E-FILED
CNMI SUPREME COURT
E-filed: Aug 13 2024 09:57AM
Clerk Review: Aug 13 2024 09:58AM
Filing ID: 74026455
Case No.: ADM-2024
Judy Aldan

IN THE

Supreme Court

OF THE

Commonwealth of the Northern Mariana Islands

IN RE DECISION OF THE COMMONWEALTH CASINO COMMISSION APPEAL,
Commission Order No. 2021-002;
Final Orders for Enforcement Action 20-001 and 20-003.

COMMONWEALTH CASINO COMMISSION,
Respondent-Appellee,

v.

IMPERIAL PACIFIC INTERNATIONAL (CNMI), LLC,
Petitioner-Appellant.

Supreme Court No. 2022-SCC-0006-CIV

ORDER DENYING MOTION TO DISMISS

Cite as: 2022 MP 8

Decided December 2, 2022

CHIEF JUSTICE ALEXANDRO C. CASTRO
ASSOCIATE JUSTICE JOHN A. MANGLOÑA
ASSOCIATE JUSTICE PERRY B. INOS

Superior Court Civil Action No. 21-0173-CV
Associate Judge Wesley M. Bogdan, Presiding

PER CURIAM:

¶ 1 Respondent-Appellee Commonwealth Casino Commission ("CCC") seeks to dismiss Imperial Pacific International ("IPI")'s appeal because IPI filed its docketing statement eight days late. For the following reasons, we DENY the Motion to Dismiss.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 IPI filed this appeal on April 11, 2022. On April 25, the Clerk of the Supreme Court ("Clerk") notified the parties that the appeal has been transmitted and docketed in the Supreme Court. NMI Supreme Court Rule 3-1 requires appellants to file a docketing statement within 15 days of this notice. IPI did not file its docketing statement within the required time or request an extension.

¶ 3 IPI's counsel was unaware that the appeal had been docketed. On May 11, the day after the docketing statement was due, he called the Supreme Court to inquire about the appeal status, but was not able to reach someone. He called several different numbers but made no further attempts to determine whether the appeal had been docketed and did not use his File & ServeXpress account to check.

¶ 4 On May 16, the briefing schedule was issued. On May 18, CCC moved to dismiss the appeal based on NMI SUP. CT. R. 3-1(a)(5)(A), which reads "Failure to file a docketing statement is grounds for dismissal or other sanctions as the Court deems appropriate." Only after learning of this motion did IPI's counsel thoroughly check his emails and learn that the appeal had been docketed. On the same day, May 18, IPI filed its docketing statement.

II. DISCUSSION

¶ 5 IPI argues we should not dismiss the appeal because its late filing was excusable neglect. We discussed excusable neglect in *Owens v. Commonwealth Health Ctr.*, 2011 MP 6, which concerned a motion to file a late brief. NMI Supreme Court Rule 31-1(b) says "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." We interpreted the "highly disfavored" language by adopting the excusable neglect standard from NMI Supreme Court Rule 4(a) and held that showing excusable neglect requires unique or extraordinary circumstances. *Owens v. Commonwealth Health Ctr.*, 2011 MP 6 ¶ 16.

¶ 6 IPI does not claim that any unique or extraordinary circumstances exist here and instead asks that we apply the more flexible excusable neglect standard articulated by the United States Supreme Court in *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380 (1993). There, the Court adopted a multi-factor balancing test. *Id.* at 385.[1] The Commonwealth argues that *Owens*'s

[1] *Pioneer* involved a bankruptcy rule, but the Supreme Court made clear that the same test applies to various contexts where the phrase excusable neglect appears. *See Pincay v. Andrews*, 389 F.3d 853, 855 (9th Cir. 2004) (en banc).

strict approach is the applicable one and that the requirement for a docketing statement is a mandatory claim-processing rule.

¶ 7 Despite the parties' framing of this issue, analyzing whether IPI's error constitutes excusable neglect is unnecessary to resolving this motion. *Owens* does not stand for the proposition that any late filing must be determined under the excusable neglect standard. While *Owens* discussed how to interpret the "highly disfavored" language in NMI Supreme Court Rule 31-1(b), NMI Supreme Court Rule 3-1(a)(4)(A) provides that extensions of time to file docketing statements are only "disfavored," a lesser requirement which distinguishes this case from *Owens*.

