IN THE SUPREME COURT OF GUAM

CAROLYN JANE LAMB,
Plaintiff-Appellee,

v.

BENJAMIN RALPH HOFFMAN,
Defendant-Appellant

Supreme Court Case No.: CVA05-015
Superior Court Case No.: CS0589-03

OPINION

Cite as: 2008 Guam 2

Appeal from the Superior Court of Guam
Argued and submitted on May 3, 2006
Mangilao, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice,[1] FRANCES M. TYDINGCO-GATEWOOD, Associate Justice,[2] and ROBERT J. TORRES, Associate Justice.[3]

TORRES, J.:

[1] Defendant-Appellant Benjamin Ralph Hoffman appeals from a judgment of the Superior Court that ratified the findings and recommendations of the Child Support Referee. We affirm in part and remand in part for further proceedings.

I.

[2] Defendant-Appellant Benjamin Ralph Hoffman ("Benjamin")[4] and Plaintiff-Appellee Carolyn Jane Lamb ("Carolyn") were married in 1982. They have one daughter, Emma, born in 1989. In 1998, Carolyn filed a divorce action in Pictou County in the Province of Nova Scotia, Canada. A trial was held on February 28 and 29, 2000 and March 1, 2000, in the Supreme Court of Nova Scotia, which functions as a trial court under the Canadian justice system. On March 1, 2000, at the conclusion of the proceedings, the judge issued an oral order that was subsequently memorialized in a written decision released April 6, 2000. In the decision, Justice Scanlan conservatively estimated Benjamin's income from his work as a radiologist to be C$300,000 per year and ordered him to pay Carolyn C$2,391 per month in child support and C$10,000 per month in spousal support. The spousal support was to continue "until such time as [Carolyn] receives her share of the division of matrimonial property." Record on Appeal ("RA"), Tab 1, p. 24 (Decision, Apr. 6, 2000).

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[1] Chief Justice F. Philip Carbullido assumed the title of Associate Justice prior to the issuance of this Opinion.

[2] Associate Justice Frances M. Tydingco-Gatewood heard oral argument in this case. Prior to the issuance of this Opinion, she was sworn in as Chief Judge of the U.S. District Court of Guam.

[3] Associate Justice Robert J. Torres assumed the title of Chief Justice prior to the issuance of this Opinion.

[4] The preferred practice in family law cases is to refer to the parties by their first name. *Mano v. Mano*, 2005 Guam 2 ¶ 1 n.1. We continue that practice in the instant case while recognizing that the parties do not share the same last name.

[3] At the time of the trial, the evidence indicated that the matrimonial assets, mostly venture capital stocks, were worth between 17 and 26 million Canadian dollars. However, Benjamin transferred many of those assets to limited companies or offshore trust accounts prior to the trial. Justice Scanlan characterized the transfers as a "deliberate and complicated scheme" designed to deprive Carolyn of her share of the matrimonial assets. RA, Tab 1, p. 22 (Decision, Apr. 6, 2000). Very little evidence was presented in the court below as to the value of the assets currently in Benjamin's possession. However, neither party contends that Carolyn has received her full share of the marital estate.

[4] On March 10, 2000, after the oral decision but before it was memorialized in written form, the court issued a Corollary Relief Judgment. According to Justice Scanlan, the Corollary Relief Judgment "was intended to be an Interim Judgment to permit [Carolyn] to take immediate steps to protect or secure her share of matrimonial assets awarded as per the oral Decision. . . ." Supplemental Excerpt of Records ("SER"), Tab 3, p. 2 (Amended and Final Corollary Relief Judgment, Oct. 10, 2000). On the same day, the court issued an Ex Parte Order in response to a motion that Carolyn had made to acquire shares of stock held by Daniel Hoffman, Benjamin's brother. The Decision[5] accompanying the signing of the Ex Parte Order was issued in written form on March 30, 2000. In the Decision, Justice Scanlan indicated that the shares would be held by her attorneys in trust to be used by Carolyn "at her discretion so as to allow her to start making payments on the maintenance portion of the previous order. That will be spousal and child maintenance until we see if we can get this matter straightened out." ER, p. 97 (Decision, March 30, 2000). As a result of the Ex Parte Order, 13,500 common shares of Cell-Loc stock, previously registered in the name

[5] To an American legal observer, the Decision issued March 30, 2000 strongly resembles a simple transcript of the hearing. However, in the common law provinces of Canada where oral decisions are much more common than in the United States, transcripts are converted into written form with minor editing and can thereafter be cited as precedent. *See generally* J.E. Côté, *The Oral Judgment Practice in the Canadian Appellate Courts*, 5 J. App. Prac. & Process 435 (2003). We therefore give the same legal weight to the oral Decision of March 10, 2000 as we do to the written Ex Parte Order issued the same day.

of 3001497 NS, Ltd.,[6] were registered in trust for Carolyn. The shares were subsequently liquidated for a value of approximately C$343,000. Finally, on October 10, 2000, Justice Scanlan issued an Amended and Final Corollary Relief Judgment.

