IN THE SUPREME COURT OF GUAM

GERALDO L. ABALOS and **MERIEFE M. ABALOS,**
Plaintiffs-Appellees,

v.

CYFRED, LTD., A GUAM CORPORATION; ENRIQUE BAZA, JR.; ELEANOR B. PEREZ; DONGBU INSURANCE COMPANY and **DOE DEFENDENTS 1-10,**
Defendants-Appellants.

OPINION

Cite as: 2009 Guam 14

Supreme Court Case No.: CVA08-014
Superior Court Case No.: CV0580-02

Appeal from the Superior Court of Guam
Argued and Submitted May 22, 2009
Hagåtña, Guam

Appearing for Plaintiffs-Appellees:
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Appearing for Defendants-Appellants:
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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

MARAMAN, J.:

[1] Defendant-Appellant Cyfred, Ltd. ("Cyfred") appeals an award of attorney's fees and costs to Plaintiffs-Appellees Geraldo and Meriefe Abalos ("the Abaloses"). The Abaloses contend that Cyfred's appeal is untimely because the Judgment implicitly denied Cyfred's Motion to Reconsider, and no appeal was taken within thirty days of the Judgment. We agree and therefore dismiss the present appeal as untimely.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] The underlying dispute in this case has already been before this court three times on appeal, and the details are fully described in the prior opinions. *See Abalos v. Cyfred*, 2006 Guam 7 (*Abalos I*); *Sananap v. Cyfred (Sananap I)*, 2008 Guam 10; *Sananap v. Cyfred (Sananap II)*, 2008 Guam 19. In short, Cyfred sold plots in the Gill-Baza Subdivision but failed to install sewer lines. *Sananap II*, 2008 Guam 19 ¶ 2; *Abalos I*, 2006 Guam7 ¶¶ 1-2. Various owners sued, some asking for rescission of their contracts, others for damages. *Sananap II*, 2008 Guam 19 ¶ 2-3. The Abaloses were granted rescission of their contract, which was affirmed on appeal. *Abalos I*, 2006 Guam 7 ¶ 8.

[3] The statute allowing the remedies of rescission or damages, 21 GCA § 60314(f), also allows recovery of attorney's fees and costs. 21 GCA § 60314(f) (2005). After our decision in *Abalos I*, the Abaloses filed a Motion for Attorney's Fees and Costs. In support of their motion, the Abaloses' attorney, Wayson Wong, filed a detailed invoice for legal services rendered. Cyfred did not file an opposition to the motion, and instead filed its own Motion to Compel

Discovery. Specifically, Cyfred requested that the court compel Wong's deposition and the production of Wong's fee agreement with the Abaloses.

[4] After a hearing, the Decision and Order awarding attorney's fees was filed on August 28, 2007. In its Decision, the court examined the invoice submitted by Wong and found it to be reasonable. Despite the lack of a written opposition, the court considered and rejected arguments raised by Cyfred's attorney, Curtis Van de veld, at the hearing. These arguments included: (1) that the invoice was vague and questionable; and (2) that secretarial work was billed at an attorney's rate. The court noted that Cyfred had not objected to any specific charges.

[5] Cyfred filed a motion for reconsideration on September 7, 2007. The Motion for Reconsideration repeats Cyfred's request that it be allowed to obtain the fee agreement and concludes generally "that the legal fees included charges that are not derived from performing legal duties by counsel." Appellant's Excerpts of Record ("ER") at 34-36 (Mot. Recons., Sept. 7, 2007). Pursuant to Rule 54(b) of the Guam Rules of Civil Procedure, the court determined that there was no reason to delay the entry of a final judgment, and Judgment awarding attorney's fees and costs was entered on September 11, 2007. Cyfred's Motion for Reconsideration was denied on October 21, 2008. In denying the motion, the court concluded that "the defendant's argument was previously raised by the defendant at the May 18, 2007 hearing and was considered in its August 28, 2007 Decision and Order. It is therefore otherwise precluded by Rule [CVR] 7.1(i) of the Local Rules of the Superior Court of Guam and Guam law." ER at 41 (Dec. & Order, Oct. 21, 2008). Cyfred filed its Notice of Appeal on November 20, 2008, more than two months after the Judgment was entered but less than thirty days after the Motion for Reconsideration was denied.

