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NoraV Borja

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

CO-TRUSTEES FOR PB MANGLONA FAMILY TRUST,
Plaintiffs-Appellants,

v.

CO-ADMINISTRATORS OF ESTATE OF BERNADITA A. MANGLONA
Defendants-Appellees.

Supreme Court No. 2017-SCC-0025-CIV
Superior Court No. 15-0082 CV

ORDER DISMISSING APPEAL

Cite as: 2018 MP 3
Decided June 22, 2018

Pamela Brown Blackburn, Saipan, MP, for Plaintiffs-Appellants.

Samuel I. Mok, Saipan, MP, for Defendants-Appellees.

BEFORE: ROBERT J. TORRES, Justice Pro Tempore; ARTHUR R. BARCINAS, Justice Pro Tempore; MICHAEL J. BORDALLO, Justice Pro Tempore.

PER CURIAM:

¶1 Charles A. Manglona and Prudencio A. Manglona, Jr., Co-Trustees for the PB Manglona Family Trust (“Trustees”), move for leave to late file its opening brief. As Trustees’ counsel, Pamela Brown Blackburn (“Counsel”), failed to meet the highly disfavored standard to justify the late filing, we hereby DENY the motion to late file the opening brief and DISMISS the appeal.

I. FACTS AND PROCEDURAL HISTORY

¶2 On November 30, 2017, we issued a briefing schedule, setting a deadline for Trustees to file its opening brief on or before January 9, 2018. On January 19, 2018, Trustees filed a motion for an automatic extension of time to file its opening brief pursuant to NMI Supreme Court Rule 31-1(a)(1) (“Rule 31-1(a)”). The Deputy Clerk denied Trustees’ motion, noting that the opening brief was due on January 9, 2018. Trustees then moved to late file its opening brief pursuant to NMI Supreme Court Rule 31-1(b) (“Rule 31-1(b) Motion”).¹ Co-Administrators of Estate of Bernadita A. Manglona (“Estate”) opposed Trustees’ Rule 31-1(b) Motion. On March 13, 2018, we heard oral arguments on the Rule 31-1(b) Motion and opposition to late filing Trustees opening brief.

¶3 Generally, Rule 31-1(b) motions may be determined by a single justice. *See* NMI SUP. CT. R. 27-2(b). However, because a denial of Trustees’ Rule 31-1(b) Motion would result in the dismissal of the appeal, it was referred to the full Court pursuant to NMI Supreme Court Rule 27-2(c)(1)(A).² We now address Trustees’ Rule 31-1(b) Motion.

II. DISCUSSION

A. *NMI Supreme Court Rule 31-1(b)*

¶4 Rule 31-1(b) permits filing of late briefs “only with the permission of the Court.” NMI SUP. CT. R. 31-1(b). Furthermore, “[a] motion to file a late brief is highly disfavored where a motion for a discretionary extension could have been filed but was not, or was filed and denied.” *Id.*

¹ NMI Supreme Court Rule 31-1(b) reads:

Late Filing of Briefs. A late brief may be filed only with the permission of the Court, on such conditions as the Court may order. A motion to file a late brief is highly disfavored where a motion for a discretionary extension could have been filed but was not, or was filed and denied. A motion to file a late brief must include an affidavit conforming to Rule 31-1(a)(2)(B).

² NMI Supreme Court Rule 27-2(c)(1)(A) reads: “(c) Motions Determined by the Full Court. (1) The following motions must be decided by the full Court: (A) Motions that would have the effect of determining the merits of a proceedings.”