[5] The Corollary Relief Judgment released on March 30, 2000, the Decision released on April 6, 2000, and the Amended and Final Corollary Relief Judgment released on October 10, 2000 are all intended to be written memorializations of the oral decision of March 1, 2000. They are consistent in that all three transfer to Carolyn 30,300 directly-owned shares of Cell-Loc stock and 43,000 shares of Cell-Loc stock held under Nova Scotia Limited 3001495. However, only the Ex Parte Order and the accompanying Decision mention the 13,500 shares of Cell-Loc stock held under the similarly named limited partnership Nova Scotia Limited 3001497 ("3001497 Cell-Loc shares").

[6] Benjamin believed that the transfer and subsequent liquidation of the 3001497 Cell-Loc shares was for the purpose of meeting his child and spousal support obligations through August 1, 2002. Beginning August 23, 2002, he tendered eight monthly checks of $1,550 US to Carolyn followed by seven monthly checks of $1,600 US. The checks were never negotiated, possibly because one or more of the checks contained a handwritten note that read as follows: "1) Cashing this check is acknowledgement that all child support payments [to] Emma Hoffman are current 2) acknowledgement that child support has Never Been in arrears/ Ben Hoffman." ER, p. 220 (Photocopy of Check).

[7] Benjamin subsequently moved to Guam, and Carolyn pursued him there to collect on child and spousal support allegedly owed to her. On August 12, 2003, the Child Support Enforcement Division of the Attorney General's ("AG's") Office filed a registration of a foreign support order, seeking to register the Pictou County order regarding Benjamin. The AG's Office then sought an order to show cause regarding Benjamin's "willful failure" to comply with the orders of the

[6] Also designated 3001497 Nova Scotia Limited or Nova Scotia Limited 3001497.

Canadian court, and additionally requested that the court confirm and enter the Canadian order. ER, p. 5 (Order to Show Cause, Aug. 20, 2003). The AG's Office wanted Benjamin to be held in contempt and asked that he be committed "to jail for a period not to exceed two (2) days per count of contempt." ER, p. 3 (Application for Order to Show Cause, Aug. 12, 2003). The AG's Office also filed a Declaration of Arrears for Child Support, showing arrears of $69,604 US as of June 2003, and a Declaration of Arrears for Spousal Support, showing arrears of $297,800 US as of June 2003.

[8] The case eventually went before Child Support Referee Linda Ingles ("Referee Ingles" or "the Referee"). During the proceedings, Benjamin was indicted for perjury and arrested in Referee Ingles' courtroom. The charges were eventually dropped. On January 26, 2004, Referee Ingles issued Findings and a Recommended Order. She determined that Benjamin should not be given credit for the transfer of the 3001497 Cell-Loc shares because they were marital assets. Benjamin was then found to be in contempt for failing to pay his child and spousal support arrears.

[9] Benjamin filed an objection with the Superior Court to the Referee's findings and moved for a new trial. In his objection, Benjamin asserted that he was not given a jury trial, that he was not given credit for the transfer of the 3001497 Cell-Loc shares, and that Referee Ingles made no finding that he had the ability to pay the ordered support. Benjamin also argued that his indictment and arrest for perjury resulted in a trial that was fundamentally unfair, thus requiring a new trial. The Superior Court, reviewing for an abuse of discretion, confirmed and ratified the Referee's order and denied Benjamin's motion for a new trial. Benjamin timely filed a notice of appeal.

II.

[10] This court has jurisdiction over appeals of a final judgment. 48 U.S.C. § 1424-1(a)(2) (Westlaw through Pub. L. 110-176 (2008)); 7 GCA §§ 3107, 3108(a) (2005).

[11] The issues relating to the right to a jury trial, the interpretation of the Canadian order, the standard of review applicable to the Referee's findings, and the contempt charges are all questions

of law which this court reviews *de novo*. *Lizama v. Dep't of Pub. Works*, 2005 Guam 12 ¶ 13. However, "[a] trial court's decision to grant or deny a motion for a new trial will not be disturbed on appeal except for cases of clear abuse of discretion." *Adams v. Duenas*, 1998 Guam 15 ¶ 16. Under this standard, "before reversing a lower court's decision, we must first have a definite and firm conviction the trial court committed clear error of judgment in its conclusion." *J.J. Moving Servs., Inc. v. Sanko Bussan (Guam) Co.*, 1998 Guam 19 ¶ 14.

