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

COMMONWEALTH DEVELOPMENT AUTHORITY,
Plaintiff-Appellee,

v.

FELIPE Q. ATALIG, individually & dba CASA DE FELIPE, and ELVIRA CUSTODIO
ATALIG,
Defendants-Appellants.

SUPREME COURT NO. 2007-SCC-0024-CIV
SUPERIOR COURT NO. 04-0242

DISMISSAL FOR FAILURE TO PROSECUTE

Cite as: 2009 MP 5

Decided June 16, 2009

Ramon K. Quichocho, Saipan, Northern Mariana Islands, for Defendants-Appellants.
F. Mathew Smith, Saipan, Northern Mariana Islands, for Plaintiff-Appellee.

BEFORE: ALEXANDRO C. CASTRO, Associate Justice; KATHERINE A. MARAMAN, Justice Pro Tem; HERBERT D. SOLL, Justice Pro Tem

PER CURIAM:

¶ 1 Appellants Felipe Q. Atalig, Casa De Felipe, and Elvira Custodio motioned the Court to extend time to file their brief, but their motion failed to comply with Commonwealth Rule of Appellate Procedure 31(d). Appellants' motion also failed to adequately justify their requested relief, and instead indicated a desire to improperly stall the appellate process through misuse of Rule 13 settlement proceedings. The Court denied appellants' motion to extend time, and appellants failed to file a timely brief. Appellants took no other action to further this appeal. Accordingly, we DISMISS this matter for failure to prosecute.

I

¶ 2 On March 13, 2008, appellants requested a settlement conference pursuant to Com. R. App. P. 13(b). Before granting appellants' request, however, the Court determined it necessary to establish whether settlement was a realistic possibility or whether it would merely cause added delay and expense. Consequently, the matter was set for a preliminary settlement conference. The Court ordered the parties to appear before the Clerk of the Supreme Court to discuss the feasibility of settlement, and instructed the Clerk to file a report "addressing the likelihood of settlement and recommending whether further settlement negotiations would be beneficial." *Commonwealth Dev. Auth. v. Atalig*, No. 2007-SCC-0024-CIV (NMI Sup. Ct. March 27, 2008) (Order Setting Preliminary Settlement Conference ¶ 1).

¶ 3 At the preliminary settlement conference, the parties identified a potential settlement option and agreed to pursue it informally, outside the strictures of a court-facilitated settlement conference. *Commonwealth Dev. Auth. v. Atalig*, No. 2007-SCC-0024-CIV (NMI Sup. Ct. April 1, 2008) (Clerk's Preliminary Settlement Conference Report at 1). Based on the narrow scope of the identified settlement option and the parties' history of unsuccessful settlement attempts, the Clerk recommended setting a briefing schedule that would provide the parties adequate time to pursue settlement, yet avoid further delay if settlement failed. *Id.* The Clerk recommended granting appellants an additional thirty days – or a total of seventy days from the date of the preliminary settlement conference – to file their opening brief in the event settlement was unsuccessful. *Id.* The Court accepted the Clerk's recommendation and ordered appellants to file their brief by June 10, 2008. On that date, however, rather than filing a brief, appellants filed a motion to extend time. Appellants' motion was deficient, both procedurally and on the merits, and the Court denied it. Appellants did not move the court to file a late brief, and took no other action to further this appeal.

II

¶ 4 Appellants’ motion to extend time to file their brief was based on Com. R. App. P. 26(b). However, as we have previously noted, Rule 31(d), not Rule 26(b), governs such motions. *In Re the Estate of Taisacan*, 2008 MP 6 ¶ 13. The difference between the rules is one of scope and specificity. Rule 26(b) is concerned with the Court’s authority to extend or circumvent time limits in general. By contrast, Rule 31(d) deals exclusively with motions to extend time for filing briefs, and prescribes specific filing requirements for such motions. As a basic tenant of statutory construction, and as clearly evidenced from the structure of our rules themselves, the specific requirements of Rule 31(d) control over the general language of Rule 26(b) regarding motions to extend time for filing briefs. *Taisacan*, 2008 MP 6 ¶ 13; *see also* Com. R. App. P. 27(a) (stating that a “motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion . . .”).

