

FILED

MAY 04 2023

CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

IN THE SUPREME COURT

OF THE

REPUBLIC OF THE MARSHALL ISLANDS

MARSHALL ISLANDS SOCIAL
SECURITY ADMINISTRATION,

Plaintiff/Appellee,

vs.

JACK JORBON dba PHILIPPO &
JORBON, LLC,

Defendant/Appellant.

Supreme Court Case No. 2022-02240

High Court Civil Action Nos. 2022-01364

ORDER DISMISSING APPEAL

CADRA, C.J., Single Judge Procedural Order:

I. INTRODUCTION

On April 24, 2023, Plaintiff-Appellee, Marshall Islands Social Security Administration (“MISSA”), filed a motion to dismiss the above captioned appeal due to the failure of Defendant-Appellant, Jack Jorbon dba Philipppo & Jorbon, LLC, to comply with Supreme Court Rules of Procedure (SCRП), Rules 28(b) and 31(c). Appellant has not filed an opposition or response to MISSA’s motion to dismiss. Because the motion is unopposed and because the Court is consequently unaware of any “good cause,” excusable neglect, reason, or explanation for Appellant’s failure to comply with the Rules, this appeal is ORDERED DISMISSED.

II. DISCUSSION

The record reveals:

1. On January 11, 2023, the Clerk of the Supreme Court filed the “Supreme Court Clerk’s Certification Re: Filing of Record on Appeal.” That document stated that “the filing of the Record on Appeal begins the time (40 days period) for filing of Appellant’s Opening Brief pursuant to Supreme Court Rule 28(b).”¹
2. On February 17, 2023, the Clerk of the Supreme Court sent an e-mail to the parties’ counsel of record (David Strauss for Plaintiff/Appellee and Jack Jorbon for Defendant/Appellant) attaching the January 11, 2023, Record on Appeal and Clerk’s Certificate. That e-mail gave notice that the time for filing Appellant’s Opening Brief commenced at that time.
3. Pursuant to SCRP, Rule 28 (b), Defendant-Appellant had until March 29, 2023, (40 days after the Clerk’s February 17, 2023, e-mail giving notice of filing of the Record on Appeal) in which to file its Opening Brief.
4. Appellant failed to file its Opening Brief by March 29, 2023.
5. Appellant’s Opening Brief was late-filed on April 6, 2023 (8 days past the 40-day deadline imposed by SCRP Rule 28(b)).
6. At no time did Appellant request an enlargement of time in which to file its Opening Brief and has not filed a motion requesting that the late-filed brief be accepted for filing.²
7. On April 24, 2023, Appellee filed the instant motion to dismiss. The “Certificate of Service” accompanying the motion to dismiss indicates that the motion was served on Appellant by e-mail on April 24, 2023.

¹ SCRP, Rule 28(b) provides that an appellant shall file an opening brief “within 40 days of the filing of the record on appeal.”

² SCRP, Rule 26(b) allows an enlargement of time for “good cause shown.”

8. Appellant has not filed an opposition or any response to Appellee's motion to dismiss and has not requested an enlargement of time in which to file an opposition or otherwise respond.³

A lengthy discussion is not necessary as it is clear that Appellant has not complied with the Supreme Court Rules of Procedure and has offered no excuse for its noncompliance.

There is a policy favoring decisions of appeals on their merits and not on mere procedural technicalities. In furtherance of that policy enlargements of time in which to comply with briefing deadlines have been liberally granted. Despite the liberality in granting extensions of time, litigants must comply with the procedural rules regarding requests for extensions or enlargements of time.

In this case, Appellant failed to timely file its opening brief within the 40 days permitted by SCRCP, Rule 28(b). At no time did Appellant file a motion demonstrating "good cause" for an enlargement of time in which to file its opening brief or to accept the late filing of its opening brief pursuant to Rule 26(b). Because Appellant has failed to file a motion pursuant to Rule 26(b), the Court is unaware of any "good cause" required by that Rule for an enlargement of time or excusing the late filing of Appellant's opening brief.

Appellant has also failed to file an opposition or response to Appellee's motion to dismiss. Consequently, the Court is unaware of Appellant's position on dismissal of its appeal. It may be that Appellant consents to dismissal. In any event, Appellant has not offered any reason why this case should not be dismissed for Appellant's failure to comply with the Rules. It is not

³ SCRCP, Rule 27(a) provides that any party may file a written response to a motion within 5 days of service of the motion. Excluding the intervening weekend, any opposition would have been due on or before May 2, 2023. No opposition or response has been filed.

the Court's function to make an argument on behalf of Appellant why this case should not be dismissed.

SCR, Rule 42(b)(2), (3) provides that the Supreme Court may dismiss an appeal upon "motion and notice" or upon the Court's own initiative "for failure of appellant to abide by these rules or for lack of timely compliance with these rules." Because Appellant has failed to abide by the rules regarding the filing of its opening brief with 40 days of the filing of the record on appeal as required by Rule 28(b), because no "good cause" has been offered excusing the late filing pursuant to Rule 26(b) and because Appellant does not object to dismissal as requested by Appellee's motion, this appeal is DISMISSED.⁴

Dated: May 3, 2023 (AST)

/S/

Daniel Cadra, Chief Justice

**ENTERED AS A SINGLE JUDGE PROCEDURAL ORDER PURSUANT TO SCR,
RULE 27(c)**

⁴ The undersigned need not address the objection to the single space formatting of the opening brief.