

NO. 29134

IN THE SUPREME COURT OF THE STATE OF HAWAII

TIMOTHY E. BATES,
Respondent/Claimant-Appellee/Appellee,

vs.

KEVIN M. HUGHES dba SOUTH PACIFIC PAINTING,
Petitioner/Employer-Appellant/Delinquent-Appellant,

and

ALOHA PAINTING,
Respondent/Employer-Appellee/Delinquent-Appellee,

and

SPECIAL COMPENSATION FUND,
Respondent/Appellee-Appellee/Delinquent-Appellee.

K. HAMAMADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2008 DEC 23 PM 12:51

FILED

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CASE NO. AB 2005-441(M) (7-04-03265) (7-04-02843))

ORDER DENYING EX-PARTE MOTION FOR PERMISSION TO FILE
WRIT OF CERTIORARI AND DISMISSING APPLICATION FOR
WRIT OF CERTIORARI

(By: Moon, C.J. for the court¹)

Upon consideration of petitioner/employer-cross-appellant/delinquent-appellant Kevin M. Hughes dba South Pacific Painting's ex-parte motion for permission to file a late application for writ of certiorari and petitioner's application for writ of certiorari, both filed on December 15, 2008, the papers in support thereof, and the record herein, it appears that the time for filing an application for writ of certiorari is

¹ Considered by: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.

governed by Hawai'i Revised Statutes § 602-59(c) (Supp. 2007), which requires an application for writ of certiorari to be filed "no later than ninety days after the filing of the judgment or dismissal order of the intermediate appellate court" and does not permit an extension of the ninety-day period. The ninety-day statutory period cannot be extended pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 26(b), which permits the appellate court to extend a time "prescribed by these [HRAP] rules" and does not permit the appellate court to extend a time prescribed by statute. Therefore,

IT IS HEREBY ORDERED that the motion for permission to file a late application for writ of certiorari is denied.

IT IS FURTHER ORDERED that the application for writ of certiorari, filed December 15, 2008, is dismissed as untimely.

DATED: Honolulu, Hawai'i, December 23, 2008.

FOR THE COURT:


Chief Justice

