

Idecheel v. Uludong, 4 ROP Intrm. 236 (1994)
AMONARIA IDECHEEL, et al.,
Appellants,

v.

MOSES ULUDONG, et al.,
Appellees.

CIVIL APPEAL NO. 3-87
Civil Action 157-86

Supreme Court, Appellate Division
Republic of Palau

Order

Decided: August 1, 1994

Counsel for Appellants: Micronesia Legal Service Corp.

Counsel for Appellees: Moses Uludong

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice;
PETER T. HOFFMAN, Associate Justice

PER CURIAM:

Before us are appellees' motions to dismiss and their motion to vacate three single justice orders granting appellants extensions of time to file an opening brief. ¹ For the reasons stated below, these motions are denied.

On April 17, 1987, appellants (hereinafter "Idecheel") timely filed a notice of appeal of the trial court's judgment. Three days later the clerk of court notified Idecheel of the estimated cost of preparing the transcript. Following this, Idecheel moved to proceed in forma pauperis which was granted on May 25, 1987. It thereafter became the court's responsibility to pay for preparation of the transcript. See ROP R. App. Pro. 24(a) ("If the motion [to proceed in forma pauperis] is granted, the party may proceed . . . without prepayment of fees or costs.").

¶237 Three years later, on May 23, 1990, before the transcript was complete and before the record had been certified, appellees (hereinafter "Uludong") moved to dismiss the appeal for lack of prosecution. This motion was not acted upon.

The transcript was finally completed on August 17, 1990. On August 31, 1990 Chief Justice Mamoru Nakamura gave Idecheel thirty days to find new counsel, as Idecheel's previous

¹ These motions were originally submitted to a different appellate panel but were never acted upon.

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counsel, Jonas Olkeriil had died that summer. After encountering some initial difficulty in accomplishing this task, Idecheel asked for and was given until November 10, 1990 to secure new counsel. On November 6, 1990 Micronesian Legal Services notified Chief Justice Nakamura that it would agree to represent Idecheel if it could have until February 1, 1991 to file its opening brief.

On November 7, 1990 Uludong filed a second motion to dismiss for lack of prosecution.

On November 14, 1990 the clerk of court certified the record. On the same day, Chief Justice Nakamura ordered Idecheel to file an opening brief by February 1, 1991. On January 31, 1991 Chief Justice Nakamura granted Idecheel's motion to extend the time for filing an opening brief to February 4, 1991. On February 4, Chief Justice Nakamura granted Idecheel a one day extension to file an opening brief. Idecheel's opening brief was thereafter filed on February 5, 1991.

On February 11, 1991 Uludong filed a motion to vacate the three single justice orders granting time extensions for the filing of Idecheel's opening brief.

1238 DISCUSSION

Uludong argues that Idecheel failed to prosecute her appeal and that therefore it should be dismissed. Uludong focuses on the long delay between the granting of Idecheel's motion to proceed in forma pauperis and Uludong's first motion to dismiss a period of approximately three years in which Idecheel took no action, to support of his argument that Idecheel abandoned her appeal. This argument ignores the fact that once Idecheel's motion to proceed in forma pauperis was granted, she could do nothing but wait for the transcript to be paid for and completed. That this process took over three years is no reflection on Idecheel's willingness or desire to prosecute her appeal. Given that the delay Uludong relies on to argue that Idecheel failed to prosecute her appeal was a result of the tardy transcription process, and was therefore completely out of Idecheel's control, his motions to dismiss are without merit.

Uludong also moves for a vacation of Chief Justice Nakamura's orders of November 14, 1990, January 31, 1991, and February 4, 1991, granting Idecheel a total of 38 extra days to file an opening brief. Contrary to Uludong's contention, a single justice does have the authority to grant motions to extend the time for filing appellate briefs. See Rurcherudel v. Uchel, 2 ROP Intrm. 244, 247 (1991) (Motions for procedural orders that do not "substantially affect the rights of the parties or the ultimate disposition of the appeal" may be ruled upon by a single justice). In fact, such motions are routinely ruled upon by single justices.

1239 Uludong also complains that no hearings were held on the motions and that the motions were not served on him. There is no requirement that a hearing be held on procedural motions. See ROP R. App. Pro. 27(b) (Motions for procedural orders "may be acted upon at any time, without awaiting a response thereto."). Regarding service, the record indicates that Idecheel's first request for an extension was, in fact, served on Uludong. While we cannot condone Idecheel's failure to serve Uludong with her second and third motions to extend, the total time

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requested in those two motions (four days) is so short that Uludong could not possibly have been prejudiced by the lack of notice.

For all of these reasons, we hold that Uludong's motion to vacate Chief Justice Nakamura's orders has no merit.

CONCLUSION

Uludong's motions to dismiss and to vacate single justice orders are DENIED. Appellees are directed to file their response brief thirty days from the date of this order.