III.

[12] Benjamin challenges the trial court's ratification of the Referee's order, and makes several arguments in this appeal: 1) that he has the right to a trial by jury; 2) that he is entitled to a new trial based on "fundamental fairness" because he was arrested for perjury in front of the Referee; 3) that the Superior Court erred in failing to use *de novo* review of the Referee's findings and recommended order; 4) that the Superior Court erred in rejecting Benjamin's objection to the Referee's finding of contempt without making a specific finding that he had the ability to pay the order; and 5) that the Superior Court erred in finding him in contempt because it failed to give him a credit from the sale of the 3001497 Cell-Loc shares.

[13] Carolyn believes that the Superior Court correctly ratified the Referee's order and counters each of Benjamin's arguments. She first argues that Benjamin was not entitled to a jury trial. She further contends that the Superior Court properly denied Benjamin's motion for a new trial because he failed to show that the Referee was improperly influenced in making her decision. She maintains that the Referee correctly refused to apply the money from the sale of Cell-Loc shares to Benjamin's obligations to pay spousal and child support. Carolyn additionally argues that the Superior Court was correct in refusing to apply *de novo* review to the Referee's order and that it properly affirmed the Referee's findings. Finally, Carolyn asserts that the appeal should be dismissed because Benjamin failed to provide this court with transcripts of the Referee's hearings. We address each argument below.

A. Right to a Jury Trial

[14] Benjamin makes several arguments to support his contention that he was denied the right to a jury trial provided by 7 GCA § 22104. First, he asserts that section 22104 is triggered because the AG's Office requested imprisonment of two days per count of contempt, or a total of eighty days. He next argues that as the action of the AG's Office against him is a case at law, "a criminal action, not a case in equity," and that the criminal nature of the action is evident in the request for eighty days imprisonment. Appellant's Br., p. 7 (Jan. 10, 2006). Carolyn, however, points out that no fine was ordered in the case, and Benjamin would not have served time in confinement because "the Government and the parties stipulated that [Benjamin] would not serve any jail time if he was found in contempt." ER, p. 237 (Findings & Recommended Order, Jan. 26, 2004). She also counters that actions for support have historically been treated as equitable actions. Carolyn finally argues that nothing in the Superior Court Rules for Expedited Process, which govern proceedings before the Child Support Referee, authorize a jury trial in contempt proceedings.

1. Relevant Guam law

[15] Guam's contempt statute states, in relevant part: "Any person found guilty of a contempt of court pursuant to § 34102(b) is subject to the same penalties as a person found guilty of a petty misdemeanor." 7 GCA § 34101(b) (2005). If convicted of a petty misdemeanor, "the court shall set a definite term not to exceed sixty (60) days." 9 GCA § 80.34(b) (2005).

[16] Benjamin asserts that his right to trial by jury derives from 7 GCA § 22104 (2005), which states in its entirety:

> **§ 22104. Right to Jury Trial.**
>
> In all cases at law in which the demand, exclusive of interest and costs, or the value of the property in controversy amounts to more than Twenty Dollars ($20.00), except for small claims cases and appeals thereafter, and in all criminal cases where the authorized punishment consists of confinement for more than sixty (60) days or a fine of more than Five Hundred Dollars ($500.00), the parties shall be entitled to a trial by jury.

Furthermore, Guam's contempt statute also specifically provides for a jury trial: "If the person charged with contempt is entitled to a trial by jury, such trial shall be provided." 7 GCA § 34102(f) (2005).

[17] Benjamin argues that the action of the AG's Office was a "criminal case[] where the authorized punishment consists of confinement for more than sixty (60) days," that triggered the right to a jury trial under 7 GCA § 22104. He contends that he "is entitled to a trial by jury" under 7 GCA § 34102(f). The sanction requested by the AG's Office was two days per count of contempt based on forty counts, to be served consecutively, resulting in a total of eighty days of confinement. ER, p. 2-4 (Application for Order to Show Cause, Aug. 12, 2003). He maintains the Superior Court should aggregate the two-day confinement requested for each count of contempt, and treat the case as a serious offense that requires the right to a jury trial.

[18] Benjamin's argument presents a novel interpretation of Guam law. It requires this court to examine not only the distinction between petty and serious offenses, but also to decide whether the sentence for contempt should be aggregated so as to give the alleged contemnor the right to a trial by jury.

