfeits appellee’s right to be heard at oral argument.