II. JURISDICTION AND STANDARD OF REVIEW

[6] This court has jurisdiction over appeals of a final judgment. 48 U.S.C. § 1424-1(a)(2) (Westlaw 2009); 7 GCA §§ 3107, 3108(a) (2005). However, an untimely appeal will be dismissed for lack of jurisdiction. *McGhee v. McGhee*, 2008 Guam 17 ¶¶ 5-7. Application of our Rules of Appellate Procedure to the present appeal does not require a standard of review.

III. DISCUSSION

[7] In its Notice of Appeal, Cyfred stated that it was appealing the Decision and Order of August 28, 2007, the Judgment of September 11, 2007, and the Decision and Order denying reconsideration of October 21, 2008. The Abaloses contend that Cyfred's appeal is only timely with respect to the denial of the Motion for Reconsideration. They also contend that the Motion for Reconsideration did not toll the time for appeal because it was filed prior to Judgment. The Abaloses' view is that Cyfred's Motion for Reconsideration was a Rule 60(b) motion, which must be "filed no later than 10 days after the judgment is entered" in order to toll the time for appeal. Guam R. App. P. ("GRAP") 4(a)(4)(A)(vi). From this, the Abaloses conclude that GRAP 4(a)(4)(A)(vi) does not allow Rule 60(b) motions filed before judgment to toll the time for appeal. Cyfred did not file a reply brief in response to these arguments.

[8] Three sections of the Guam Rules of Appellate Procedure are relevant here: (1) a notice of appeal must be filed within thirty days of the judgment or order appealed from, GRAP 4(a)(1) (2007); (2) motions of the type enumerated in GRAP 4(a)(4)[1] toll the time for appeal until they

[1] (4) Effect of a Motion on a Notice of Appeal.

> (A) If a party timely files in the Superior Court any of the following motions under the Guam Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:
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> (i) for judgment under Rule 50(b);
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> (ii) to amend or make additional factual findings under Rule 52(b),

are decided; and (3) an appeal from an order, where the notice of appeal occurs before judgment, is treated as if filed on the date of and after the entry of judgment, GRAP 4(a)(2) (2007). Cyfred's Motion for Reconsideration was filed ten days after the August 28, 2007 Decision and Order, but before the Judgment was issued.

[9] Neither party cites to any relevant cases that would assist in deciding this issue. However, just two years ago this court decided *Rojas v. Rojas*, which considered a strikingly similar issue. 2007 Guam 13. In *Rojas*, the defendant, who was a party to a divorce proceeding, filed a motion to reconsider an order granting partial summary judgment. *Id.* ¶ 3. The order of partial summary judgment decided only the narrow issue of how to partition retirement benefits. *Id.* While the motion to reconsider was pending, a Final Judgment and Decree for Divorce was issued. *Id.* ¶ 4. One year later, the court denied the motion for reconsideration, and the defendant filed an appeal within thirty days. *Id.* This court assumed, *arguendo*, that the motion for reconsideration tolled the time for appeal and proceeded to determine whether the intervening final judgment stopped the tolling. *Id.* ¶ 11. The court determined that the finality of judgments was determinative and declined to allow the motion for reconsideration to toll the time of appeal past the thirty day window following entry of final judgment. *Id.* ¶¶ 12-18.

[10] Although *Rojas* suggests that Cyfred's appeal is untimely, the ruling was actually very narrow in its effect. This court distinguished the facts of *Rojas* from very similar cases, stating

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whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54(d)(2) if the Superior Court extends the time to appeal under Rule 58(c);

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 10 days after the judgment is entered.