2. Petty Offenses and Serious Offenses

[19] The United States Supreme Court has long recognized that trial by jury has been reserved for serious offenses and, that at the adoption of the Constitution, "there were numerous offenses, commonly described as 'petty,' which were tried summarily without a jury." *Dist. of Columbia v. Clawans*, 300 U.S. 617, 624 (1937). Thus, in deciding whether the offense warranted a jury trial, courts have looked to whether, under the common law, those charged with that offense were afforded the right to a trial by jury. *See Callan v. Wilson*, 127 U.S. 540, 555-56 (1888); *Dist. of Columbia v. Colts*, 282 U.S. 63, 73 (1930).

[20] The Court subsequently departed from mere reliance on common law precedent, and held that a statutory offense that was not traditionally considered a crime at common law could "be deemed

so serious as to be comparable with common-law crimes, . . . thus . . . entitl[ing] the accused to the benefit of a jury trial prescribed by the Constitution." *Clawans*, 300 U.S. at 625. After *Clawans*, the Court continued to uphold its adoption of a more objective standard, and eventually concluded that the decisive factor in determining whether an offense was petty or serious was the penalty authorized by the legislature. In *Cheff v. Schnackenburg*, 384 U.S. 373 (1966), the Court determined that an offense with a maximum penalty of six months' confinement was petty and a jury trial was not required. More relevant to this case, the Court, referencing *Cheff*, later stated: "Contempt did not 'of itself' warrant treatment as other than a petty offense; the six months' punishment imposed permitted dealing with the case as a prosecution for 'a petty offense, which under our decisions does not require a jury trial.'" *Bloom v. Illinois*, 391 U.S. 194, 197 (1968) (quoting *Cheff*, 384 U.S. at 379-380).

[21] Then, in *Duncan v. Louisiana*, 391 U.S. 145, 160 (1968), the Court held that an offense that carried a punishment of two years' imprisonment was serious and invoked the right to a trial by jury. The Court in *Duncan* did not establish a bright-line rule relating the right to a jury trial and the length of imprisonment, but emphasized that the legislature's maximum authorized penalty was the basis for determining whether an offense was serious or petty. *Duncan*, 391 U.S. at 161. The maximum authorized sentence standard was embraced again in *Frank v. United States*, 395 U.S. 147, 148 (1969), where the Court looked at the "objective indications of the seriousness with which society regards the offense." *See also Baldwin v. New York*, 399 U.S. 66, 68 (1970) (plurality opinion) (stating that "we have found the most relevant such criteria in the severity of the maximum authorized penalty"). The Court later stated that it would not rely solely on "the maximum prison term authorized for a particular offense" to determine whether an offense was serious and invoked the right to a jury trial, but nevertheless acknowledged that "[p]rimary emphasis . . . must be placed on the maximum authorized period of incarceration." *Blanton v. N. Las Vegas*, 489 U.S. 538, 542 (1989). The Court in *Blanton* announced the following rule when determining an offense to be petty:

> Although we did not hold in *Baldwin* that an offense carrying a maximum prison term of six months or less automatically qualifies as a "petty" offense, and decline to do so today, *we do find it appropriate to presume for purposes of the Sixth Amendment that society views such an offense as "petty."* A defendant is entitled to a jury trial in such circumstances only if he can demonstrate that any additional statutory penalties, viewed in conjunction with the maximum authorized period of incarceration, are so severe that they clearly reflect a legislative determination that the offense in question is a "serious" one.

Id. at 543 (emphasis added). Therefore, for purposes of a jury trial, any offense that carries a maximum prison term of six months or less was presumptively a petty offense and thus, did not require a trial by jury. *See generally* Jeff E. Butler, *Petty Offenses, Serious Consequences: Multiple Petty Offenses and the Sixth Amendment Right to Jury Trial*, 94 Mich. L. Rev. 872 (1995).

[22] In the case at bar, Guam's contempt statute expressly states that a person convicted of contempt "is subject to the same penalties as a person found guilty of a petty misdemeanor" under 7 GCA § 34101(b), which carries a maximum term of confinement of sixty days. 9 GCA § 80.34(b) (2005). Applying the presumption announced in *Blanton*, the fact that a contempt offense is treated as a petty misdemeanor, leads us to believe that a contempt offense under Guam law is presumptively a petty offense which does not carry the right to a jury trial. Yet our analysis does not end here. We next examine Benjamin's argument that aggregating the penalty requested by the AG's Office triggers his right to a jury trial under 7 GCA § 22401.

