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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

TROY MCGHEE,
Plaintiff-Appellee,

v.

CLAUDETTE MCGHEE,
Defendant-Appellant.

Supreme Court Case No. CVA05-019
Superior Court Case No. CV0179-00

OPINION

Cite as: 2008 Guam 17

Appeal from the Superior Court of Guam
Submitted on the briefs June 1, 2007
Hagåtña, Guam

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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice;
RICHARD H. BENSON, Justice *Pro Tempore*

TORRES, C.J.:

[1] Defendant-Appellant Claudette McGhee, appearing *pro se*, appeals the Superior Court's judgment that defined Troy McGhee's community property interest in Claudette's Government of Guam retirement benefits and ordered her to reimburse Troy's community property interest in monthly installments ("Partition Judgment"). Additionally, Claudette appeals two judgments issued by the Superior Court that voided her transfers of real property to her children (collectively, "Voiding Judgments") shortly before the entry of the Superior Court's partition order. We dismiss Claudette's appeal because Claudette failed to order a transcript of the proceedings in the trial court, and the absence of a transcript precludes meaningful review of the trial court's findings.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] Years after the dissolution of his marriage to Claudette, Troy filed a complaint to partition Claudette's Government of Guam retirement benefits which were not previously divided. The Partition Judgment, awarding Troy a fifty percent share of the retirement benefits, was issued on August 18, 2004, and entered into the docket on August 24, 2004. Claudette attempts to appeal this judgment.

[3] Two weeks before the entry of the Partition Judgment on the docket, Claudette executed two deeds transferring her ownership of two lots to her children. Troy moved to set aside the transfers arguing that Claudette intentionally attempted to defraud him and frustrate his ability to collect money due to him. The lower court agreed with Troy and issued the two separate Voiding Judgments on November 22, 2005, voiding both deeds.

[4] Claudette filed a Notice of Appeal on December 14, 2005, appealing the Voiding Judgments. In her opening brief supporting her appeal, Claudette failed to include the argument pertaining to the Voiding Judgments. However, her reply brief did contain the argument supporting her appeal of the Voiding Judgments. Claudette also failed to order a transcript of the hearing covering Troy's motion to set aside her real property transfers.

II. DISCUSSION

A. The Partition Judgment

[5] Claudette's appeal of the Partition Judgment is untimely. The filing of a timely notice of appeal is "an absolute requirement from which this court has no discretion to digress." *Gill v. Seigel*, 2000 Guam 10 ¶ 5. A "timely notice of appeal is 'mandatory and jurisdictional.'" *Id.* (quoting *United States v. Robinson*, 361 U.S. 220, 224 (1960)).

[6] Rule 4(a) of the Guam Rules of Appellate Procedure ("GRAP") states that in a civil case, the notice of appeal must be filed with the Superior Court within thirty days after the judgment or order appealed from is entered.¹ Guam R. App. P. 4(a) (2007). Filing the notice of entry

¹ During the pendency of this case, the Guam Rules of Appellate Procedure were amended. We apply the new amended GRAP Rules adopted in 2007 throughout this opinion. When we amended the GRAP Rules, we stated that the new GRAP:

... shall apply to all actions, cases and proceedings brought after the instant Promulgation Order takes effect and to all actions, cases and proceedings commenced prior to the effective date hereof and still pending, except to the extent that the application of the Rules to those pending actions, cases and proceedings would not be feasible, or would work injustice, in which event the prior valid Guam Rules of Appellate Procedure shall apply.

Re: Adoption of the Guam Rules of Appellate Procedure, PRM07-003 (Promulgation Order No. 07-003-1, Feb. 21, 2007).

Here, applying the new GRAP works no injustice for it establishes the same time period for filing an appeal as that established by the former GRAP, which stated that "[w]hen an appeal is permitted by law from the Superior Court to the Supreme Court, the time within which an appeal may be taken in a civil case shall be thirty (30) days from the date of entry of judgment." Guam R. App. P. 4(a) (2004).

effectively gives notice to the parties and is sufficient to begin the thirty-day limit for filing a notice of appeal. *Sky Ent. v. Kobayashi*, 2002 Guam 24 ¶ 16.

[7] The Partition Judgment was entered into the docket on August 24, 2004. Claudette filed her Notice of Appeal on December 14, 2005. Because her Notice of Appeal was not filed within the thirty days following entry into the docket, Claudette's appeal of the Partition Judgment must be dismissed.

B. The Voiding Judgments

[8] Claudette also appeals the Voiding Judgments which were issued on November 22, 2005. Her appeal of the Voiding Judgments, although timely, warrants further examination.

[9] Rule 13 of the Guam Rules of Appellate Procedure requires an Appellant's initial brief to contain a statement of the issues presented for review. GRAP 13(a)(5). Further, Rule 13 requires the Appellant to include the argument, which must contain appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies. GRAP 13(a)(9)(A).²

[10] Claudette failed to include contentions in her initial brief to support an argument relating to the Voiding Judgments, but she did raise these contentions in her reply brief.³ In such an instance, "[t]he general rule is that issues raised for the first time in a reply brief are deemed waived." *In re Estate of Concepcion*, 2003 Guam 12 ¶ 10. This court has discretion to reject issues raised for the first time in a reply brief. *Id.* at ¶ 11.

