

IN THE SUPREME COURT OF GUAM

FRANCIS L. GILL, and CORAL PIT, INC.
Plaintiffs-Appellants

vs.

**JEFFREY R. SIEGEL, RICHARD G. CRUZ,
ROGER S. MORAN, and INVESTMENTS INTERNATIONAL, INC.,**
Defendants-Appellees

OPINION

Supreme Court Case No. CVA99-017
Superior Court Case No. CV1172-97

Filed: February 16, 2000

Cite as: 2000 Guam 10

Appeal from the Superior Court of Guam
Submitted on the briefs December 9, 1999
Hagåtña, Guam

Appearing for Plaintiffs-Appellants:
Francis L. Gill (*In Propria Personam*)
123 Hernan Cortes Ave.
Hagåtña, Guam 96910

Appearing for Defendants-Appellees:
William C. Bischoff, Esq.
Suite 600D, GCIC Bldg.
414 W. Soledad Ave.
Hagåtña, Guam 96910

BEFORE: BENJAMIN J. F. CRUZ, Chief Justice; RICHARD H. BENSON and JOHN A. MANGLONA, Designated Justices.

CRUZ, C.J. :

[1] Plaintiff-Appellant, Francis L. Gill (hereinafter “Gill”) appeals the final judgment rendered against him by the Superior Court. The matter of the timeliness of Gill’s Notice of Appeal and thus our jurisdiction was raised by this court *sua sponte*. At our request, Gill submitted a supplemental brief asserting timeliness. After review of Gill’s supplemental brief and review of the procedural record we hold that Gill’s Notice of Appeal was untimely filed and is hereby dismissed for want of jurisdiction.

FACTUAL AND PROCEDURAL BACKGROUND

[2] Final Judgment as to the last remaining Defendant in this case, was filed in the Superior Court on March 26, 1999. On April 23, 1999, this Final Judgment was entered on the docket by the Clerk of the Superior Court. On April 23, 1999, the Notice of Entry on Docket was mailed to Gill. Thirty-two calendar days later, on May 25, 1999, Gill filed his Notice of Appeal in the Superior Court. The Notice of Entry on Docket was not served personally upon Gill by the Clerk of the Superior Court. The actual date of receipt of this Notice is unknown. However, Gill states that he received the Notice on or about April 26, 1999, or thereafter.

[3] Gill cites to rule 4(a) of the Guam Rules of Appellate Procedure which sets the time limit for filing an appeal in a civil case at thirty days from the date of entry of judgment and defines entry of judgment as when judgment is entered on the docket and “notice is given to the parties of this entry by the Clerk of the Superior Court.” Gill argues that this rule requires his actual receipt of the Notice of Entry on Docket and

that the time limit for filing an appeal does not commence until receipt of the Notice of Entry on Docket.

[4] Gill claims that although he cannot recall exactly when he received the notice, he must have received it on or after April 26, 1999. To support this claim, Gill provided the declaration of a U.S. Postal employee, George U. Diaz, who works in the Hagåtña Post Office. In his declaration, Mr. Diaz states that, at the very least, it takes two days for mail to be delivered from one point in Hagåtña to another point in Hagåtña. Essentially, Gill claims that the Notice of Entry on Docket was mailed to him on Friday April 23, 1999 and, allowing for a two day delivery time and not including Sunday, he received the notice on or after April 26, 1999. Gill argues that April 26, 1999 is the earliest day that the GRAP 4(a) time limit could have started and therefore his filing of the Notice of Appeal on May 25, 1999 was timely.

ANALYSIS

[5] The filing of a timely notice of appeal to take an appeal as of right is an absolute requirement from which this court has no discretion to digress. The United States Supreme Court has held that a timely notice of appeal is “mandatory and jurisdictional.” *United States v. Robinson*, 361 U.S. 220, 224, 80 S. Ct. 282, 285 (1960). “The purpose of the rule is clear: It is ‘to set a definite point of time when litigation shall be at an end, unless within that time the prescribed application has been made; and if it has not, to advise prospective appellees that they are freed of the appellant’s demands. . . .’” *Browder v. Director, Department of Corrections of Illinois*, 434 U.S. 257, 264, 98 S. Ct. 556, 561 (1978) (citation omitted). We are guided by these decisions and hold that pursuant to GRAP 3 and 4 a timely notice of appeal from a civil action must be filed within thirty days from the date of entry of judgment or this court cannot obtain jurisdiction. The issue raised by Gill is whether, pursuant to GRAP 4(a), the date

of entry of judgment includes the date an appellant receives the notice of entry of the judgment on the docket.

[6] In *Merchant v. Nanyo Realty, Inc.*, 1997 Guam 16, ¶ 15, this court adopted strict adherence to the “separate document rule” which interprets rule 58 of the Guam Rules of Civil Procedure as requiring a formal, separate judgment prior to this court’s ability to obtain jurisdiction on appeal.¹ Rule 58 also requires the Clerk of the Superior Court to enter the judgment on the docket which “unequivocally indicates a final judgment.” *Id.* at ¶ 11. Pursuant to GRCP 77(d), provided in full below, the Clerk must thereafter provide notice of the entry of judgment to the parties.

[7] The actual filing of a notice of appeal is governed by GRAP 3 and 4. In relevant part, GRAP 3(a) provides: “[a]n appeal permitted by law as of right from the Superior Court to the Supreme Court shall be taken by filing a notice of appeal with the Clerk of the Superior Court within the time allowed by Rule 4 of these Rules.” Rule 4 provides in relevant part:

When an appeal is permitted by law from the Superior Court to the Supreme Court, the time within which an appeal may be taken in a civil case shall be thirty (30) days from the date of entry of judgment. . . . A judgment or order is entered within the meaning of this subdivision when it is entered in the civil or criminal docket and notice is given to the parties of this entry by the Clerk of the Superior Court.

