

FSM SUPREME COURT APPELLATE DIVISION

YOSILYN CARL,)	APPEAL CASE NO. P2-2021
)	(Civil Action No. 2019-003)
Petitioner,)	
)	
vs.)	
)	
ASSOCIATE JUSTICE LARRY WENTWORTH,)	
)	
Respondent, and)	
)	
FEDERATED STATES OF MICRONESIA)	
DEVELOPMENT BANK,)	
)	
Respondent-Real Party in Interest.)	
_____)	

ORDER DENYING PETITION FOR REHEARING

Dennis K. Yamase
Chief Justice

Decided: April 22, 2021

APPEARANCE:

For the Petitioner: Yoslyn G. Sigrah, Esq.
P.O. Box 3018
Kolonias, Pohnpei FM 96941

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HEADNOTES

Appellate Review – Rehearing

The deadline to file a petition for rehearing is fourteen days after the court’s judgment is entered, and any motion made for reconsideration after the disposal of an appeal case is a petition for rehearing. An untimely motion to reconsider is considered a motion to enlarge time to file such a petition as well as a petition for rehearing, and such a petition may be denied in its entirety as untimely filed. Carl v. Wentworth, 23 FSM R. 249, 250 (App. 2021).

Appellate Review – Rehearing

When the only reason given for a rehearing petition’s tardiness is that the petitioner’s counsel was waiting to receive a paper copy of the court’s order, and judgment, these reasons are totally unavailing and do not serve, in any way, as a basis for overlooking the untimely filing of the petition for rehearing. Carl v. Wentworth, 23 FSM R. 249, 250 (App. 2021).

Appellate Review – Rehearing

The court will deny a petition for rehearing that sets forth a series of irrelevant assertions – complaints of a personal nature by the petitioner’s counsel – concerning the role that the court’s justices and staff have

in fulfilling the court's constitutionally-mandated role of adjudicating cases that are pending before the court. Carl v. Wentworth, 23 FSM R. 249, 250 (App. 2021).

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COURT'S OPINION

DENNIS K. YAMASE, Chief Justice:

This matter comes before the Court on the Petitioner's petition for rehearing under FSM Appellate Rule 40. This pleading was filed on April 14, 2021. For the reasons stated below the petition for rehearing is denied.

To begin, on March 23, 2021, this Court issued an order denying the Petitioner's request for a writ of prohibition directed to Associate Justice Larry Wentworth prohibiting him from further presiding over a trial-court case captioned as: Federated States of Micronesia Development Bank v. Yoslyn Carl, as administrator of the estate of Linda Carl and Yoshiro Carl, Civil Action No. 2019-003. [Carl v. Wentworth, 23 FSM R. 196 (App. 2021).] The record here shows that the Court's March 23, 2021 Order was served on the Petitioner on March 23, 2021. Thus, the petition for rehearing at issue here was filed some twenty two (22) days after the Court's Order was issued. Under FSM Appellate Rule 40, a request for rehearing must be filed within 14 days from the date that judgment is entered. As this Court has explained, "[t]he deadline to file a petition for rehearing is fourteen days after" the Court's judgment is entered. Edwin v. Kohler, 21 FSM R. 239, 240 (App. 2017). "Any motion made for reconsideration after the disposal of an appeal case is a petition for rehearing, and an untimely motion to reconsider is considered a motion to enlarge time to file such a petition as well as a petition for rehearing." *Id.* at 240 (citing Jano v. FSM, 12 FSM R. 633, 634 (App. 2004)). Such a petition may be denied in its entirety as untimely filed. *Id.* at 240.

Here, the Petitioner's request for reconsideration was filed after the 14-day deadline for doing so, and the only reason given for its tardiness is that the Petitioner's counsel was waiting to receive a paper copy of the Court's Order, and judgment. These reasons, however, are totally unavailing and do not serve, in any way, as a basis for overlooking the untimely filing of the petition for rehearing at issue here. Goya v. Ramp, 14 FSM R. 305, 307 (App. 2006) (untimely filed petition for rehearing can be denied on that basis alone).

That aside, even if the Court were to consider the petition for rehearing, it would be denied since it does not demonstrate how the Court misapprehended or overlooked any issue of law or fact. Instead, the petition for rehearing sets forth a series of irrelevant assertions – complaints of a personal nature by the petitioner's counsel – concerning the role that the Court's justices and staff have in fulfilling the Court's constitutionally-mandated role of adjudicating cases that are pending before the Court. See Berman v. Pohnpei, 17 FSM R. 464, 465 (App. 2011) (even if appellate court misapprehended a fact, a petition for rehearing may be summarily denied when it would not change the result of the appeal).

For the reasons stated above, the petition for rehearing filed on April 14, 2021, is hereby denied. The Clerk of Court is hereby instructed to file a copy of this Order in the file for the underlying case captioned as: Federated States of Micronesia Development Bank v. Yoslyn Carl, as administrator of the estate of Linda Carl and Yoshiro Carl, Civil Action No. 2019-003. The Clerk of Court is further instructed to serve a copy of this Order on all parties to the underlying trial court case at issue here.

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