¶ 5 Appellants incorrectly cited Rule 26(b) as the proper authority for seeking an extension of time to file their brief. However, an improper citation by itself, or any number of other procedural flaws, will not necessarily render a party’s motion inadequate. Technical deficiencies may be considered by the Court, but they do not control our decision whether to grant the requested relief. *See, e.g., Commonwealth v. Pua*, 2006 MP 19 ¶ 18 (regarding jurisdictional prerequisites, “it is the substance and timeliness of pleadings, rather than strict adherence to procedure that controls . . .”). Appellants’ misplaced reliance on Rule 26(b) did not directly lead to their motion’s denial. Rather, denial was premised on appellants’ failure to comply with the specific requirements of Rule 31(d), and the meritless claims underlying their request.

¶ 6 Rule 31(d) states that a motion to extend time for filing a brief “may be granted only upon written motion supported by a showing of diligence and substantial need . . .” Com. R. App. P. 31(d). The motion must be supported by an affidavit that includes, among other things, “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.” Com. R. App. P. 31(d)(7). In the present case, appellants’ motion was supported by counsel’s declaration, which did not include such a statement. Instead, appellant’s counsel opined that he did “not see any unfair prejudice to opposing counsel as a result of th[e] request for extension of time.” *Commonwealth Dev. Auth. v. Atalig*, No. 2007-SCC-0024-CIV (NMI Sup. Ct. June 10, 2008) (Declaration of Ramon K. Quichocho in Support of Motion to Enlarge Time to File Appellants’ Brief at 2). Counsel’s opinion regarding the propriety of granting the motion, while arguably relevant, is no substitute for the opposing counsel’s opportunity to object, and it clearly fails to satisfy the plain language of Com. R. App. P. 31(d)(7). Moreover, it calls counsel’s and appellants’ motives into question.

Appellants brought their motion pursuant to Rule 26(b), which does not require specific factual allegations and does not require a supporting affidavit. However, counsel's declaration contains six of the seven statements required by Rule 31(d). It strains logic to assume that counsel coincidentally included the six required statements. A more likely scenario is that counsel purposefully excluded the seventh.

¶ 7

In addition to its procedural deficiencies, appellants' motion also lacked merit. Appellants requested an additional ninety days to file their brief, more than double the forty days provided by rule. *See* Com. R. App. P. 31(a). Although such a generous request might be justified in extreme circumstances, it is clearly unjustified here. Rule 31(d) requires "a showing of diligence and substantial need" before a motion to enlarge time is granted. Appellants' counsel, in his supporting declaration, states, "[d]ue to other pending criminal and civil cases that I am involved in, Appellants need additional time to file the Brief." *Commonwealth Dev. Auth. v. Atalig*, No. 2007-SCC-0024-CIV (NMI Sup. Ct. June 10, 2008) (Declaration of Ramon K. Quichocho in Support of Motion to Enlarge Time to File Appellants' Brief at 2). Counsel's language amounts to little more than saying, "I'm too busy right now." It shows a lack of respect for the Court and the opposing party, and it certainly lacks the detailed explanation necessary to support appellants' requested ninety-day extension. The solution for an attorney's busy schedule is reduced workload or improved time management. Wasting the Court's and opposing parties' time through excessive extensions is unacceptable.

¶ 8

Appellants' motion is even more egregious in light of the additional time they were already given. In its briefing schedule issued April 1, 2008, the Court granted appellants an additional thirty days beyond what they were otherwise entitled, giving them a total of seventy days to file their brief. The additional time was granted pursuant to the Clerk's recommendation, which, in turn, was based on the parties' discussion during the preliminary settlement conference. The parties identified a single, narrow settlement option and agreed to pursue it. However, because previous settlement attempts had failed, and to prevent settlement negotiations from being used as a stall tactic, the Clerk recommended a briefing schedule be implemented to avoid unnecessary delay. Viewed in this context, appellants' requested ninety-day extension is, in effect, an attempt to circumvent the Court's precautions against dilatory conduct.¹

¹ When a party files a timely request for a settlement conference, briefing is suspended by operation of Rule 13(c). Although Rule 13 does not specify how or when briefing resumes, Rule 13's import makes clear that briefing is only suspended until such time as settlement negotiations run their course. To suspend briefing beyond the failure of settlement negotiations would invite abuse by parties not interested in settling, but rather seeking to delay the appellate process. Such reasoning is evident in the rule's language, as the settlement judge may refuse to suspend briefing, Com. R. App. P. 13(c), thus preventing parties the benefit of bad faith settlement requests. Likewise, even good faith requests should not provide a pretext for

