

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

NO. 28969

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

LESLIE HARRINGTON BROWN, Plaintiff-Appellee,

v.

ZADOC WHITE BROWN, III, Defendant-Appellant

APPEAL FROM THE FAMILY COURT OF THE SECOND CIRCUIT
(FC-D 07-1-0175)2008 DEC 18 AM 8:00
FILED
JAN KIMOTO
CLERK, APPELLATE COURTS
STATE OF HAWAIIORDER DISMISSING APPEAL

(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

Upon consideration of Plaintiff-Appellee Leslie Harrington Brown's (Appellee) Second Motion to Dismiss the Appeal, the papers in support, and the records and files herein, the record shows the following.

Defendant-Appellant Zadoc White Brown III (Appellant), through his counsel, Elizabeth C. Melehan (Ms. Melehan), filed his notice of appeal on January 22, 2008. On March 24, 2008, the appellate clerk filed a notice of entering case on calendar and informed Appellant that the jurisdictional statement was due on April 3, 2008 and the opening brief was due on May 3, 2008. Appellant filed the statement of jurisdiction. Appellant obtained a clerk's extension of time to file the opening brief pursuant to HRAP Rule 29(a), and the opening brief became due June 4, 2008. Thereafter, this court granted Appellant two additional extensions of time to file the opening brief. In the order dated July 16, 2008, the court extended the opening brief due date to September 2, 2008 with a notation that the court would grant no further extensions of time. Appellant did not file the opening brief on September 2, 2008.

In the interim, Appellee, on July 14, 2008, filed her first motion to dismiss the appeal because Appellant failed to file the opening brief. On July 23, 2008, this court denied the first motion to dismiss because the court had granted Appellant an extension to September 2, 2008 to file the opening brief.

On September 24, 2008, Appellee filed the second motion to dismiss the appeal because Appellant failed to timely file the

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opening brief or timely move for an extension of time to file the brief. Appellant did not respond to the motion. On October 17, 2008, this court issued an order directing Ms. Melehan to show cause as to why the appeal should not be dismissed. The order stated that failure to respond or to show good cause will result in sanctions that may include the dismissal of the appeal and a referral to the Office of the Disciplinary Counsel. The record shows that the appellate clerk served a copy of the order by certified mail and the return receipt shows the order was received on October 24, 2008. No response was filed to the order to show cause. The opening brief has not been filed. Therefore,

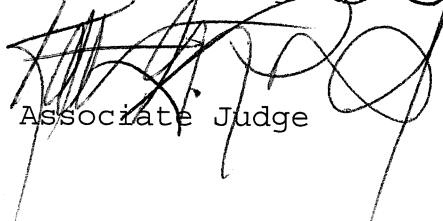
IT IS HEREBY ORDERED that Plaintiff-Appellee's Second Motion to Dismiss Appeal is granted, and this appeal is dismissed for failure to file the opening brief.

IT IS FURTHER ORDERED that the Appellate Clerk shall serve a copy of this order on the Office of the Disciplinary Counsel.

DATED: Honolulu, Hawai'i, December 18, 2008.


Presiding Judge


Associate Judge


Associate Judge