Guam R. App. P. 4(a).

¹ Rule 58 states:

Entry of Judgment. Subject to the provisions of Rule 54(b): (1) upon a general verdict of a jury, or upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the court; (2) upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it. Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth. Entry of the judgment shall not be delayed for the taxing of costs. Attorneys shall submit forms of judgment except upon direction of the court. Guam R. Civ. P. 58.

[8] It is the last sentence of rule 4(a) which Gill claims requires receipt of the notice of entry of judgment prior to the commencement of the time limit for filing an appeal. However, GRCP 58 and 77 govern entry of judgment and notice of entry of judgment.² Rule 77(d) provides:

Notice of Orders or Judgments. Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by mail in the manner provided for in Rule 5 upon each party who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these rules; but any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers. **Lack of notice of entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed**, except as permitted by Rule 4(a) of the Federal Rules of Appellate Procedure or in the Appellate Rules of the District Court of Guam.³

Guam R. Civ. P. 77(d) (emphasis supplied).

[9] Rule 77(d) of the GRCP expressly states that lack of notification by the clerk of the entry of judgment has no effect whatsoever on the start of the allowable time for filing an appeal. With respect to an appeal, all that matters under this rule is that the judgment be entered.⁴ Moreover, this rule also expressly states that mailing is sufficient notice. In the instant case, the Notice of Entry on the Docket also contains a declaration by the Clerk that the notice was mailed to Gill on the same date that the judgment was entered. As mailing, in and of itself is sufficient notice, Gill's argument that receipt of notice is required to start the time limit must fail. Further, and in a practical sense, the position advocated by Gill is unworkable. The record would not show when the notice of entry of judgment was received and thus when the time for the filing of a notice of appeal begins to run.

² See *supra* note 1.

³ With the establishment of the Supreme Court of Guam, Federal Rules of Appellate Procedure 4(a) or the Appellate Rules of the District Court of Guam, as used herein, are now substituted with GRAP 4(a)

⁴ The exception, "as permitted by the provided by Rule 4(a)," is in reference to the filing of a notice of appeal prior to the entry of the judgment on the docket and is not relevant to the issue presented in this case.

[10] We note that the federal counterpart rule, Federal Rules of Civil Procedure 77(d), is nearly identical to GRCP 77(d) and is interpreted similarly to mean that lack of notice does not effect the time to appeal.

The Advisory Committee Notes on FRCP 77(d) state that notice upon the parties is not required to start the time limit.

[N]otification by the clerk of the entry of a judgment has nothing to do with the starting of the time for appeal; **that time starts to run from the date of entry of judgment and not from the date of notice of the entry.** Notification by the clerk is merely for the convenience of litigants. And lack of such notification in itself has no effect upon the time for appeal; . . .

Fed. R. Civ. P. 77(d) advisory committee's note (emphasis supplied).

[11] The issue of whether the time for filing a notice of appeal begins on entry of judgment or upon notice of entry of judgment was addressed by the Ninth Circuit Court of Appeals. In *Calvo v. Look*, 597 F.2d 1267 (9th Cir. 1979), the court of appeals held that although [the old] GRAP 2(a) established a fifteen day limit to file a notice of appeal from the entry of judgment, it did not on its face require notice of entry be given to parties. *Id.* at 1268. The fifteen day period therefore began upon entry of judgment, not upon notice given. *Id.* Appellant's argument that GRCP 77(d) required notice be given to the parties in order for the fifteen day period to begin running was rejected by the court of appeals. *Id.*

[12] In *Calvo*, the court of appeals also held that appellant was afforded ample opportunity to file an appeal when he received the notice of entry of judgment with nine days remaining on his fifteen day time limit to file an appeal. *Id.* at 1269. Similarly in Gill's case, judgment was entered on the docket on April 23, 1999. The thirtieth day thereafter was Sunday, May 23, 1999, and pursuant to GRAP 11, Gill's last day to file his notice of appeal fell to Monday May, 24, 1999.⁵ By Gill's own admission, he received the

⁵ Section 11(a) provides in part that the last day of the period shall be included in the computation of time unless it is a Saturday, a Sunday, a legal holiday, or when the court is closed. Guam R. App. P. 11(a).

notice on or about April 26, 1999. Gill therefore had some twenty-eight days to file his notice of appeal. This was more than ample time to file a timely notice of appeal. Further, this was more than ample time for Gill to move the Superior Court pursuant to GRAP 4(c) to enlarge time to file a notice of appeal.⁶ This was also not done.

CONCLUSION

[13] The time limit for filing an appeal commenced on the date Final Judgment was entered on the docket, April 23, 1999. Gill filed his Notice of Appeal on May 25, 1999 and did not meet the thirty day time limit. Therefore, this court is without jurisdiction and this appeal is **DISMISSED**.

RICHARD H. BENSON
Designated Justice

JOHN A. MANGLONA
Designated Justice

BENJAMIN J. F. CRUZ
Chief Justice

⁶ Section 4(c) provides:

Upon a showing of excusable neglect, the Superior Court may extend the time for filing the notice of appeal by any party for a period not to exceed thirty (30) days from the expiration of the time otherwise prescribed by this subdivision. Such an extension may be granted before or after the time otherwise prescribed by this subdivision has expired; but if a request for an extension is made after such time has expired, it shall be made by motion with such notices as the court shall deem appropriate. Guam R. App. P. 4(c).