GRAP 4(a)(4) (2007).

that "[t]his case does not involve a situation where a court announces a final decision or announces that it will certify a partial summary judgment to be final under Rule 54(b) and a party moves the court to reconsider that final decision prior to the actual entry of the final judgment or order appealable as of right." *Id.* ¶ 19. In the present case, the Decision and Order has all the hallmarks of a final determination rather than an interlocutory one. The resulting Judgment was identical in scope to the Decision and Order that preceded it and was entered upon the court's own Rule 54(b) determination, thereby effectively disposing of all issues before the court. ER, at 38 (Judgment, Sept. 11, 2007). The Decision and Order therefore is distinguishable from the order in *Rojas*, which was an interlocutory determination of only one of several issues yet to be determined. *See id.* ¶ 15 (emphasizing that the order was a partial summary judgment that merged into a larger final divorce decree).

[11] As we explained in *Rojas*, not all courts agree as to which rule should apply in situations like the present one, where a motion for reconsideration is filed after a final decision and order but before final judgment. *See id.* ¶ 19 n.8 (noting that the Circuit Courts of Appeals are split on the issue of pre-judgment tolling). Courts have generally divided the question into two parts: 1) whether motions for reconsideration can be filed before judgment; and 2) whether the judgment has the effect of denying such a motion. *See Dunn v. Truck World, Inc.*, 929 F.2d 311, 312-13 (7th Cir. 1991). For Rule 59(e) motions at least, the *Dunn* court found the answer to the first question by interpreting the plain language of the rules: "[T]he answer is easy. . . . Rule 59 says that the motion must come 'not later than 10 days after entry of the judgment.' A pre-judgment motion satisfies this requirement." *Id.* at 313. Identical language found in Rule 4(a)(4)(A)(vi) (allowing Rule 60(b) motions to toll the time of appeal if filed "not later than 10 days after entry

of the judgment") compels the same result. GRAP 4(a)(4)(A)(vi). Thus, Cyfred's Motion for Reconsideration,[2] filed before judgment, did not violate the plain language of our Rules.

[12] The second question, whether a judgment effectively disposes of any pending motions for reconsideration, has been interpreted differently among the various Federal Circuit Courts of Appeals. Some Circuit Courts have determined that the final order or judgment effectively denies the pending motion. In *Dunn*, the Seventh Circuit created a bright line rule that "[f]inal judgment necessarily denies pending motions, and so starts the time for appeal." 929 F.2d at 313. In *Cohen v. Curtis Publishing Co.*, the Eight Circuit ruled that a final judgment that made no reference to the motion "was an effective denial of plaintiff's motion . . . so that the 30-day period within which to file the notice of appeal commenced on [the date of the final judgment]." 333 F.2d 974, 977 (8th Cir. 1964). Such decisions often rest upon the assumption that motions may be implicitly denied. *Id.*; *Mosier v. Fed. Reserve Bank of N.Y.*, 132 F.2d 710, 712 (2nd Cir. 1942) ("The determination of a motion is not always express, but may be implied. Thus the entry of an order inconsistent with granting the relief sought is a denial of the motion. So, also, the entry of final judgment in a cause is in effect an overruling of all motions pending prior thereto in the case." (quoting 42 Corpus Juris 511)). These courts also tend to emphasize the policy of giving judgments finality:

> Any other approach produces a morass. Some district judges might close the case on entry of judgment, treating this as denying all pending motions without need to catalog them one by one. Other judges might keep a motion or two under advisement. No one would know whether the question was live, when the time for appeal started, or even which court had jurisdiction.

[2] As discussed below, there is a question as to which rule Cyfred seeks to invoke in filing its Motion for Reconsideration.

Dunn, 929 F.2d at 313. We expressed similar concerns in *Rojas* when we decried the possibility that "lurking motions to reconsider" might "threaten the finality of cases that were long ago deemed final." 2007 Guam 13 ¶ 17.

