

IN THE SUPREME COURT  
OF THE  
REPUBLIC OF THE MARSHALL ISLANDS

FILED

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ASSISTANT CLERK OF COURTS  
REPUBLIC OF THE MARSHALL ISLANDS

MAUJ EDMUND, et al.,

Plaintiff-Appellee,

vs.

MARSHALL ISLANDS MARINE  
RESOURCES AUTHORITY, et al.

Defendants-Appellants.

Supreme Court Case No. 2021-00406

**ORDER GRANTING UNOPPOSED  
"SECOND MOTION TO DISMISS  
APPEAL" AND DISMISSING APPEAL**

**TO ALL PARTIES HEREIN THROUGH THEIR RESPECTIVE COUNSEL OF  
RECORD:**

CADRA, C.J.; SINGLE JUDGE PROCEDURAL ORDER [Supreme Court Rule of Procedure  
27(c)]

On July 28, 2021, Appellee Mauj Edmund, et al, filed a "Second Motion to Dismiss  
Appeal for Repeated Violations of the Rules" pursuant to Supreme Court Rules of Procedure  
(SCRP) 42(b)(2),(3)

Appellant Marshall Islands Marine Resources Authority (MIMRA) has not filed an  
Opposition to Appellee's Motion to Dismiss and has not requested an extension of time in which  
to file an Opposition or otherwise respond.

Because Appellant has not opposed dismissal and because the record demonstrates a  
pattern of disregard or noncompliance with the Supreme Court Rules of Procedure (SCRP)

throughout this litigation, Appellee's motion is GRANTED and this appeal is ORDERED DISMISSED.

**I. PROCEDURAL HISTORY OF INSTANT APPEAL**

This case presents with an atypical procedural background demonstrating repeated violations of the Rules by Appellant, most of which violations are unexplained.

The record establishes:

1. Appellant MIMRA filed its Notice of Appeal on February 19, 2021.
2. Appellant did not serve its Notice of Appeal on Appellee's counsel of record as required by SCR 3(d), 25(b).
3. On May 7, 2021, Appellant filed a "Motion for Extension of Time" in which to file its Opening Brief.
4. Appellant did not serve its "Motion for Extension of Time" on Appellee's counsel of record as required by SCR 25(d).
5. On May 10, 2021, Appellee filed a "Motion to Dismiss Appeal for Repeated Rule Violations of the Rules."
6. On May 17, 2021, the undersigned issued a single-judge procedural order denying Appellee's Motion to Dismiss Appeal but imposed a monetary sanction on Appellant's counsel for the above referenced Rules violations.
7. On May 24, 2021, Appellant filed another (second) "Motion for Extension of Time" in which to file its Opening Brief. Appellee opposed the requested extension. That motion was granted despite Appellee's opposition.
8. Appellant's Opening Brief was filed on May 31, 2021.

9. Appellee filed its Answering Brief on July 12, 2021. Appellee's Answering Brief asserts another procedural violation by Appellant regarding the questions presented for review pursuant to SCR 28(b)(6). Appellee requests dismissal of the appeal in its entirety based on this Rule's violation.
10. On July 21, 2021, Appellant filed a "Motion for Enlargement of Time" of 3 days in which to file its Reply Memorandum due to sickness of unidentified off-island counsel. The requested extension of time was opposed by Appellee but the motion was granted by the undersigned's single-judge procedural order dated July 22, 2021.
11. Appellant filed its Reply Brief on July 26, 2021.
12. On July 28, 2021, Appellee filed its instant "Second motion to Dismiss Appeal for Repeated Violations of the Rules." A Certificate of Service indicates service on Appellant's counsel on that date.
13. Appellant has not filed an Opposition to dismissal of its appeal within the time allowed by SCR 27(a) and has not requested an extension of time to object to dismissal.

## **II. THE INSTANT "SECOND MOTION TO DISMISS APPEAL"**

### **A. Appellee's Arguments for Dismissal.**

Appellee moves for dismissal of this appeal pursuant to SCR 28(a), 30 and 42 "for MIMRA's repeated and continuing violations of the rules."

The specific violation triggering Appellee's most recent (second) motion to dismiss is Appellant's filing of an eleven (11) page Reply Brief which exceeds the ten (10) page limit imposed by SCR 28.

