

Doe v. Doe, 6 ROP Intrm. 51 (1997)

**JOHN DOE,
Appellant,**

v.

**JANE DOE,
Appellee.**

CIVIL APPEAL NO. 20-96
Civil Action No. 271-94

Supreme Court, Appellate Division
Republic of Palau

Order

Decided: January 27, 1997

Counsel for Appellant: Oldiais Ngiraikelau

Counsel for Appellee: Roy T. Chikamoto

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice;
R. BARRIE MICHELSEN, Associate Justice

BEATTIE, Justice:

Before the Court is Appellee's Motion to Dismiss Appeal of Judgment and Order Denying Motion for New Trial. Judgment was rendered in favor of appellee Jane Doe ("Appellee") and against appellant John Doe ("Appellant") on January 24, 1996. Appellant timely filed a motion for a new trial pursuant to Rule 59(a) of the Palau Rules of Civil Procedure. ¹ On March 19, 1996, the trial court entered an order denying the motion for new trial.

On April 1, 1996, 13 days after the denial of the motion for **L52** new trial, Appellant filed a motion for reconsideration of the order denying the motion for new trial. After holding a hearing, the trial court entered an order on May 7, 1996 denying Appellant's motion for reconsideration.

On June 4, 1996, Appellant filed a notice of appeal appealing the judgment entered

¹ PRCP Rule 59 states in relevant part:

"(a) . . . A new trial may be granted to . . . any of the parties . . . for manifest errors of law . . . or for newly discovered evidence. (b) . . . A motion for a new trial shall be served not later than ten (10) days after the entry of the judgment." Accordingly, Appellant's motion filed eight days after the entry of judgment was timely filed.

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January 24, the March 19 order denying the motion for a new trial and the May 7 order denying the motion for reconsideration.

DISCUSSION

The timely filing of a notice of appeal is a prerequisite to establish jurisdiction and is governed by ROP R. App. Pro. 4(a), which states in relevant part:

Every appeal shall be directed to the Appellate Division of the Supreme Court and shall be filed within thirty (30) days after the . . . service of a judgment or order in a civil case, unless otherwise provided by law The time for filing an appeal is terminated 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 [*i.e.*, a Rule 59(a) or Rule 59(e) motion] . . . 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 or the denying of a motion for a new trial . . .

Absent an extension of time, the 30-day period for filing a notice of appeal of the January 24 judgment would have ended on February 23. However, by filing the Rule 59 motion to alter or amend the January 24 judgment, the time for filing the notice of appeal was extended to a date 30 days following the service of the ruling on that motion. Thus, since the ruling on the Rule 59(a) motion was served on March 19, Appellant was required to file his notice of appeal on or before April 18 (*i.e.*, within 30 days following the service of the order denying the Rule 59(a) motion). Because Appellant filed the notice of appeal on June 4, the notice of appeal was untimely and, accordingly, the appeal of the judgment must be dismissed for lack of jurisdiction. “The late filing of a notice of appeal is a fatal jurisdictional defect.” *Tellei v. Ngirasechedui*, 5 ROP Intrm. 148 (1995) (citing *ROP v. Chisato*, 2 ROP Intrm. 227 (1991)).

Appellant argues that his motion for reconsideration was also **L53** a Rule 59 motion, so that the time for filing the appeal was extended to a date 30 days following the denial of that motion. Although he concedes that the motion to reconsider was not timely filed (it was filed 13 days after denial of the motion for new trial), the trial court entertained it anyway. Citing *Thompson v. Immigration and Naturalization Service*, 84 S.Ct. 397 (1964), he argues that the tardiness of the motion should not prevent it from extending the time to file the notice of appeal in that he relied on the trial court's treatment of the motion as timely filed.

The problem with that argument is that, even if the motion to reconsider were timely filed, it would not extend the time for filing the notice of appeal.

The text and purpose of [Rule 4(a)] indicate that it is an original . . . [Rule 59(a) or Rule 59(e)] motion that postpones appeal until after disposition of the motion and the running of the time for appeal is not further extended by a motion to reconsider an order disposing of the motion . . .

9 J. Moore, *Moore's Federal Practice*, ¶ 204.12[1] (1983) (emphasis in original).

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A long line of authority supports this proposition. See *Wansor v. George Hantscho Co.*, 580 F.2d 1202, 1206 (3d Cir. 1978) (“A motion to reconsider an order disposing of a motion of the kind enumerated in Rule 4(a) does not again terminate the running of the time for appeal.”); *EEOC v. Central Motor Lines*, 537 F.2d 1162 (4th Cir. 1976); *Dockery v. Travelers Co.*, 349 F.2d 1017 (5th Cir. 1965); *Yates v. Behrend*, 280 F.2d 64, 65 (D.C. Cir. 1960) (“There is nothing in the Rules to suggest that a second motion for reconsideration, made after the denial of a timely initial motion, has the effect of again terminating the running of the time to appeal from the judgment.”); *Randolph v. Randolph*, 198 F.2d 956 (D.C. Cir. 1952); *Marten v. Hess*, 176 F.2d 834 (6th Cir. 1949).

Although we dismiss the appeal of the judgment and the order denying the motion for new trial, we do not dismiss the appeal of the denial of the motion for reconsideration. We treat that motion as a Rule 60(b) motion. Rule 60(b) provides for relief from judgments and orders due to, among other things, mistake or inadvertence and requires motions thereunder to be filed “within a reasonable time, and for [mistake or inadvertence] not more than one year after the . . . order . . . was entered”

154 The filing of a Rule 60(b) motion does not toll the deadline for filing a notice of appeal. The May 7 order denying the Rule 60(b) motion for reconsideration is, however, separately appealable. Appellant filed his notice of appeal within 30 days after the entry of the order denying that motion. Therefore, the appeal of the May 7, 1996 order denying the motion to reconsider was timely.

CONCLUSION

The motion to dismiss is GRANTED and the appeal is DISMISSED to the extent that it challenges the January 24, 1996, Judgment against Appellant and the March 19, 1996, Order denying Appellant's motion for a new trial. Appellant may proceed with this appeal only to the extent that it challenges the May 7, 1996, Order denying his motion for reconsideration.