[13] However, other Federal Circuits have taken a different approach. In *Havird Oil Co. v. Marathon Oil Co.*, the Fourth Circuit rejected the bright-line rule from *Dunn* and established its own "bright-line rule" that, "if [a trial court] intends to dispose of all outstanding Rule 4(a)(4) motions when it enters judgment, [it must] explicitly state that it is doing so and give its reasons." 149 F.3d 283, 289 (4th Cir. 1998). Although not every Federal Circuit applies such a bright-line test, the majority rule is to allow prematurely filed motions of the type specified in Fed. R. Civ. Proc. 4(a)(4) to toll the time for appeal past judgment. *Calculators Hawaii, Inc. v. Brandt, Inc.*, 724 F.2d 1332, 1335 (9th Cir. 1983) (concluding that the pending motion tolled the time to file the notice of appeal because the intervening final judgment did not reject the new contentions raised through the motion); *Partridge v. Presley*, 189 F.2d 645, 647 (D.C. Cir. 1951) (reasoning that the trial court did "not consciously dispose[ ] of the [pending motion] by entering the judgment on April 11; so instead of being unnecessary . . . the order [denying the motion] was the first and only disposition of the pending motion."); *see also Wagoner v. Wagoner*, 938 F.2d 1120, 1123 (10th Cir. 1991); *Jurgens v. McKasy*, 905 F.2d 382, 386 (Fed. Cir. 1990); *Swift v. State Farm Mut. Auto. Ins. Co.*, 796 F.2d 120 (5th Cir. 1986); David G. Knibb, *Federal Court of Appeals Manual* § 10:6 (5th ed.) (Westlaw 2007) (noting the majority rule).

[14] It is helpful to examine *Calculators Hawaii*, a Ninth Circuit opinion, in more detail. The court of *Calculators Hawaii* emphasized the need to refer to the actual text of the judgment before the intentions of the court can be ascertained:

> [W]e must look to the judgment itself to see whether a denial of all pending motions was intended. This approach is consistent with holdings in other circuits that require reference to the implications of a judgment in order to ascertain its effect.

Calculators Hawaii, 724 F.2d at 1335. However, the court also stated that "[t]he district court's consideration and denial of the motion . . . *in light of newly proffered and admitted evidence* belies [the] contention that the . . . judgment impliedly denied the motion." *Id.* (emphasis added). This suggests that one must examine not just the judgment but also the nature of the motion for reconsideration and whether or not that motion raises substantial issues still to be resolved.

[15] In fact, the court of *Calculators Hawaii* discussed an earlier case where the appellant failed to raise any substantially new issues in their motion for reconsideration. *Id.* (citing *Agostino v. Ellamar Packing Co.*, 191 F.2d 576, 577 (9th Cir. 1951)). In *Agostino v. Ellamar Packing Co.*, the appellant prematurely filed a "Motion to Reconsider, and in the Alternative, Objections to Findings of Fact, Conclusions of Law and Judgment as Drawn, and Motion to Require Defendant to Submit Findings of Fact, Conclusions of Law and Judgment in Accordance with the Court's Memorandum Opinion." 191 F.2d at 576. The court determined that the motion "was nothing more than an argument on the law applicable to the case and every request made therein was in effect denied by the findings of fact, conclusions of law and judgment entered after the motion to reconsider was filed." *Id.* at 577. Although the court concluded that "[t]he denial of a motion need not be express but may be implied," it also reasoned that the appellant's motion was not the type of motion to reconsider that would extend the time for appeal. *Id.*

[16] The court of *Cohen* also considered the nature of the motion in deciding that the judgment was an implied denial. 333 F.2d at 977. There, the plaintiff had moved for an order amending the summary judgment to remove the word "wrongfully." *Id.* at 976. In determining that the later judgment implicitly denied the motion, the court reasoned that "[t]he final judgment is specifically based on the [summary judgment order], and is, therefore, an approval of such order and a denial of plaintiff's request to amend by the deletion of the word 'wrongfully'. It impliedly and effectively denied plaintiff's motion."[3] *Id.* at 977. Here too, the motion was found to be insubstantial: "The plaintiff's motion . . . , by which he now hopes to keep alive his appellate rights as to time, presented no such substantial issue of fact or law (the deletion of the word 'wrongfully') as would justify this court, in the interest of justice, overlooking plaintiff's disregard of the time rule." *Id.* at 978.