Appellee, however, does not contend that Appellant's brief exceeding the limit by one page justifies the harsh sanction of dismissal. Rather, Appellee points to a pattern of repeated violations of the Rules despite previous imposition of sanctions: "[I]t is not the 11<sup>th</sup> page of the Reply Brief that is problematic in this instance, but MIMRA's repeated and continuing violations of the rules. MIMRA has already been admonished several times by this Court and has even been sanctioned. However, these admonishments and penalties have had no effect on MIMRA's continued behavior. It is clear that MIMRA believes that either (i) the Supreme Court Rules of Procedure do not or should not apply to it; or (ii) the Rules should be renamed the Supreme Court Voluntary Rules of Procedure." (Appellee's Memorandum in Support of Motion to Dismiss, p. 2)

It must be noted that Appellee does not claim that it has been prejudiced in this appeal by Appellant's most recent violation of the Rules or that the procedural missteps by Appellant amount to some sort of cumulative prejudice. Rather, the undersigned construes Appellee's motion to dismiss as a policy argument calling upon the Court to enforce its Rules of Procedure which have been seemingly ignored by Appellant.

**B. Appellant Has NOT OPPOSED DISMISSAL.**

SCRP, Rule 27(a) provides:

...Any party may file a written response in opposition to a motion within 5 days after service of the motion, but the Supreme Court may shorten or extend the time for responding to any motion pursuant to Rule 26(d) or (b).

The instant motion to dismiss was filed and served on July 28, 2021. Thus, excluding the intervening weekend, Appellant had until close of business on August 4, 2021, in which to file an Opposition pursuant to SCRП Rule 26(a).

Appellant MIMRA has not opposed dismissal of its appeal. Appellant has not requested an extension of time in which to file an Opposition or otherwise respond to the requested dismissal.

Due to the lack of an Opposition, it is unclear whether MIMRA (as the client) opposes dismissal, intends on pursuing its appeal, has chosen to abandon its appeal or whether counsel has ignored or neglected a deadline for advising the Court of MIMRA's position on dismissal.

### III. DISCUSSION

#### **A. SCRP, Rule 42, Authorizes Dismissal of an Appeal For Failure to Comply with the Rules of Procedure.**

SCRP, Rule 42 authorizes the Court to dismiss an appeal for noncompliance or lack of timely compliance with the Rules

Rule 42(b), in relevant part, states:

(2) Upon motion and notice, the Supreme Court may dismiss an appeal upon terms fixed by the Supreme Court.

(3) The Supreme Court may also dismiss an appeal, on its own initiative, for failure of appellant to abide by these rules or for lack of timely compliance with these rules.

That Rule, on its face, does not mention or require a showing of prejudice to an opposing party or a pattern of Rules violations prior to ordering dismissal.

#### **B. Dismissals of Appeals based on Technicalities or Procedural Errors are Disfavored; Nevertheless, Appellate Rules Cannot be Ignored.**

Notwithstanding Rule 42's grant of authority to dismiss an appeal for violation of the Rules, it is well settled that appeals should be decided upon their merits and, therefore, dismissals of appeals based on procedural technicalities are disfavored.

"A motion to dismiss an appeal is, in effect, a request that the appellate court refuse to examine the merits of the cause, that is, dismiss it on some technical ground. However, appellate courts prefer to decide cases on the merits, and appellate courts should avoid dismissing appeals. As appeals are favored in the law, unless the ground urged for dismissal of the appeal is free from doubt the appeal should be maintained. Thus, pursuant to policy embodied in the appellate rules, disposing appeals based on harmless

procedural defects is disfavored. Since cases on appeal should be heard on the merits if possible, the statutes and rules governing the orderly administration of justice should be construed liberally in favor of allowing appeals to proceed.” *See, generally*, 5 C.J.S. Appeal and Error, Sec. 747 *Citations omitted*.)

While the Supreme Court will interpret its appellate rules, when possible, to further resolution of appeals on the merits, litigants should not view relaxation of rules in a particular case as endorsing noncompliance, and litigants who ignore the rules do so at the risk of forfeiting appellate review. *See, e.g., Bennett v. Cochran*, 96 S.W.3d 227 (Tex. 2002).

Historically, this Court has favored resolution of appeals on their merits and has refused to dismiss appeals based on technical, non-jurisdictional grounds. This policy has extended to civil matters and has been especially true in cases involving *pro se* litigants and in criminal cases where liberty interests have been at stake.

**C. The Record Reflects Repeated, Unexplained Failures of Appellant to Comply with the SCRP.**

The record in this case (as above referenced) demonstrates a pattern of Appellant’s non-compliance with the Rules. Monetary sanctions were previously imposed against Appellant’s counsel for his unexplained failure to make service of its Notice of Appeal and motion for enlargement of time. The purpose of the sanction was “(a) to send a message to the legal community that the Supreme Court Rules must be complied with; (b) that there are consequences for violations of the Rules; (c) to discourage sharp practice, harassment or tactical game playing whereby opposing parties are subjected to unnecessary expenditure of time and effort attributable to failure to serve documents; and (d) in this case, to (partially) compensate Appellees for the time expended in filing its motion to dismiss and efforts undertaken to secure satisfaction of the judgment prior to being advised that a Notice of Appeal had been filed.” (“Order Denying Motion to Dismiss Appeal” dated May 16, 2021 (AST)).

