

Ueda v. Ngiwal State, 7 ROP Intrm. 132 (1998)
MASAO UEDA, et al.,
Appellants,

v.

NGIWAL STATE,
Appellee.

CIVIL APPEAL NO. 98-56
Civil Action No. 183-86,158-86

Supreme Court, Appellate Division
Republic of Palau

Decided: October 19, 1998

Counsel for Appellants: Yosiharu Ueda, T.C.

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
and R. BARRIE MICHELSEN, Associate Justice.

PER CURIAM:

In 1988, Appellants obtained a stipulated judgment against Appellee, Ngiwal State. In September, 1997, Appellants filed a motion in aid of judgment before the Trial Division. That motion was denied August 31, 1998. On October 2, 1998, 32 days¹ after service of Justice Beattie's August 31 Order, Appellants filed a motion seeking leave to appeal the August 31 Order and further requested an extension of time to file their notice of appeal until 30 days after leave to appeal, if any, was granted. On October 5, 1998, Justice Beattie, after expressing a belief that obtaining leave to appeal the August 31 Order was not necessary, granted leave to the extent it was necessary, but denied Appellants any extension of time on the grounds that neither "good cause" nor "excusable neglect" had been shown pursuant to ROP R. App. Pro. 4(c).² Appellants filed a "Motion for Leave to File Notice of Appeal" before this Court on October 6, 1998, which we will be treat as an appeal of the denial of an extension of time to file a notice of appeal.³

¹ Service of an order or judgment for purposes of ROP R. App. Pro. 4(a) is complete when the order is placed in an attorney's mailbox, and not on the later day when the attorney picks it up. *Belmar v. Dalton*, 6 ROP Intrm. 90, n. 1 (1997). Unlike *Belmar* Appellant here has not contended that Justice Beattie's decision was not distributed to his mailbox at the court on the same date it was filed. Thus, Appellants' 30 days within which to file a notice of appeal expired on September 30, 1998.

² ROP R. App. Pro. 4(c) states that "Upon a showing of excusable neglect or good cause, the trial court may extend the time for filing the notice of appeal by any party for a period not to exceed thirty days"

³ A decision by the Trial Division to deny an extension of time to file a notice of appeal is reviewable as a final order. *See Bortugno v. Metro-North Commuter Railroad*, 905 F.2d 674 (2d

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Upon due consideration, we affirm.

We turn first to Appellants' request for leave to appeal the August 31 Order. There is no provision in our statutes or rules of the Republic of Palau for requesting leave to appeal, other than pursuant to ROP R. Civ. Pro. 54(b), which is inapplicable here. Although issues may arise as to the appealability of a particular order, *see ROP v. Black Micro Corp.*, 7 ROP Intrm. 46 (1998) (discussing operation of and exceptions to final judgment rule), appealability is unaffected by whether the Trial Division judge grants leave **L133** to appeal the decision. Rather, an appeal as of right to this Court lies to any final order of the Trial Division. In this regard, the Trial Division was correct that leave was not necessary to appeal the Order.

Because an extension of time to file a notice of appeal may be granted by the trial court under ROP R. App. Pro. 4(c) even after the 30 day period of ROP R. App. Pro. 4(a) has run, we next turn to the issue of whether Appellants should have been granted an extension of time to file a notice of appeal. As Appellants' motion papers fail to allege any facts upon which a finding of "good cause" or "excusable neglect" may be made for extending the time to file a notice of appeal beyond the September 30 deadline, this Court affirms the denial of an extension of time to file a notice of appeal under ROP R. App. Pro. 4(c). *See generally Tellei v. Ngirasechedui*, 5 ROP Intrm. 148 (1995).

Based on the foregoing, the Order of October 5, 1998 is AFFIRMED, this appeal is hereby DISMISSED.