[17] We reject the bright-line rule of *Dunn* that final judgment implicitly denies all pending motions and starts the time for appeal. 929 F.2d at 313. At the same time, we also reject the bright-line rule of *Havird Oil*, which requires all final judgments that purport to deny a motion to do so explicitly. 149 F.3d at 289. A better rule lies somewhere in between. The holding of *Calculators Hawaii* suggests reliance on the language of the final judgment itself in determining whether denial of the motion is implied. 724 F.2d at 1335. The problem with relying solely on the language of the final judgment is that there is often very little language to examine. In Guam, as in many jurisdictions, the order of final judgment is a terse, formalized document that mentions the remedies imposed but not the underlying factual or procedural posture of the case. One would therefore expect a final judgment order to give little clue as to the implied intentions

[3] The order of final judgment in *Cohen* did at least state parenthetically that the summary judgment order "was attacked by plaintiff's motion . . . , asking for the deletion of the word 'wrongfully'." 333 F.2d at 975.

of the judge. A better method is to examine both the judgment and the nature of the motion whose implied denial is at stake, as the courts did in *Agostino* and *Cohen*. *See Agostino*, 191 F.2d at 577; *Cohen*, 333 F.2d at 977; *cf. Calculators Hawaii*, 724 F.2d at 1335 (noting that the motion for reconsideration proffered newly admitted evidence such that the final judgment did not implicitly deny the motion).

[18] In the present case, the Judgment makes no reference to the Motion for Reconsideration. ER, at 37-38 (Judgment). We therefore turn to the Motion for Reconsideration itself and its section titled "Legal Analysis" which is quoted in its entirety below:

> The Guam Supreme Court [sic] in *James S. Lee et al. v. Citibank, N. A.*, 1980 WL 18538 established the minimum requirements to sustain an attorney's fee award. The Court wrote: ". . . [W]e must caution the Superior Court that if the question of attorney's fees is raised again at a later date we expect proper documentation as to the number of hours **and exact legal duties** performed. . . . The Superior Court committed error when it approved fees without sufficient evidence to support them. (Emphasis added)" *Id* at pg. 6. At the very least, counsel seeking attorney's fees should be required to produce his fee agreement as part of the "evidence" necessary to support his request. Moreover, there is evidence that the legal fees included charges that are not derived from performing legal duties by counsel.
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> Based on the decision in *Lee* above, Cyfred requests that this Court reconsider its prior decision and allow Cyfied to inquire into the legal duties supporting the charges in the attorney's fee billing submitted by opposing counsel, and to obtain a copy of the fee agreement supporting the requested fees.
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> Thereafter, within a reasonable time, to allow Cyfred to file its opposition to the requested fees if they are unsupported by performed "legal duties".

ER, at 35-36 (Mot. Recons., Sept. 7, 2007). Although the Motion itself claims to derive its authority from Rule 60(b), the effect of the Motion is to challenge the court's conclusion that the submitted invoice was reasonable and sufficient evidence to sustain an award of attorney's fees. *See Id.*; Guam R. Civ. P. ("GRCP") 60(b); ER, at 32-33 (Dec. & Order, Aug. 28, 2007). The Motion could therefore be styled a Rule 59(e) motion to alter or amend the judgment. *See* GRCP 59(e). It could also be styled a renewal of Cyfred's Motion to Compel Discovery in that it asks

the court to "allow Cyfred to inquire into the legal duties supporting the charges in the attorney's fee billing . . . and to obtain a copy of the fee agreement . . . [and] within a reasonable time, to allow Cyfred to file its opposition to the requested fees . . . ." ER, at 35 (Mot. Recons.). Of course, a motion to compel discovery, even a renewed one, has no effect in tolling the time for appeal. *See* GRAP 4(a)(4).

[19] For the sake of argument, we will treat Cyfred's Motion for Reconsideration as a request to alter or amend the judgment under Rule 59(e) and therefore within the category of motions enumerated in GRAP 4(a)(4). Ignoring Cyfred's procedural requests, the Motion reduces to only two substantive arguments: (1) that a fee agreement is a necessary part of the evidence required to support a request for attorney's fees; and (2) that "there is evidence that the legal fees included charges that are not derived from performing legal duties by counsel." ER, at 35 (Mot. Recons.). The one case cited, *Lee v. Citibank, N.A.*, does not support the legal proposition that a fee agreement is necessary to an award of attorney's fees. 1980 WL 18538, at *5 (D. Guam App. Div. 1980). Moreover, the vague allegation that the legal fees are not derived from performing legal duties is unsupported by any specific evidence, and no attempt is made to reference the invoice itself.

