

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN THE ESTATE OF
RAMONA SATUR TAISACAN, Deceased.

SUPREME COURT NO. CV-06-0001-GA
SUPERIOR COURT NO. 79-107

ORDER OF DISMISSAL

Cite as: 2008 MP 6

Decided April 7, 2008

Antonio M. Atalig, Saipan, Northern Mariana Islands, for Appellant.
Jane Mack, Micronesia Legal Services Corporation, Saipan, Northern Mariana Islands, for
Appellee.

BEFORE: MIGUEL S. DEMAPAN, Chief Justice; JOHN A. MANGLONA, Associate Justice; F. PHILIP CARBULLIDO, Justice Pro Tem

MANGLONA, J.:

¶ 1 Appellant Leon I. Taisacan (“Taisacan”) failed to file his opening brief after the Court extended his time to do so. Intervening motions for additional extensions of time were procedurally deficient and substantively inadequate to justify continued exception from the appellate rules. Accordingly, we grant Appellee Ignacia Rogopes’ (“Rogopes”) motion to dismiss based on Taisacan’s failure to prosecute.

I

¶ 2 This appeal has been pending almost two years, yet appellant Leon Taisacan has not filed his opening brief. Instead, Taisacan filed a series of five motions seeking additional time. Taisacan’s first motion was granted, but his subsequent requests – based on counsel’s workload and assorted technical problems – were not. A detailed procedural timeline of relevant events follows.

¶ 3 Taisacan filed his notice of appeal January 18, 2006. On May 11, 2006, Rogopes requested an early settlement conference. Rogopes’s request was granted¹ and the Court appointed a settlement judge. The order appointing the settlement judge instructed the settlement judge to report to the Court by February 1, 2007 whether the case was likely to settle. The appointment order also stayed the briefing schedule pending the settlement judge’s report and required Taisacan to file his brief by March 8, 2007, if the case was not settled.

¶ 4 The settlement judge did not file his report by the specified date. However, two days before his brief was due, Taisacan informed the Court that no settlement had been reached and requested a sixty-day extension of time to file. The Court granted Taisacan’s request, but, despite the additional time, Taisacan failed to file a brief. Shortly after expiration of the filing deadline, Rogopes moved to dismiss for failure to prosecute. Taisacan did not respond.

¶ 5 A month after his brief was due, on June 7, 2007, Taisacan filed a second motion to extend time. Taisacan’s motion claimed he: (1) was not served the Court’s order granting his previous extension; (2) repeatedly called the clerk’s office during the preceding three months and was told the motion was not granted; and (3) did not file a brief because he was uncertain whether

¹ “The Court will consider requests for settlement conference made by counsel prior to the filing of the certificate of record. The Court may hold a settlement conference where there is a showing of a need before the certificate is filed.” Com. R. App. P. 13(f).

his previous motion had been granted. As such, Taisacan requested an additional sixty days to complete and file a brief.²

¶ 6 On July 9, 2007, Taisacan filed his third motion, again requesting a sixty-day extension. Taisacan based his request on “the enormous volume of record [sic] in this case, the breakdown of office computers due to constant power outages, [and] other pending appeal [sic] and civil cases”

¶ 7 On August 16, 2007, the settlement judge’s report was filed. The report, which the settlement judge signed and submitted April 19, 2007,³ confirmed that despite several good faith attempts to settle, settlement negotiations failed. Four days later Rogopes renewed her motion to dismiss for failure to prosecute. Taisacan filed a one-page opposition, again claiming counsel’s large case load and technical difficulties prevented timely filing, and noting Rogopes was not prejudiced because Taisacan posted a security deposit pursuant to trial court order. However, Taisacan’s opposition was filed fourteen days after Rogopes’s renewed motion, rendering it untimely.⁴ Com. R. App. P. 27(a).⁵

¶ 8 That same day, September 3, 2007, Taisacan filed his fourth motion to extend time. Again, the request referenced counsel’s large workload and the case’s large record. Similarly, on November 4, 2007, Taisacan filed his fifth request for additional time, citing technical problems, counsel’s workload and the case’s record.

