IN THE

SUPREME COURT

OF THE

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN THE MATTER OF THE ESTATE OF NORBERTO EDUARDO PANGELINAN,

Deceased.

Supreme Court No. 2017-SCC-0010/0011-CIV
Superior Court No.15-0169

ORDER DENYING MOTION FOR RECONSIDERATION

Cite as: 2019 MP 12

Decided December 18, 2019

John S. Pangelinan, Pro Se, Saipan, MP, Appellant.

Janet King, Saipan, MP, for Appellee.

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLOÑA, Associate Justice; PERRY B. INOS, Associate Justice.

PER CURIAM:

¶ 1 Appellant John S. Pangelinan ("Pangelinan") seeks reconsideration and rescission of the Order Granting Motion to File a Late Brief ("Order Granting Late Filing") and the Order Denying Motion to Strike and Instructing Appellant to Register as Electronic Filing Service Provider User ("Order to Register").

¶ 2 For the following reasons, we DENY reconsideration of the Order Granting Late Filing and the Order to Register.

I. FACTS AND PROCEDURAL HISTORY

¶ 3 The trial court rendered a number of orders in the probate case *In the Matter of the Estate of Norberto Eduardo Pangelinan*. These included orders to set hearings, orders denying reconsideration, orders determining heirship, and an order rendering the final distribution. Pangelinan appealed a number of those orders.

¶ 4 Thereafter, Pangelinan filed his opening brief. The Estate then moved for an automatic extension to file its response brief, which we granted. The new deadline for the Estate's response brief was January 2, 2018. On January 8, 2018, the Estate submitted a motion to file a late brief, which we also granted. The next day, the Estate filed its response brief.

¶ 5 Pangelinan moved to strike, or alternatively, construe the Estate's response brief as untimely, which the Estate opposed. Concurrently, the Estate filed a motion for an order directing Pangelinan to register as an Electronic Filing Service Provider ("EFSP") user. We issued the Order to Register, to which Pangelinan responded by filing this motion for reconsideration.

¶ 6 In the Order to Register, we ordered Pangelinan to register as an EFSP user because he failed to provide good cause for alternative service or prove e-service was impossible, inappropriate, or unavailable. *In re Estate of Pangelinan*, 2018 MP 6 ¶ 17. Throughout this appeal, Pangelinan electronically filed ("e-filed") his notices, briefs, and motions using the Public Access Terminal. *Id.* ¶ 5. Pangelinan has been served the Court's orders "over the counter" by Deputy Clerk of the Supreme Court. *See, e.g.*, Certificate of Service, No. 2017-SCC-0011-CIV (Aug. 22, 2018). Janet H. King, Glennis Y. Gamboa, Mary Bernadette S. Cabalza, and Rainaldo Agulto, all on behalf of the Estate, submitted declarations in opposition to Pangelinan's Motion to Strike. In her Declaration, Glennis Gamboa states she called Pangelinan on the days the Estate filed its Motion to File an Out-of-Time Brief and its answering brief so that he could come by counsel's office to pick up copies of the filings. Opposition to John S. Pangelinan's Motion, Declaration of Glennis Y. Gamboa, App. B at 1. When Pangelinan failed to answer, she left voicemails. *Id.* Rainaldo Agulto, a process server for the Estate, also declared that he attempted to serve the filings on Pangelinan at his house several times on January 26, 2018, but Pangelinan's children told Agulto Pangelinan no longer lived there. Opposition to John S. Pangelinan's Motion, Declaration of Rainaldo Agulto, App. D at 2. He also attempted service at Pangelinan's brother-in-law's house, to no avail. *Id.* Agulto then attempted service and called Pangelinan at various times, but could not locate or get in contact with him. *Id.* When Pangelinan finally returned the

Estate's phone calls, he told Mary Cabalza, Legal Assistant to the Estate's counsel, that he did not want the documents, they were already late, and that the Estate could "hold it, keep it, throw it, I don't care what you do with it, I don't want it." Opposition to John S. Pangelinan's Motion, Declaration of Mary Bernadette Cabalza, App. C at 2.

II. STANDARDS OF REVIEW

¶ 7 We review the motion to reconsider the Order to Register, decided by three justices, "for an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Commonwealth v. Guerrero,* 2014 MP 4 ¶ 2. We review the motion to reconsider the Order Granting Late Filing, a single justice's order resolving a motion, de novo. *Commonwealth v. Guerrero,* 2014 MP 2 ¶ 2.

III. DISCUSSION

A. Order Granting Late Filing

¶ 8 Pangelinan raises a number of issues with regard to our Order Granting Late Filing. Despite this, we reject Pangelinan's arguments and write to clarify the extension and late filing rules.