[20] Whatever the merits of these arguments may be,[4] they are not substantially novel arguments that would have required additional analysis by the court. In deciding the Motion for Reconsideration, the court concluded that "the defendant's argument was previously raised by the defendant at the May 18, 2007 hearing and was considered in its August 28, 2007 Decision and Order. It is therefore otherwise precluded by Rule [CVR] 7.1(i) of the Local Rules of the

[4] Because we are answering only the procedural question of whether Cyfred's Motion tolled the time for appeal after the Judgment was issued, our opinion should not be construed as reaching the merits of Cyfred's substantive arguments.

Superior Court of Guam[5] and Guam law." ER, at 39-41 (Dec. & Order, Oct. 21, 2008). In addition, Cyfred filed a Motion to Compel Discovery rather than an opposition to the request for attorney's fees prior to the May 18, 2007 hearing. ER, at 30 (Dec. & Order). The court then issued its Decision and Order, ruling that the invoice was sufficient to justify an award of attorney's fees. ER, at 32-33 (Dec. & Order). In doing so, the court implicitly denied that additional evidence, such as the fee agreement, was necessary in reaching its conclusion. At the same time, the court implicitly denied Cyfred's Motion to Compel Discovery. Finally, the court *explicitly* denied Cyfred's assertion that legal fees are not derived from performing legal duties by reviewing the invoice under the legal standard of *S.J. Gargrave Syndicate at Lloyds v. Black Const. Corp.*, 2006 WL 1815325 (D. Guam 2006). ER, at 32-33 (Dec. & Order, Oct. 21, 2008). Thus, Cyfred's objections as described in its Motion for Reconsideration were already considered in the Decision and Order at the time the Motion was filed. The Judgment was issued soon after, thereby confirming the Decision and Order and implicitly denying the Motion for Reconsideration.[6]

[21] Cyfred's Motion for Reconsideration raises no substantially novel arguments and provides no significant support for the arguments it does raise. Those arguments were already considered at the hearing and in the Decision and Order, and the Decision and Order was later

[5] Rule CVR 7.1(i) of the Local Rules of the Superior Court of Guam, Civil Rules, requires that "[n]o motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion." Local R. Sup. Ct. Guam CVR 7.1(i).

[6] Cyfred's Motion for Reconsideration contains only a single authority, *Lee v. Citibank, N.A.*, to support its substantive arguments. 1980 WL 18538, at *5. That case stands for the unremarkable proposition that an award of attorney's fees must be based on a detailed record indicating hours and services performed. *Id.* The rest of the Motion's assertions are simply set forth in a conclusory manner. The Motion therefore provides no legal guidance to the court and only the barest scintilla of a legal argument. The less substantial a motion for reconsideration is, the more it appears to serve merely as a procedural tool for extending the time for appeal. The purpose of a motion for reconsideration is to assist the court in correcting errors by providing it with sound legal reasoning and relevant legal authorities. A motion for reconsideration that completely fails in that purpose would also necessarily fail to toll the time for appeal. *See Agostino*, 191 F.2d at 577; *Cohen*, 333 F.2d at 978.

confirmed by a Judgment issued after the Motion was filed. Although the Judgment does not expressly deny the Motion for Reconsideration, we find that the Motion's lack of novel or substantial arguments, and the court's subsequent determination that the Motion was precluded for failing to raise such arguments, lead to the conclusion that the Judgment "impliedly and effectively denied" the Motion for Reconsideration. *Cohen*, 333 F.2d at 977.

IV. CONCLUSION

[22] The time for appeal began to run on September 11, 2007, when the Judgment was entered and the Motion for Reconsideration was implicitly denied. ER, at 37-38 (Judgment). Cyfred's Notice of Appeal was filed more than thirty days later and is therefore untimely. *See* GRAP 4(a)(1). As a result, the appeal must be **DISMISSED** for lack of jurisdiction.

F. PHILIP CARBULLIDO
Associate Justice

KATHERINE A. MARAMAN
Associate Justice

ROBERT J. TORRES
Chief Justice