

In re Udui, 5 ROP Intrm. 196 (1996)
IN THE MATTER OF ESTATE OF KALEB UDUI

CIVIL APPEAL NO. 1-96
Civil Action No. 580-89

Supreme Court, Appellate Division
Republic of Palau

Order

Decided: March 7, 1996

Counsel for Appellant: Carlos H. Salii

Counsel for Appellee: David F. Shadel

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
and PETER T. HOFFMAN, Associate Justice.

PER CURIAM.

The notice of appeal in this matter was filed on January 5, 1996. No request for transcript was filed at that time. On February 5, 1996, appellant filed a document entitled "Designation of Record for Appeal" which, although listing as part of the designation the transcript of a trial held on November 28, 1990, stated that the transcript had already been transcribed and distributed. On February 23, 1996, when more than 45 days had passed since the filing of the notice of appeal and no opening brief had been filed, we issued an order directing appellant to show cause why the appeal should not be dismissed.

¶197 On February 26, 1996, appellant responded by noting the designation of record filed on February 5, and arguing that under ROP App. Pro. R. 10(b), as recently revised, he was entitled to file it at any time within the 45 days following the filing of the notice of appeal. After appellee filed a memorandum urging dismissal of the appeal, appellant on March 5, 1996, filed a motion and memorandum formally requesting an extension of time to file her opening brief.

Appellant's argument is confused. The first sentence of Rule 10(b), entitled *Ordering and Payment for Transcript*, provides

"Upon filing a notice of appeal, any party desiring to raise an issue on appeal depending on the whole or any part of the testimony or evidence adduced in the trial court shall request in writing that a transcript be made of such testimony and evidence."

We are doubtful of appellant's suggestion that a request for a transcript, directed to be made "[u]pon filing a notice of appeal," may properly be made 30 days after the notice of appeal was

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filed. But that question is not before us in any event. Appellant has not requested that any transcript be made; rather, the February 5 "Designation of Record" expressly stated that the transcript relevant to the appeal had already been transcribed and distributed.¹

In such circumstances and indeed in all circumstances the appropriate rule to consult was Rule 31(b), entitled *Time for Filing*:

"Appellant's brief shall be filed within forty-five (45) days after the appellant has been served with a transcript of the testimony and evidence. *If no transcript has been requested*, or if the appellant has requested a transcript of anything other than testimony or evidence, *then the appellant's brief shall be filed within forty-five (45) days after the filing of the notice of appeal*. ROP App. Pro. R. 31(b) (emphasis added).

¶198

Under the plain terms of this rule, appellant's brief was due on February 19, 1996, forty-five days after the filing of the notice of appeal. This is a sensible result, since where no transcript is ordered, there is nothing to wait for, and there is no need to extend the time for filing. "If a transcript is not necessary to the appeal, or if one already exists, appellant does not need the extra time provided by the later filing date." *NECO v. Rdialul*, 3 ROP Intrm. 98, 99 (1992).²

Appellant's confusion on this point is inexplicable,³ and cannot be attributed to or excused by the promulgation of revised appellate rules in December 1994. A year before that revision, in a remarkably similar case,⁴ we made the unremarkable observation that "an appellant cannot extend his or her time for filing a brief by designating a transcript where none is called for" and stated clearly:

"In appeals where there is no transcript to be prepared, the appellant's brief shall be due within 45 days of the filing of the notice of appeal irrespective of the certification of record and without the need for any other action by the Clerk of Courts. It is the sole responsibility of appellants and their counsel to determine whether there is any transcript to be prepared ¶199 and to act accordingly."

¹ The transcript had apparently been prepared years earlier in connection with a prior appeal that had been dismissed as premature. *See In re Udui*, 3 ROP Intrm. 130 (1992).

² It is notable that appellant's response to the order to show cause contains no alternative theory as to when the opening brief was due. There is no alternative. Since no transcript needed to be prepared, there was no occasion for appellant to be served with a transcript within the meaning of the first sentence of Rule 31(b) to thus trigger the time for filing. If appellant's brief were not due within 45 days of the notice of appeal as stated above, then -- absurdly -- it would never be due.

³ It is also inexplicable why, given our usual liberality in granting extensions, appellant's counsel should risk his client's appeal on a doubtful legal theory instead of simply requesting additional time to file his brief, before the deadline -- or at least potential deadline -- had expired.

⁴ There, too, the only transcript necessary or appropriate to the appeal had been prepared long before the appeal was filed.

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Bausoch v. Tmeleu Clan, 4 ROP Intrm. 60, 61, 62 (1993).⁵

There is thus no excuse for appellant's failure to comply with our rules.

Since the fault lies not with appellant personally but with her counsel, the Court hereby sanctions Carlos H. Salii, and orders him to pay \$750.00 to the Clerk of Courts by the close of business on March 18, 1996. *Cf. ROP v. Singeo*, 1 ROP Intrm. 428A, 428D (1987) (sanctioning same counsel in the amount of \$500). Appellant's belated motion for an extension of time is granted; her brief shall be filed by not later than May 7, 1996.

⁵ That appellant may have considered requesting that additional testimony be transcribed does not change the fact that, ultimately, no such request was made. Nor does it matter that appellant's designation listed additional documents. Those documents, assuming that they were among the "original papers and exhibits filed in the Trial Division" were already part of the record pursuant to ROP App. Pro. R. 10(a), and appellant's listing of them did not constitute a request for transcript in any event.