

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 29394

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

GLADYS BOLES, HERK BOLTON, HARRIET S. BOLTON, KEVIN CAMPBELL,  
C. PAUL CHISENA, BERTHA B. CHISENA, LENA B. COOK, JEWELL COX,  
et al., for themselves and all others similarly situated,  
Plaintiffs-Appellees,

v.

CLYDE ENGLE, Defendant-Appellant,

and

NATIONAL DEVELOPMENT COMPANY, INC. and SUNSTATES CORPORATION,  
Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT  
(S.P. NO. 06-1-0078)

ORDER DENYING DEFENDANT-APPELLANT  
CLYDE ENGLE'S FEBRUARY 18, 2009 HRAP RULE 40  
MOTION FOR RECONSIDERATION OF THE FEBRUARY 5, 2009  
DISMISSAL ORDER, AND ORDERING CORRECTION OF A CLERICAL  
ERROR IN THE FEBRUARY 5, 2009 DISMISSAL ORDER  
(By: Watanabe, Presiding Judge, Foley and Fujise, JJ.)

Upon review of (1) the February 5, 2009 order dismissing this appeal for lack of jurisdiction, (2) Defendant-Appellant Clyde Engle's (Appellant Engle) February 18, 2009 "Motion for Reconsideration of Order Dismissing Appeal for Lack of Appellate Jurisdiction or, in the Alternative, to Correct the Order" pursuant to Rule 40 of the Hawai'i Rules of Appellate Procedure (HRAP) and (3) the record, it appears that Appellant Engle's February 18, 2009 HRAP Rule 40 motion for reconsideration is untimely and without merit.

The ten-day time limit under HRAP Rule 40(a) for filing a motion for reconsideration of the February 5, 2009 dismissal

K. HANAKADO  
CLERK, APPELLATE COURT  
STATE OF HAWAII

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order expired on Tuesday, February 17, 2009.<sup>1</sup> Therefore, Appellant Engle's February 18, 2009 HRAP Rule 40 motion for reconsideration of the February 5, 2009 dismissal order is untimely.

When we entered the February 5, 2009 dismissal order, we did not overlook or misapprehend any points of law or fact. Therefore, Appellant Engle's February 18, 2009 HRAP Rule 40 motion for reconsideration lacks merit.

We note that sentence four in paragraph three of the February 5, 2009 dismissal order includes a clerical error, namely, the following reference to a September 5, 2008 trial scheduling order: "Furthermore, through a separate September 5, 2008 'Order Granting Plaintiffs' Motion to Set Trial Date,' the circuit court has apparently scheduled this post-judgment proceeding for a trial on a future date, namely July 13, 2009." It appears that the September 5, 2008 trial scheduling order was mistakenly filed in S.P. No. 06-1-0078 when, in fact, it should have been filed in a separate civil matter, namely Civil No. 07-1-0461. Therefore, the reference in sentence four of paragraph three of the February 5, 2009 dismissal order to the September 5, 2008 trial scheduling order was a clerical error. Accordingly,

IT IS HEREBY ORDERED that Appellant Engle's February 18, 2009 HRAP Rule 40 motion for reconsideration of the February 5, 2009 dismissal order is denied as untimely and without merit.

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<sup>1</sup> The tenth calendar day after February 5, 2009, was Sunday, February 15, 2009. Furthermore, Monday, February 16, 2009, was a holiday. Therefore, Rule 26(a) of the Hawai'i Rules of Appellate Procedure (HRAP) extended the ten-day time limit under HRAP Rule 40(a) for a motion for reconsideration until Tuesday, February 17, 2009.

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IT IS FURTHER HEREBY ORDERED that the appellate court clerk shall delete the following sentence in sentence four of paragraph three of the February 5, 2009 dismissal order:

"Furthermore, through a separate September 5, 2008 'Order Granting Plaintiffs' Motion to Set Trial Date,' the circuit court has apparently scheduled this post-judgment proceeding for a trial on a future date, namely July 13, 2009."

DATED: Honolulu, Hawai'i, February 25, 2009.

*Corinne K. A. Watanabe*  
Presiding Judge

*Daniel R. Foley*  
Associate Judge

*Auna M. J. J. J.*  
Associate Judge