II

¶ 9 An appellant must file his or her brief within forty days after the certificate of record is filed. Com. R. App. P. 31(a). Time may be enlarged by motion to the Court, but “extensions of time are not automatically granted; rather, they are permissive and subject to certain procedural requirements.” *Babauta v. Babauta*, 2004 MP 2 ¶ 7; see Com. R. App. P. 31(d). Thus, in *Babauta* a second request to extend time was denied where movant “neither utilized the original

² Rogopes filed a motion opposing the extension, but it was not considered because oppositions to motions seeking procedural orders are not permitted. Com. R. App. P. 27(a). Rule 27(a) reads in relevant part, “[a]ny party may file a response in opposition to a motion other than one for a procedural order” However, “[a]ny party adversely affected by [the Court granting a motion for a procedural order] may apply to the Court to reconsider, vacate, or modify such order.” Com. R. App. P. 27(c).

³ The settlement judge submitted a paper copy of his report to the clerk’s office on April 19, 2007, but it was not electronically filed until August 16, 2007.

⁴ Because his opposition was untimely, we do not address whether Taisacan’s failure to oppose Rogopes’s initial motion to dismiss affected his opportunity to oppose the renewed motion.

⁵ Com. R. App. P. 27(a) states in relevant part, “[a]ny party may file a response in opposition to a motion other than one for a procedural order . . . within 7 days after service of the motion”

forty days . . . nor . . . the fifty-two day extension she was granted,” *id.* ¶ 8, and filed a motion procedurally deficient for failure to include Com. R. App. P. 31(d)(6) declarations – that counsel exercised diligence and would file the brief within the requested time. *Id.* ¶ 10.⁶

¶ 10 In *Babauta* we determined “ninety-two days is sufficient time to research, draft, and file a presumably routine brief.” *Id.* ¶ 8. In the present case, Taisacan was given far longer. The certified record was filed December 6, 2006. Taisacan’s initial forty days would have expired January 5, 2007, but the contingent briefing schedule made Taisacan’s brief due March 8, 2007 – over twice the usual time. Moreover, Taisacan requested and was given an additional sixty days. Thus, Taisacan had 152 days to file a timely brief; over one and a half times that granted in *Babauta*.

¶ 11 Counsel in *Babauta* justified the delay as an unavoidable consequence of his caseload, stating his “time ha[d] been completely consumed by [a] trial – leaving absolutely no time to finish the brief.” 2004 MP ¶ 6. Similarly, counsel in the present case provides the Court boilerplate excuses that his workload prevented his filing a brief. He also points to the case’s voluminous record and occasionally blames technical glitches. Worse still, counsel blamed the Court for his tardiness. In his second request to extend time, filed thirty-one days after expiration of the filing deadline, counsel claimed he was unaware his previous request for additional time was granted because he was never served and was repeatedly misled by the clerk’s office. Counsel’s first claim is demonstrably false; his second is dubious at best. Since service was perfected via e-filing, electronic records clearly refute counsel’s contention he was not served.⁷ Although we are devoid of evidence beyond counsel’s own allegations regarding communication with the clerk’s office, we are reluctant to accept counsel’s contention. Furthermore, even if the clerk’s office did give counsel incorrect information, had counsel simply checked his electronic filing account his questions would have been answered.

⁶ Although not an expressed basis for the *Babauta* decision, the Court noted counsel requested additional time “[n]otwithstanding counsel’s declaration that the brief would be completed without further extensions of time” *Babauta*, 2004 MP 2 ¶ 4. Since Com. R. App. P. 31(d)(6) requires a declaration stating “the brief will be filed within the time requested,” an argument could be made our appellate rules militate against multiple extension of time for filing a brief. This argument is made stronger by *Babauta*’s refusal to grant an extension based on the lack of a Rule 31(d)(6) declaration. However, Rule 31(d)(2)-(3) makes clear prior extensions are not an automatic bar. For our purposes, suffice it is to say multiple requests to extend time are disfavored at least in policy, if not by rule, although the Court may grant as many as it sees fit, even overlooking technical deficiencies, pursuant to Com. R. App. P. 2. *See Babauta*, 2004 MP 2 ¶ 13. We leave for another day the precise limitations on multiple requests to extend time.

⁷ *See* LexisNexis File & Serve Transaction number 14343575.

¶ 12 Taisacan’s barrage of motions is also replete with procedural deficiencies. Whether this is due to honest oversight or bad faith is unclear. For instance, Taisacan’s first motion to extend time, which was granted despite its nonconformance, incorrectly relied on Rule 26(b)⁸ instead of Rule 31(d).⁹ Nevertheless, counsel filed a supporting declaration substantially in line with Rule 31(d)’s requirements. Rule 26(b) requires no specific declaration. Counsel’s declaration includes five of the seven requirements under Rule 31(d), none of which Rule 26(b) mentions. Moreover, although counsel’s declaration does not include a Rule 31(d)(7) “statement that opposing counsel does or does not object to the extension or why the moving party has been unable to determine any such party’s position,” it does state, “counsel sees no prejudice to Appellee or its counsel for enlargement of time to file the motion.”¹⁰ Similar language is present in each of Taisacan’s motions.