Appellant's most recent Rule violation consists of exceeding the briefing limit on a Reply Brief by 1 page. Rule 28(a) states:

All briefs must conform with this rule and must be accompanied by proof of service of a copy on each party to the appeal. Except after leave is granted, the clerk of the Supreme Court will not accept an opening or answering brief of more than 35 typewritten pages or printed pages, or a reply brief of more than 10 typewritten or printed pages, exclusive of indices, appendices and statements of related cases, or any brief that does not conform with Rule 31. (Emphasis added.)

Rule 28(a) required Appellant to seek leave of Court to file a request in order to file a brief exceeding the 10 page limit. Appellant failed to follow the Rule. It is a Rule violation regardless of whether the Reply brief exceeded the limit by 1 page or 100 pages. The prejudice to Appellee by Appellant's violation of Rule 28(a) in the context of this particular case may be non-existent or minimal.

In the larger context, however, there is prejudice to the system when rules are ignored without consequence. Routinely excusing seemingly minor rule violations (such as exceeding a briefing limit by 1 page and/or by not requesting the required leave of Court) is likely to undermine the purpose of having clear standards set forth by the rules of procedure. With no clear standards (or standards which are not enforced) procedural litigation would likely increase accompanied by increased delay and expense to litigants and the court. Quite simply, if the rules are not enforced then why have the rules (?)

In the instant case, the Court does find prejudice to the administration of justice by Appellant's repeated and unexplained violation of the SCRP. There has been prejudice, albeit minimal, to Appellee because Appellee has been subjected to the time and expense of having to repeatedly bring motions before this Court to secure Appellant's compliance with the Rules. More importantly, as discussed below, Appellant has offered no explanation for its failure to

comply with the Rules and has not even bothered to make a plea for not dismissing this appeal by responding to the instant motion to dismiss.

**D. Because Appellant Has Not Opposed Dismissal, The Court Is Unaware Of Any Reason This Case Should Not Be Dismissed.**

Appellant MIMRA has not opposed dismissal and has not requested an extension of time in which to file an opposition. Because there has been no opposition filed, the Court is unaware of whether Appellant (MIMRA) objects to dismissal, intends of abandoning its appeal, or whether Appellant's counsel has intentionally failed to object to dismissal or has missed a deadline through inadvertence or neglect. Appellant's lack of opposition or response to Appellee's motion to dismiss is troubling. It is not a particularly difficult task to respond to a 2 page dismissal motion within the time limits provided by the Rules. The Rules even allow an extension of time in which to respond upon timely application. It would seem to the undersigned that when confronted with a motion to dismiss that some sort of response would be filed if this appeal was intended to be pursued.

Because no opposition has been filed, it can reasonably be inferred that Appellant does not oppose dismissal. In the trial court context, the failure to oppose a motion to dismiss constitutes an abandonment of the claims for which dismissal is being sought. *See, e.g., King v. Contra Costa County*, 2020 WL 978632 (U.S. Dist. Ct., N.D. Ca.2/28/20). There is no reason why a similar rule should not apply on the appellate level when a dispositive motion is unopposed.

Even if this Court were to adopt a policy that dispositive motions on appeal are not to be granted merely because they are unopposed, there are ample grounds for dismissing this appeal due to Appellant's (1) lack of opposition to dismissal and (2) the pattern of repeated rules violations despite the prior imposition of sanctions aimed at securing compliance with the rules.



Alternative sanctions, such as striking the Reply Brief or imposing additional monetary sanctions, appear inadequate in securing future compliance with the Rules.

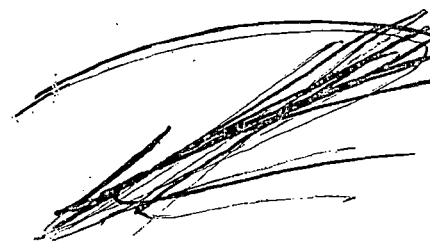
**V. CONCLUSION & ORDER**

Appellee has requested dismissal of this appeal. Appellant does NOT OPPOSE DISMISSAL. Grounds for dismissal exist under Rule 42(b)(2)(3) due to Appellant's repeated failure to abide by the Rules.

Sanctions short of dismissal are likely inadequate to secure Appellant's future compliance with the Rules and are inadequate to send the message to the bar and other litigants that the Rules of Procedure are, indeed, mandatory, not "voluntary" and that there are consequences for repeated violations of those Rules.

**IT IS THEREFORE ORDERED** that Appellee's motion to dismiss is **GRANTED** and this appeal is **DISMISSED**.

Dated this 8th day of August, 2021. (AST)



Daniel Cadra  
Chief Justice, Supreme Court

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