Rebluud v. Fumio, 5 ROP Intrm. 12, 1994

SALVADOR REBLUUD,
Appellant,

v.

KALISTA FUMIO, et al.,
Appellees.

CIVIL APPEAL NO. 16-94
Civil Action No. 466-92

Supreme Court, Appellate Division
Republic of Palau

Order denying motion to dismiss
Decided: October 25, 1994

PER CURIAM:

Appellees ("Fumio") have moved to dismiss this appeal, alleging that the appeal was untimely filed and that it was filed in the wrong court.

On June 23, 1994 the trial court entered a Decision and Order affirming an LCHO ownership determination in Fumio's favor. On July 4, 1994 Rebluud filed a petition for reconsideration. The trial court denied the petition for reconsideration on July 6, ⊥13 1994. Rebluud thereafter filed a notice of appeal with the Appellate Division on August 4, 1994.

Fumio first argues that Rebluud's notice of appeal was untimely filed. A party must ordinarily file its notice of appeal within 30 days after service of the judgment or order from which it appeals. ROP App. Pro. Rule 4(a). This time is tolled, however, by the "timely filing in accordance with the Rules of Civil Procedure . . . [of] a motion to alter or amend the judgment or a motion for a new trial." Id. That Rebluud labeled his motion a "petition for reconsideration" rather than a ROP Civ. Pro. Rule 59(e) motion to alter or amend the judgment or a ROP Civ. Pro. Rule 59(a) motion for a new trial is not dispositive of whether the motion tolled the time for filing a notice of appeal. We will look to the substance of the motion to determine whether it tolls the time for filing a notice of appeal. See 9 James Moore, Moore's Federal Practice , ¶ 204.12[1] (1983) ("Any motion that draws into question the correctness of the judgment is functionally a motion under Civil Rule 59(e), whatever its label. Thus, a motion to 'reconsider,' . . . is a motion under Rule 59(e) and under [Appellate] Rule 4(a)(4) will postpone the time for appeal if the motion was timely made."); see also *Sunstream Jet Exp. v. International Air Service Co.* , 734 F.2d 1258, 1273 (7th Cir. 1984) ("[S]ubstance controls in determining whether a post judgment motion is a Rule 59(e)" motion.); *Vreeken v. Davis* , 718 F.2d 343, 345 (l0th Cir. 1983) ("Generally, regardless of how it is styled . . . a motion filed within ten days of the entry of judgment that questions the correctness of the judgment is properly treated as a Rule 59(e) motion.").

In his petition for reconsideration Rebluud argued that the Tochi Daicho listing for the lot in question does not name the true owner of the property. Rebluud asked the court to grant a trial de novo so he could prove that Fumio's father, who is listed as the lot's owner in the Tochi Daicho, did not actually own the land. Because this argument necessarily called into question the correctness of the trial court's Decision and Order, it was the functional equivalent of a motion to alter or amend the judgment. As such, it tolled the time for filing a notice of appeal. [1] Since ⊥14 Rebluud filed his notice of appeal within 30 days of the denial of his petition for reconsideration he satisfied the time limits found in Appellate Rule 4(a). See ROP App. Pro. Rule 4(a) ("The full time for appeal commences to run and is to be computed from the service of an order granting or denying a motion to alter or amend the judgment.").

Fumio also argues that the appeal should be dismissed because the notice of appeal was filed in the Appellate Division rather than the Trial Division. Fumio relies on Appellate Rule 3(a), which states that an "appeal shall be taken by filing a notice of appeal with the clerk of the trial court." We note, however, that Appellate Rule 4(a) appears to contradict Rule 3(a), or at least creates an ambiguity, by stating that an "appeal to review any judgment shall be directed to the Appellate Division of the Supreme Court." This apparent conflict will be resolved through the rule revision process. [2] It is enough, for this case, to repeat our earlier holding that filing a notice of appeal in the Appellate Division rather than the Trial Division is not a "fatal" defect requiring the dismissal of the appeal. *Bausoch v. Tmetuchl*, 2 ROP Intrm. 57 (1990).

For all of these reasons, Fumio's motion to dismiss is DENIED.

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[1] Appellate Rule 4(a) requires that a motion to alter or amend the judgment be timely filed in order for it to toll the time for filing an appeal. ROP Civ. Pro. Rule 59(e), in turn, requires that a motion to alter or amend the judgment be served no later than 10 days after the judgment. The trial court's Decision and Order was filed on June 23, 1994, which would have given Rebluud until July 3, 1994 to file a timely motion to alter or amend the judgment. As July 3, 1994 was a Sunday, the 10 day time limit did not run until July 4, 1994. See ROP Civ. Pro. Rule 6(a). Rebluud's petition for reconsideration, filed on July 4, 1994, can therefore be considered a timely filed motion to alter or amend the judgment.

[2] Appellate Rule 3(a) is patterned after FRAP Rule 3(a) in the United States, where the trial and appellate courts often sit in different locales separated by great distances. In such a setting, if the notice of appeal were filed with the clerk of the appellate court the trial court clerk might not necessarily hear of it immediately. In Palau such a concern is irrelevant since the clerk of the trial court and the clerk of the appellate court are one and the same.