¶ 9 The Court is unable to understand appellants' actions as anything other than a bad faith attempt to delay the appellate process. If appellants had requested an additional day, two days, or even a week, this Court might be persuaded that they honestly desired to file a timely brief. However, requesting an additional ninety days makes clear that appellants were not diligently laboring to meet their deadline. A party will rarely be able to justify needing 160 days to file a brief. See *Taisacan*, 2008 MP 6 ¶¶ 10-12 (finding that counsel's litany of nonconforming and substantively deficient motions to extend time did not excuse a 152-day delay in filing his brief); *Babauta v. Babauta*, 2004 MP 2 ¶ 8 (Manglona, J.) (noting "that ninety-two days is sufficient time to research, draft, and file a presumably routine brief"). Appellants' motion, based on an unsubstantiated claim of need that was virtually devoid of detail, does not justify any additional time, much less ninety days.

¶ 10 Over nine months have past since the Court denied appellants' motion to extend time. Appellants did not file a timely brief, and have not filed a Rule 31(e) motion requesting permission to file a late brief. Nor have appellants sought to explain their delay or otherwise pursue this appeal. Appellants' continued procrastination is unjustified and provides ample reason for the Court to dismiss their appeal. Com. R. App. P. 31(e), 42(c).

parties to cause, or be subjected to, undue delay if settlement negotiations fail. However, Rule 13 provides little direction to parties, the appointed settlement judge, or the Court in preventing such abuses. Although the settlement judge may refuse to suspend briefing at the outset, whether, when, and how briefing may be reinstated for failed or failing settlements is unclear.

Both the language and policy of Rule 13 make clear that briefing should be suspended only so long as good faith settlement negotiations continue. Thus, briefing should be reinstated if the settlement judge determines negotiations have reached impasse or a party is engaged in dilatory tactics. However, not only is Rule 13 silent regarding the reinstatement of briefing, it does not provide for, much less require, regular communication between the settlement judge and the Court. Rather, the settlement process occurs with virtually no Court oversight. While an independent procedure ensuring confidentiality is necessary for meaningful settlement negotiations, settlement proceedings also require an appropriate level of integration with the overall appellate process. The Court uses various mechanisms to provide such integration and prevent the potential pitfalls of a settlement process insulated from effective Court supervision. One such mechanism is a contingent briefing schedule, whereby a briefing schedule is set by the Court before settlement negotiations begin and requires parties to brief the case if they have not settled within a certain time. See, e.g., *In Re the Estate of Taisacan*, App. No. CV-06-0001-GA (NMI Sup. Ct. Nov. 1, 2006) (Order Appointing Justice Pro Tempore for Settlement Purposes; Order Concerning Statement of Record for Settlement Purposes ¶ 6). Another option is ordering the settlement judge to report the progress of settlement efforts to the Court. *Id.* ¶ 3.

The Court's responsibility to supervise settlement proceedings also requires a mechanism to assess the merits of a settlement conference request before acting on it. A bad faith request can be used as a stall tactic, subjecting opposing parties to additional cost and delay. The Court's limited resources also suffer, particularly its financial resources, because it is the Court, rather than the parties, that compensates the settlement judge. To guard against abuses, the Court should deny a bad faith settlement conference request. Similarly, the delay and expense of a court-ordered settlement conference is unwarranted if any party is unwilling to entertain settlement offers. Rule 13 is silent on these issues, but requiring all parties to act in good faith and through a common desire to find areas of agreement only furthers its policy. Consequently, in the present case, the Court ordered a preliminary settlement conference to gauge the parties' intent and determine whether settlement was feasible.

III

¶ 11 Appellants' motion to extend time to file their brief was denied because it failed to comply with Com. R. App. P. 31(d), and because it was based on a meritless claim of need that indicates bad faith. Since that time, appellants have not acted to further this appeal. Accordingly, this matter is DISMISSED for failure to prosecute.

Concurring:

Castro, J., Maraman, J.P.T., Soll, J.P.T.

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JUDGMENT

Pursuant to Supreme Court order issued this date, this appeal is DISMISSED.

ENTERED this 16th day of June, 2009.

/s/

JONATHAN R. GRAYSON
Clerk of the Supreme Court