¶5 Prior to filing its Rule 31-1(b) Motion, Trustees could have filed a motion for a discretionary extension at an earlier time. Moreover, Trustees moved for an automatic extension to file its opening brief, pursuant to Rule 31-1(a),³ but was denied as the initial deadline to file its brief had expired. Therefore, because Trustees failed to file for a discretionary extension and were denied an automatic extension, Trustees must overcome the highly disfavored standard to have its Rule 31-1(b) Motion granted.⁴

B. *The Owens Standard*

¶6 In *Owens*, we adopted the excusable neglect test to articulate the Rule 31-1(b) highly disfavored standard. *See Owens v. Commonwealth Health Ctr.*, 2011 MP 6 ¶ 16 (“We choose to adopt the ‘excusable neglect’ standard in NMI Supreme Court Rule 4(a) and Federal Rule 4(a) as our Rule 31-1(b) baseline.”). There, we explained that excusable neglect is not met absent a showing of extraordinary or unique circumstances. *See id.* ¶ 16, 18 (“While excusable neglect is a somewhat flexible concept, inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute excusable neglect.”) (citations and internal quotation marks omitted). There are, however, certain circumstances where counsel may be able to overcome the highly disfavored standard, such as:

- i) erroneous action taken by this court, on which counsel relied in good faith and subsequently failed to meet the filing deadline; ii) illness of the attorney responsible for the filing or a[sic] severe

³ NMI Supreme Court Rule 31-1(a)(1)(A)(i) reads:

A party must request an automatic extension of time by filing a motion specifically citing Rule 31-1(a)(1) before the expiration of time for filing the brief. (ii) The Clerk shall grant a motion for an automatic extension of time if the moving party has not previously requested and been granted an extension of time to file a brief.

⁴ When filing a Rule 31-1(b) motion, the moving party must conform to the affidavit requirements set forth in Rule 31-1(a)(2)(B), including:

- i) stating when the brief is due; ii) how many extensions including automatic extensions, have been previously granted; iii) whether previous requests for extensions have been denied wholly or in part; iv) the length of the requested extension; v) the reasons an extension is necessary; vi) Counsel’s representation that counsel has exercised diligence; and vii) whether opposing counsel objects to the extension or why the moving party has been unable to determine the opposing counsel’s position.

Trustees’ Rule 31-1(b) Motion does not comport with the requirements set forth in Rule 31-1(a)(2)(B) in that Trustees do not assert that counsel exercised diligence to avoid late filing. Moreover, Trustees, other than admitting that the deadline was missed due to ignorance, do not provide any rationale for the extension. During the March 13 hearing, Counsel further relented that there was no excuse available, other than a clerical office error, that could explain the need for an extension.

illness or death in that attorney's immediate family; [or] iii) a problem caused by the Court's electronic filing system.

Id. ¶ 20. We noted that the above list is not exhaustive but “represent[s] events beyond the control of the attorney responsible for the filing.” *Id.*

¶7 Based on its Rule 31-1(b) Motion, corresponding affidavit, and arguments at the March 13 hearing, Trustees, by its own admission, failed to demonstrate excusable neglect. Trustees did not articulate any unique or extraordinary circumstances that caused the delay in filing its opening brief. Nor did it proffer any justifiable reason for granting the Rule 31-1(b) Motion, absent the fact that the appeal addresses “critical issues regarding resolution of ancestral land claims on which this Honorable Court has not issued a ruling previously.” See Appellant's Aff. 2. Moreover, during the March 13 hearing, Counsel failed to offer any excuse articulated in *Owens* as to why the deadline was missed. Counsel admitted that her failure to timely file was inexcusable neglect and she would not waste the Court's time attempting to invent an illness or death in the family.

¶8 Despite no showing of excusable neglect, Counsel continued to urge the Court for leave to late file due to the appeal's unique land issues. Opposing counsel reiterated that Counsel failed to comply with the clearly articulated standard and has not offered any compelling reasons to justify an exception. We too agree with opposing counsel. We also decline to suspend our rules pursuant to NMI Supreme Court Rule 2, as suggested by Counsel during the March 13 hearing, because no compelling reason for suspension was provided. Allowing Trustees to late file would disrupt established precedent and blur clearly articulated standards. While we empathize with Counsel's error, such empathy is not enough to allow a late filing.

III. CONCLUSION

¶9 For the reasons stated above, we hereby DENY Trustees' Rule 31-1(b) Motion and DISMISS the appeal.

SO ORDERED this 22nd day of June, 2018.

/s/

ROBERT J. TORRES
Justice Pro Tempore

/s/

ARTHUR R. BARCINAS
Justice Pro Tempore

/s/

MICHAEL J. BORDALLO
Justice Pro Tempore