¶ 9 NMI Supreme Court Rule 31-1(b) recognizes late filing of briefs, allowing late filing "only with the permission of the Court, on such conditions as the Court may order." Motions to file a late brief, however, are "highly disfavored where a motion for a discretionary extension could have been filed but was not, or was filed and denied." NMI SUP. CT. R. 31-1(b). To assess whether the motion to file a late brief is "highly disfavored," we must first establish the Estate (1) could have filed a motion seeking a discretionary extension but failed to do so, or (2) filed a motion for a discretionary extension that was denied. *See Owens v. Commonwealth Heath Center,* 2011 MP 6 ¶ 14.

¶ 10 We begin by looking at NMI Supreme Court Rule 31-1 ("Rule 31-1"), which governs extensions and late filing of briefs. Rule 31-1 allows parties to move for one of two types of extensions. The first is an automatic extension, which a party must request before the expiration of the time for filing a brief and will not be granted if the party already requested and received an extension. NMI SUP. CT. R. 31-1(a)(1)(A)(i)-(ii) and (B). A discretionary extension may not be requested if the party receives an automatic extension. NMI SUP. CT. R. 31-1(a)(1)(C). If an automatic extension of time has not been granted, discretionary extensions may be granted, but are "disfavored and will only be granted in cases of extreme need." NMI SUP. CT. R. 31-1(a)(2). Other than the contents of the motion and that the motion should cite the Rule, the Rules place no other restrictions on discretionary extensions. Rule 31-1 then discusses late filing of briefs, which can be filed only with the permission of the Court, on the Court's conditions.

¶ 11 The threshold issue is whether a motion for a discretionary extension could have been filed. Rule 31-1(a)(1)(C) states that once an automatic extension has been granted, the party cannot request, and the Court will not grant, a discretionary extension. Here, the Estate requested and received an automatic extension. Therefore, it could not request a discretionary extension. Rule 31-1(b), regarding late filing of briefs, states a motion to late file will be highly disfavored if a motion for a discretionary extension could have been filed but was not. Because the rule does not preclude a party from late filing when an automatic

extension was filed and granted, late filing is permitted in that instance. Here, we have established that because the Estate filed and received an automatic extension, it could *not* file a motion for a discretionary extension. As a result, neither of the conditions of Rule 31-1(b) are satisfied, so we need not reach the question of whether the motion to late file was or is highly disfavored. Therefore, though we modify our reasoning, the motion to late file was properly granted. We thus deny reconsideration of the Order Granting Late Filing.

¶ 12 As Rule 31-1(b) currently reads, late filing is permitted, and the highly disfavored standard applies, only in cases where a party failed to file for or were denied a *discretionary* extension. We take this opportunity to sua sponte announce that in order to safeguard the privileges of extensions and late filings from abuse, we will analyze *automatic* extensions under the same highly disfavored standard in the future. Parties must therefore demonstrate unique or extraordinary circumstances to overcome the highly disfavored standard. *Owens*, 2011 MP 6 ¶ 16.[1]

B. Order to Register

¶ 13 We review the Order to Register for "an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Guerrero*, 2014 MP 4 ¶ 2. Because Pangelinan presents no intervening change in law and no new evidence, we review the Order to Register for clear error. "'A clear error exists only if after reviewing all the evidence we are left with a firm and definite conviction that a mistake has been made.'" *Commonwealth v. Mendiola*, 2017 MP 10 ¶ 9 (quoting *Commonwealth v. Crisostomo*, 2014 MP 18 ¶ 8).

¶ 14 Rules are interpreted according to their plain meaning. *See Peter-Palican v. Commonwealth*, 2012 MP 7 ¶ 6. When interpreting statutes or rules generally, "'all parts of an enactment should be harmonized with each other as well as the general intent of the whole enactment, [with] meaning and effect given to all provisions.'" *Guerrero v. Dep't of Pub. Lands*, 2011 MP 3 ¶ 11 (quoting *Rebuenog v. Aldan*, 2010 MP 1 ¶ 35). We turn to the NMI Rules for Electronic Filing and Service ("E-Filing Rules"), which determine whether Pangelinan must be registered as an EFSP user for e-filing and e-service. We particularly look to Rule 3 and Rule 6 which governs the scope of the E-Filing Rules and the e-file and e-service procedures, respectively.