[11] Guam case law, however, has recognized that deference should be given toward a *pro se* party's litigation efforts. *Caspino v. Caspino*, DCA Civ. No. 87-00065A, 1988 WL 242619, at

² Former GRAP 13(b)(5) similarly required an Appellant's initial brief to contain the argument supporting the issues raised on appeal. Former GRAP 13(b)(5) (2004).

³ Although the argument is omitted from Claudette's opening brief, it is touched on in her notice of appeal.

*2 (D. Guam App. Div. June 7, 1988) (“*Pro se* litigants must be afforded ‘every fair opportunity to present their case[s].’”) (quoting *Ray v. Proxmire*, 581 F.2d 998, 1003 (D.C. Cir. 1978), *McNeil v. Pub. Defender Serv. Corp.*, Civ. No. 90-00044A, 1990 WL 320362 (D. Guam App. Div. 1990) (refusing to address respondent’s contention that appellant’s brief did not comply with local rules, finding instead “*pro se* litigants are not held to the same technical standards, and there is no fatal error in [the Appellant’s] brief.”). Therefore, considering Claudette’s *pro se* status, we would generally be inclined to consider the issues concerning the Voiding Judgments, despite her failure to raise these issues in her opening brief. However, Claudette also failed to order a transcript of the hearing on Troy’s motion to set aside her transfers.

[12] Rule 7(b)(2) of the Guam Rules of Appellate Procedure states: “If the Appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion.” GRAP 7(b)(2) (2007). Because the Guam Rules of Appellate Procedure are substantially similar to the Federal Rules of Appellate Procedure, we look to federal case law for guidance. *Sananap v. Cyfred, Ltd.*, 2008 Guam 10 ¶ 8 n.2. Generally, if the absence of a transcript precludes meaningful review, an appellate court has no alternative but to dismiss an appeal. *Birchler v. Gell Co.*, 88 F.3d 518, 520 (7th Cir. 1996) (quoting *Fisher v. Krajewski*, 873 F.2d 1057, 1061 (7th Cir.1989)); *Syncom Capital Corp. v. Wade*, 924 F.2d 167, 169 (9th Cir.1991) (“[F]ailure to provide relevant portions of a transcript may require dismissal of the appeal.”); *Abood v. Block*, 752 F.2d 548, 550 (11th Cir. 1985) (dismissing complaint for failure to order transcript). Only where meaningful review is possible despite the absence of the transcript does the appellate court have discretion to disregard the failure and decide the appeal

on its merits. *See Lamb v. Hoffman*, 2008 Guam 2 ¶ 57.⁴

[13] Here, Claudette asks this court to set aside the trial court’s Voiding Judgments, issued upon the court’s finding that Claudette fraudulently conveyed the parcels to her children to avoid her financial obligations to Troy. Claudette argues that the trial court erred in finding she had the requisite intent for a fraudulent conveyance.

[14] The standard of review for a fraudulent conveyance action “is that the trial court’s ‘Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.’” *Town House Dep’t. Stores, Inc. v. Ahn*, 2000 Guam 32 ¶ 13 (quoting *Yang v. Hong*, 1998 Guam 9 ¶ 4). It is impossible for us to determine whether the trial court’s factual findings were clearly erroneous, giving due regard to the trial court’s judgment about the credibility of the witnesses, without transcripts presenting us with the oral testimony of those witnesses. Because the transcripts are essential for providing meaningful review, and meaningful review is not possible, we have no other alternative than to dismiss Claudette’s appeal of the Voiding Judgments.

III. CONCLUSION

[15] Because Claudette did not file her notice of appeal within thirty days after the Partition Judgment’s entry into the docket and because her failure to order transcripts of the relevant

⁴ *Lamb v. Hoffman* involved a dispute about child support. 2008 Guam 2 ¶ 1. The Appellant in *Lamb* appealed the trial court’s ratification of findings and recommendations of the Child Support Referee. *Id.* In doing so, Appellant failed to order a transcript to provide evidence in support of his contentions that the referee was prejudiced by his arrest in court and had failed to make a factual determination of his ability to pay child support payments. *Id.* at ¶ 58. Rather than dismissing the appeal, we were able to reach the merits even in the absence of transcript evidence, where Appellant bore the burden to rebut with affirmative evidence two legal presumptions: that a judge is presumed to consider only relevant evidence, and that a party is presumed to be able to pay support to his children. *Id.* at ¶¶ 58-59. No such statutory, evidentiary, or common law presumption guides our inquiry in the instant case. Rather, the trial court judge presumably found that Troy met his burden of proof in demonstrating the conveyance was fraudulent.

proceedings precludes our meaningful review of the Voiding Judgments, this appeal is
DISMISSED.

Original Signed : F. Philip Carbullido
By

F. PHILIP CARBULLIDO
Associate Justice

Original Signed : Richard H. Benson
By

RICHARD H. BENSON
Justice *Pro Tempore*

Original Signed : Robert J. Torres
By

ROBERT J. TORRES
Chief Justice