

NGIRAIBAI GREGORIO DECHERONG ET AL.
V.
16TH KELULUL A KIULUUL, THE NGI WAL STATE LEGISLATURE,
ET AL.

Civil Appeal No. 15-002
Appeal from Civil Action No. 14-135

Supreme Court, Appellate Division
Republic of Palau

Decided: October 27, 2015

Counsel for Appellants Vameline Singeo
Counsel for Ngwal State Legislature..... J. Roman Bedor
Counsel for Masaichi, Ruluked, Bukurou William L. Ridpath

BEFORE: LOURDES F. MATERNE, Associate Justice
R. ASHBY PATE, Associate Justice
HONORA E. REMENGESAU RUDIMCH, Associate Justice Pro Tem

Appeal from the Trial Division, the Honorable Kathleen M. Salii, Associate Justice, presiding.

ORDER DISMISSING APPEAL

Per Curiam:

After granting Appellants' motion for an extension of time to file their opening brief, the Court ordered Appellants to file their opening brief by September 26, 2015. No brief has been filed.

Two days following the expiration of the period in which to file their opening brief, Appellants submitted a filing titled "Notice of Withdrawal," which notified the Court that Appellants withdrew their appeal. Although Appellants certified that they served notice of their Notice of Withdrawal on Appellees, nothing in the record suggests whether Appellees agree or object to the appeal's dismissal.

The Court construed the Notice of Withdrawal as a motion to voluntarily dismiss the appeal pursuant to ROP R. App. P. 42. Rule 42, which governs the voluntary dismissal of an appeal, permits an appellant to so dismiss an appeal only upon the parties' executing and filing an agreement with the Court or upon motion by the appellant on terms agreed to by the parties or fixed by the Court. Accordingly, the Court ordered Appellees to respond to Appellants' Notice of Withdrawal by October 22, 2015. Appellees have failed to respond.

Because the Appellees have not responded to the Notice of Withdrawal or otherwise indicated agreement to a voluntary dismissal and because the Court perceives no reason to dismiss the appeal on terms other than those pertaining to dismissals under ROP R. App. P. 31(c), Appellants' Notice of Withdrawal, so construed as a motion for voluntary dismissal, is **DENIED**.

Rule 31(c) provides: "If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal, or the Appellate Division may so dismiss on its own motion." ROP R. App. P. 31(c); *see Estate of Masang v. Marsil*, 13 ROP 1, 2 (2005) ("[W]e 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 . . . will result in the dismissal of the appeal without further notice and that such dismissal will not be undone absent truly extraordinary and unanticipated circumstances.").

Accordingly, the Court **DISMISSES** this appeal for Appellants' failure to comply with Rule 31 and for lack of prosecution of this matter. *See Palau Red Cross v. Chin*, 20 ROP 40 (2012).