

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

RIKA SHIMIZU,

Plaintiff,

vs.

DEAN E. OCHIAI, Individually
and in his Official Capacity as
Judge of the Circuit Court of
the First Circuit State of
Hawaii,

Defendant.

Civ. No. 21-00370 HG-KJM

ORDER DENYING PLAINTIFF'S JULY 28, 2022 MOTION (ECF No. 26)

On November 24, 2021, the Court issued Judgment in favor of the Defendant. (ECF No. 15).

On December 22, 2021, Plaintiff, proceeding pro se, filed a Motion to Alter or Amend Judgment pursuant to Fed. R. Civ. P. 59. (ECF No. 16).

On January 5, 2022, the Court issued an Order denying Plaintiff's Motion. (ECF No. 17).

On February 4, 2022, Plaintiff filed a Notice of Appeal to the Ninth Circuit Court of Appeals, which remains pending. (ECF No. 18).

On June 24, 2022, Plaintiff filed a Motion pursuant to Federal Rules of Civil Procedure 60 and 62.1. (ECF No. 24).

On June 28, 2022, the Court issued an Order denying Plaintiff's June 24, 2022 Motion for lack of jurisdiction. (ECF No. 25).

On July 28, 2022, Plaintiff filed another Motion entitled "Plaintiff's Motion for Extension of Time to File Notice of Appeal." (ECF No. 26).

Here, there is no basis for Plaintiff to appeal the Court's June 28, 2022 order. Plaintiff has already appealed this matter to the Ninth Circuit Court of Appeals and it remains pending there.

Pursuant to Federal Rule of Appellate Procedure 4(a)(5)(A), a party must demonstrate excusable neglect or good cause for the District Court to extend the time to file a notice of appeal. Neither excusable neglect nor good cause is present. Any attempt to appeal the Court's June 28, 2022 is frivolous as there is no arguable basis in law or fact to challenge the order. Neitzke v. Williams, 490 U.S. 319, 325 (1989). As explained in the June 28, 2022 order, the case is already on appeal before the Ninth Circuit Court of Appeals and no further action can be taken by the District Court. The District Court was divested of jurisdiction over the case once Plaintiff filed her notice of appeal on February 4, 2022. Nat. Res. Def. Council, Inc. v. Sw. Marine Inc., 242 F.3d 1163, 1166 (9th Cir. 2001).

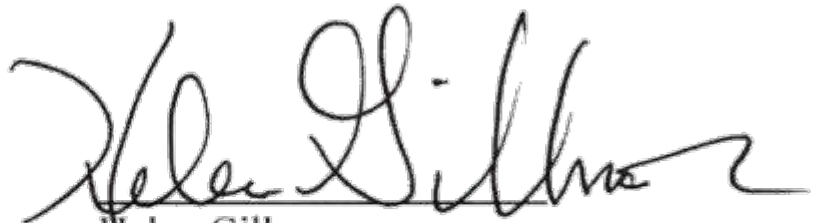
Plaintiff's July 28, 2022 Motion (ECF No. 26) is **DENIED**.

Plaintiff is warned that further frivolous filings may result in sanctions and/or an order finding Plaintiff is a vexatious litigant. See Mather v. First Hawaiian Bank, 2014 WL 6775270, *3 (D. Haw. 2014) (citing Molski v. Evergreen Dynasty Corp., 500 F.3d 1047, 1057 (9th Cir. 2007)).

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, August 1, 2022.




Helen Gillmor
United States District Judge

Rika Shimizu v. Dean E. Ochiai, individually and in his official capacity as Judge of the Circuit Court of the First Circuit, State of Hawaii, Civ. No. 21-00370 HG-KJM; **ORDER DENYING PLAINTIFF'S JULY 28, 2022 MOTION (ECF No. 26)**