Udui v. Rechucher, 9 ROP 134 (2002)

KALEB UDUI, JR.,
Appellant,

v.

JOHN K. RECHUCHER,
Appellee.

CIVIL APPEAL NO. 02-08
LC/E 00-320, 00-321, 00-322

Supreme Court, Appellate Division
Republic of Palau

Decided: June 27, 2002

[1] **Appeal and Error:** Notice of Appeal

A party's failure to file a timely notice of appeal is a fatal defect.

[2] **Appeal and Error:** Notice of Appeal

Notice received by a lawyer while he is representing a client and acting within the scope of such employment is imputed to the client.

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: Pro Se

PER CURIAM:

Before the Court is Appellee's motion to dismiss the Appellant's appeal in this case on the ground that Appellant's failure to file a timely notice of appeal divests the Court of jurisdiction to consider the appeal. We agree.

[1] This Court has previously made clear that a party's failure to file a timely notice of appeal is a fatal defect. *See ROP v. Chisato*, 2 ROP Intrm. 227, 228 (1991). In this case, a copy of the Land Court's determination was ⊥135 served on January 18, 2002, but Appellant failed to file his notice of appeal until March 22, 2002, well outside of the 30 day filing period imposed by ROP R. App. Pro. 4(a). In an effort to avoid the inescapable consequences of the rule articulated in *Chisato*, Appellant avers that he did not actually receive a copy of the Land Court's determination until March 18, 2002, thus rendering his notice timely filed. He contends that the service of the determination that was effected – the delivery of copies of the determination to Appellant's counsel Carlos H. Salii at Salii's mailbox at the Land Court and to Appellant's wife at her place of employment (the Land Court) – failed to comport with the terms of 35 PNC

§ 1311, thereby rendering such service inadequate to start the filing clock.

[2] Appellant is correct in his assertion that § 1311 directs the Land Court to serve a copy of its proceedings summary, findings and determination(s) on all parties to a case at the address each party registers with the Land Court at the hearing. The record before us, however, does not reveal whether Appellant ever actually registered an address with the Land Court. We need not tarry with this question, though, as Appellant's argument overlooks the well-settled principle that notice received by a lawyer while he is representing a client and acting within the scope of such employment is imputed to the client. *See* 58 Am. Jur. 2d *Notice* § 4 (1989). This rule applies to the receipt of notice by the attorney's office, *see Irwin v. Dept. of Veterans Affairs*, 111 S. Ct. 453, 456 (1990), and extends even to situations where a statute specifically calls for notice to be provided directly to the client. *See, e.g.*, *Buford v. Resolution Trust Corp.*, 991 F.2d 481 (8th Cir. 1993). This Court has previously held that this rule applies even where counsel's assistant retrieved notice of the entry of an order from counsel's mailbox and neglected to bring the matter to counsel's attention. *Tellei v. Ngirasechedui*, 5 ROP Intrm. 148, 149-50 (1995).

It is undisputed that the Land Court's decision in this case was served on Appellant's counsel on January 18, 2002. Appellant's filing clock began to run at that point. The notice of appeal was therefore untimely filed and this Court lacks subject matter jurisdiction over the appeal. Appellee's motion is therefore GRANTED and Appellant's appeal is hereby DISMISSED.