¶ 13 We understand why parties might incorrectly rely on Rule 26(b) when seeking additional time to file. Rule 26(b) expressly provides the Court authority to grant additional time in all instances other than filing a notice of appeal. However, Rule 31(d) deals solely and specifically with extensions of time for appellate briefs, denoting the specific criteria a movant must show. A

⁸ Com. R. App. P. 26(b) states:

The Court for good cause shown may upon motion enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time; but the Court may not enlarge the time for filing a notice of appeal. Whenever an extension of time has been granted, it shall be the duty of the party for whom such extension has been granted to give all parties to the proceedings prompt notice thereof.

⁹ Com. R. App. P. 31(d) states:

Extensions of time may be granted only upon written motion supported by a showing of diligence and substantial need, as follows:

The motion shall be filed before the expiration of the time prescribed for filing the brief, and shall be accompanied by an affidavit saying:

- (1) when the brief is due;
- (2) how many extensions have been previously granted;
- (3) whether previous requests for extensions have been denied wholly or in part;
- (4) the length of the requested extension;
- (5) the reasons an extension is necessary;
- (6) counsel’s representation that counsel has exercised diligence and that the brief will be filed within the time requested; and
- (7) a statement that opposing counsel does or does not object to the extension or why the moving party has been unable to determine any such party’s position.

¹⁰ (Amended) Declaration of Counsel in Support of Appellant’s Motion to Enlarge Time to File Appellant’s Brief, filed March 13, 2007.

common maxim of statutory construction is the more specific language controls over the more general. *See Limon v. Camacho*, 1999 MP 18 ¶ 30. This principle is applicable here, as “[w]e . . . avoid interpretations of our rules which would defy common sense or lead to absurd results.” *Del Rosario v. Camacho*, 2001 MP 3 ¶ 44, 6 NMI 213, 224. (citation and quotations omitted). Not only does common sense indicate Rule 31(d) controls motions for extensions of time, Rule 27(a), dealing with the content of motions generally, begins, “[u]nless another form is elsewhere prescribed by these rules” Clearly, Rule 31(d) provides the only path for parties seeking extensions of time for filing a brief.¹¹

¶ 14 Taisacan’s counsel will not be permitted to rely on perceived ambiguities between Rule 26(b) and Rule 31(d). His conduct demonstrates a lackadaisical attitude toward our appellate rules,¹² not a good faith attempt at strict compliance. Moreover, counsel’s conduct is particularly troublesome given he has been previously admonished and ordered to show cause why he should not be sanctioned for similar conduct. *Estate of Ayuyu*, 1996 MP 19 ¶ 33 (counsel, among other things, “filed five motions for extensions of time in which to file his opening brief, none of which comply fully with the requirements of Commonwealth Rule of Appellate Procedure 31(d)”). Counsel cannot in good faith argue he was unaware Rule 31(d) controlled motions to extend time for filing briefs. Thus, his failure to file a brief or timely seek additional time amounts to little more than inexcusable neglect.

III

¶ 15 Taken as a whole, Taisacan’s repeated motions to enlarge time and file out of time evidence a disregard for the Court and the appellate rules. Permitting such dilatory conduct would allow Taisacan, through his counsel, to hold other parties and the Court in abeyance to his scheduling preferences, awaiting the eventual rise of this case on his priority list. We do not condone such conduct. Accordingly, Taisacan’s appeal is DISMISSED for failure to prosecute.

Concurring:
Demapan, C.J., Carbullido, J.P.T.

¹¹ Rule 31(e) is also, in effect, a means of securing additional time to file, but an important distinction remains. Rule 31(e) permits parties to seek leave of the Court to file late briefs, not additional time to file a timely brief.

¹² Taisacan’s second motion to extend time incorrectly calculated by three days the date on which his requested extension would occur. Taisacan’s third motion claimed he previously sought a thirty-day extension. He actually requested sixty days. Taisacan’s fourth and fifth motion each asserts his previously requested filing date as the date on which his briefs were due. This would only have true if his previous requests were granted, which they were not.