

NO. 29871

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

H. ISABELLE MCGARRY TRUST OF MARCH 19, 1971,  
Plaintiff-Appellant,

v.

ROBERT HOFELICH and ANN MARIE HOFELICH,  
Defendants-Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT  
(S.P. NO. 97-0004K)

ORDER DENYING THE NOVEMBER 16, 2009  
MOTION FOR RECONSIDERATION OF NOVEMBER 3, 2009  
ORDER DISMISSING APPEAL FOR LACK OF JURISDICTION  
(By: Nakamura, C.J., Watanabe and Leonard, JJ.)

Upon review of (1) the November 3, 2009 order dismissing appellate court case number 29871 for lack of jurisdiction, (2) Howard Hofelich's November 16, 2009 motion for reconsideration of the November 3, 2009 appeal of dismissal pursuant to Rule 40 of the Hawai'i Rules of Appellate Procedure (HRAP), and (3) the record, it appears that, Howard Hofelich's November 16, 2009 HRAP Rule 40 motion for reconsideration is untimely because "filing shall not be considered timely unless the papers are received by the clerk within the time fixed for filing" (HRAP Rule 25(a)), and the appellate court clerk did not receive Howard Hofelich's November 16, 2009 HRAP Rule 40 motion for reconsideration within ten days after the filing of the November 3, 2009 order of dismissal, as HRAP Rule 40(a) required. It further appears that we have not misapprehended or overlooked any points of law or fact when we entered the November 3, 2009 order of dismissal. Therefore,

IT IS HEREBY ORDERED that Howard Hofelich's  
November 16, 2009 motion for reconsideration of the November 3,  
2009 order of dismissal is denied.

DATED: Honolulu, Hawai'i, November 24, 2009.

Chief Judge

Associate Judge

Associate Judge