¶ 15 Examining the E-Filing Rules confirms that appellate filings must be e-filed and e-served. At the outset, E-Filing Rule 3.2 explicitly articulates that the

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[1] In applying that standard, events such as misunderstanding a filing deadline or failing to manage workload does not rise to the level of conduct necessary to overcome the "highly disfavored" standard. *Id*. at ¶ 19 (citing *In the Matter of Ramona Satur Taisacan*, 2008 MP 6 ¶ 11; *In re Roy*, 2007 MP 28 ¶ 11; *Babauta v. Babauta*, 2004 MP 2 ¶ 6). Conversely, events beyond the control of the filing attorney, such as reliance on an erroneous action by the court, an attorney's illness or a death in the attorney's family, or a problem caused by the Court's electronic filing system will overcome the highly disfavored standard. *Id*. ¶ 20. Here, the Estate's counsel requested an automatic extension and confused the new deadline with a brief deadline in another case. This is akin to misunderstanding a filing deadline, which would not have overcome the "highly disfavored" standard.

Court "*may at any time mandate electronic filing and service* of pleadings in designated cases." (Emphasis added). E-Filing Rule 3.6 mandates that an appeal is one of those designated cases that shall be filed and served electronically. To do this, parties should e-file, *either* by registering on the system as an EFSP user or by using the Public Access Terminal, per E-Filing Rule 3.8. Use of the Public Access Terminal, however, does not require the party to register as an EFSP user. The party uses the Public Access Terminal with the assistance of the Clerk of Court, who logs into the system so the party can upload and file its papers. Specifically addressing e-service, E-Filing Rule 6.6(e) states, in relevant part, "[p]arties who register with the Court to use the EFSP for filing documents to a case shall consent to receive e-service documents." However, we do not construe Rule 6.6(e) as giving a registered EFSP user the ability to opt out of e-service if he refuses consent. Rather, we read E-Filing Rule 6.6(e) to mean that registered users are deemed to have consented to e-service.

¶ 16 Reading the E-Filing Rules in harmony indicates that appellate filings must be e-filed and e-served. Furthermore, a party necessarily consents to e-service once he or she registers as an EFSP user. To interpret the E-Filing Rules otherwise would render E-Filing Rule 3.6's mandate meaningless. Thus, our instructions to mandate Pangelinan to file and be served electronically in the Order to Register comports with the E-Filing Rules.

¶ 17 Here, Pangelinan e-filed his documents using the Public Access Terminal—not as a registered EFSP user. He, therefore, was not a registered EFSP user that was required to consent to e-service. The Estate then made multiple attempts to personally serve Pangelinan and called him to set up a convenient method of service. Opposition to John S. Pangelinan's Motion, Declaration of Glennis Y. Gamboa, App. B at 1; Declaration of Rainaldo Agulto, App. D at 2; Declaration of Mary Bernadette Cabalza, App. C at 2. The Estate found Pangelinan no longer lived at his listed home address and failed to answer the Estate's phone calls. *Id*. The Estate then filed its motion ordering Pangelinan to register as an EFSP user so it could serve him.

¶ 18 The Order to Register required Pangelinan to register as an EFSP user in accordance with the E-Filing Rules set out above. There, we first looked to NMI Supreme Court Rule 25(c), which states service must be effectuated according to the E-Filing Rules "unless the Court orders otherwise or electronic service is impossible, inappropriate, or unavailable." *In Re Estate of Pangelinan*, 2018 MP 6 ¶ 8. We then explained motions to late file and response briefs fall within the types of documents required to be e-filed and e-served under E-Filing Rule 3.6(c). *Id*. ¶ 10–11. After analyzing the NMI Supreme Court Rules to determine if alternative service was permitted, we did not find good cause to issue an order for alternative service because Pangelinan failed to move for alternative service. *Id*. ¶ 13. We also did not find e-service to be impossible, inappropriate, or unavailable under NMI Supreme Court Rule 25(c). The impossibility exception was inapplicable due to the failure to "provide facts and circumstances that preclude movant from registering . . . to receive e-service." *Id*. ¶ 13–14. In addition, e-service was not inappropriate because the documents were not sealed and did not initiate an action. *Id*. ¶ 15. Finally, e-service was not unavailable in this probate appeal because it is only unavailable in criminal cases and petitions. *Id*. ¶ 16. We thus found Pangelinan failed to articulate facts or circumstances that

prevent him from receiving e-service and ordered him to register as an ESFP user.

¶ 19 Both the NMI Supreme Court Rules and the E-Filing Rules require e-service, and accordingly, we ordered Pangelinan to comply with both sets of rules. Under E-Filing Rule 3.2, the Court can mandate e-service in certain cases. This is the power invoked in the Order to Register. While we include further analysis of the E-Filing Rules here to support that conclusion, we find no clear error in our previous decision ordering Pangelinan to register as an EFSP user.

IV. CONCLUSION

¶ 20 For the foregoing reasons, we DENY reconsideration of the Order Granting Late Filing and the Order to Register.

SO ORDERED this 18th day of December, 2019.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLOÑA
Associate Justice

/s/
PERRY B. INOS
Associate Justice