¶ 8 The Commonwealth's claim-processing argument is also not dispositive. Mandatory claim-processing rules "seek to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times." *Henderson v. Shinseki*, 562 U.S. 429, 435 (2011). They are not jurisdictional requirements, but must be enforced if invoked. *Norita v. Commonwealth*, 2020 MP 12 ¶¶ 9, 12. The requirement to file a docketing statement is a mandatory claim-processing rule. *See Vergara v. City of Chicago*, 939 F.3d 882, 886 (7th Cir. 2019).

¶ 9 However, failure to file a docketing statement does not automatically result in dismissal. NMI Supreme Court Rule 3-1(a)(5)(A) reads "[f]ailure to file a docketing statement is grounds for dismissal or other sanctions as the Court deems appropriate." The rule gives the Court substantial latitude in how to respond to late docketing statements. Dismissal, lesser sanctions, or even no sanctions are all possible options.

¶ 10 In deciding what is appropriate here, we make the following observations. First, the delay was eight days. This is not very long, and courts have refused to dismiss cases for even lengthier delays. *See Gorostieta v. Parkinson*, 17 P.3d 1110, 1116 (Utah 2000) (refusing to dismiss when the docketing statement was 13 days late); *Tekansky v. Pearson*, 635 N.E.2d 605, 608 (Ill. App. Ct. 1994) (refusing to dismiss when the docketing statement was 14 days late).

¶ 11 Second, after CCC filed its Motion to Dismiss, thus alerting IPI's counsel to his error, he filed the docketing statement that same day. CCC does not claim that he acted in bad faith. The shortcoming was serious, but it does not appear to be a deliberate attempt to manipulate the calendar.

¶ 12 Third, the delay did not prejudice CCC, nor has CCC even claimed to have suffered any harm. The purpose of a docketing statement is to "[aid] the Court in identifying potential jurisdictional defects, opportunities for simplification or settlement of issues, and matters warranting expedited treatment." NMI SUP. CT. R. 3-1(a)(1). While a docketing statement is helpful, it is not as key to understanding the other side's position as a brief, and so its absence is unlikely to harm the opposing party. Indeed, the Supreme Court of Wyoming has stated "The late filing of a docketing statement has never been sufficient ground to justify the dismissal of the appeal in this court." *In re Estate of Campbell*, 673

P.2d 645, 649 (Wyo. 1983); *see also Radici v. Associated Ins. Cos.*, 217 F.3d 737, 746 (9th Cir. 2000) (refusing to dismiss because of a late docketing statement when the other side conceded that the delay caused no prejudice); *Rush v. Rush*, 163 So. 3d 362, 368 (Ala. Civ. App. 2014) (refusing to dismiss despite no docketing statement at all being filed since there was no evidence or even allegations of prejudice).[2]

¶ 13 Because the delay was not extensive, did not harm CCC, and seems to have not been caused by an attempt to gain some sort of advantage, we conclude that dismissal is not appropriate here.

¶ 14 However, we cannot ignore the improper oversight which resulted in the delay. The Ninth Circuit has found monetary sanctions to be warranted in cases involving late docketing statements. *See Faras v. Hodel*, 845 F.2d 202, 204–05 (9th Cir. 1988) (upholding $250 sanction for late docketing statement); *Radici*, 217 F.3d at 746 (ordering $500 sanction for filing a late docketing statement despite repeated court orders). Taking into account the fact that we did not warn IPI that its docketing statement was late and that the issue was quickly resolved after learning of it, we deem appropriate lesser sanctions of $150.

III. CONCLUSION

¶ 15 For the foregoing reasons, the Motion to Dismiss is DENIED. IPI's counsel is sanctioned $150. The amount is payable to the Commonwealth Treasury, with a receipt given to the Supreme Court Clerk of Court, within thirty days from the issuance of this Order.

SO ORDERED this 2nd day of December, 2022.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLOÑA
Associate Justice

/s/
PERRY B. INOS
Associate Justice

---

[2] *But cf. Stewart v. Mortenson*, No. 10-21-00084-CV, 2021 Tex. App. LEXIS 4249, at *1 (Tex. Ct. App. May 28, 2021) (dismissing an appeal when no docketing statement was filed despite the court warning appellants of the need for one). Texas courts have regularly dismissed appeals for a missing docketing statement after giving notice to the appellants and a chance to correct their error.

COUNSEL

Joey P. San Nicolas, Saipan, MP for Appellant.

Keisha Blaise, Assistant Attorney General, Saipan, MP for Appellee.