3. Aggregation of Penalties of a Petty Offense

[23] Benjamin relies on the holding of the United States Supreme Court in *Codispoti v. Pennsylvania*, 418 U.S. 506 (1974), to argue that a jury trial is required in his case because he faced a potential aggregate penalty of more than sixty days' confinement. [7] The Court in *Codispoti* first

[7] The defendants in *Codispoti v. Pennsylvania*, 418 U.S. 506 (1974), were alleged to have committed contempt during their criminal trial, and were tried before another judge in separate post-verdict proceedings for the allegedly contemptuous conduct during the criminal trial. *Id.* at 507. The judge in the contempt proceedings denied a request for a jury trial. *Id.* at 508. He then found that one defendant committed seven acts of contempt, and imposed separate sentences for each act. *Id.* at 509. Another defendant was found to have committed six acts of contempt, and also received separate sentences for each act. *Id.* Although the individual sentence for each act was no more than six months, the judge ordered the sentences be served consecutively. As a result, the defendants' terms of imprisonment exceeded (continued...)

confirmed the right to a jury trial for serious criminal contempts, but recognized also that "petty contempts, like other petty crimes, could be tried without a jury." *Id.* at 511. *See Duncan*, 391 U.S. 145, 159 (holding that the right to jury trial does not apply to certain petty offenses). The Court then acknowledged its prior rulings that "established a fixed dividing line between petty and serious offenses: those crimes carrying a sentence of more than six months are serious crimes and those carrying a sentence of six months or less are petty crimes." *Id.* at 512. Thus, in *Bloom v. Illinois*, 391 U.S. 194 (1968), the Court held that sentences up to six months could be imposed for criminal contempt without a jury trial, but not if the sentence imposed was twenty-four months in prison. *Codispoti*, 418 U.S. at 511-12.

[24] The Court, however, had never ruled on the precise issue of whether there was a right to a jury trial in post-trial contempt proceedings, where the sentences imposed for the acts of contempt aggregated to more than six months in jail. *Id.* at 512-13. The Court looked at the sentences actually imposed by the court in the contempt proceedings, and found that:

> the trial judge not only imposed a separate sentence for each contempt but also determined that the individual sentences were to run consecutively rather than concurrently, a ruling which necessarily extended the prison term to be served beyond that allowable for a petty criminal offense.

Id. at 516. The Court then held: "In terms of the sentence imposed, which was obviously several times more than six months, each contemnor was tried for what was equivalent to a serious offense and was entitled to a jury trial." *Id.* at 517.

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[7](...continued)
six months. The defendants appealed and the Pennsylvania Supreme Court affirmed without an opinion. *Id.* at 511. The case then went to the United States Supreme Court, and certiorari was granted on the following questions:

> 1. Should petitioners receive cumulative sentences for contempt of court imposed at the end of a trial where the total effective sentence received must be used rather than the individual sentences in order to determine the seriousness of the contempt and thereby determine whether the accused should be afforded the right to a jury trial?
>
> 2. Should the strong possibility of a substantial term of imprisonment require that an accused be afforded the right to a jury trial?

Id. at 511 n.3.

[25] Benjamin urges this court to follow *Codispoti* and conclude that, because he faced the potential of more than sixty days' confinement, he is entitled to a jury trial pursuant to 7 GCA § 22104. Indeed, the First Circuit Court of Appeals interpreted *Codispoti* as holding that "a contemnor must be provided the option of a jury trial on contempt charges when those charges are heard after the conclusion of the trial from which the charges arose, if the defendant may be subject to consecutive sentences cumulating in excess of six months upon conviction on those charges." *United States v. Pina*, 844 F.2d 1, 11 (1st Cir. 1988). In *Pina*, the sentences imposed at the defendant's first two contempt hearings did not trigger the right to a jury trial, but the sentence at the third contempt hearing "exceed[ed] six months and appellant was not given the option of a jury trial, *Codispoti* requires that we set aside these convictions and remand for jury trial." *Id.*

[26] Yet, even with the Court's holding in *Codispoti*, the concept of aggregating petty misdemeanor offenses to afford the defendant a jury trial was followed by some courts,[8] but it was not universally adopted. Two circuits, post-*Codispoti*, did not aggregate multiple petty offenses, holding instead that a defendant was entitled to a jury only for serious offenses. *United States v. Brown*, 71 F.3d 845, 847 (11th Cir. 1996); *United States v. Lewis*, 65 F.3d 252, 254 (2d Cir. 1995). *See generally* Andrew James McFarland, *Lewis v. United States: A Requiem for Aggregation*, 46 Cath. U. L. Rev. 1057, 1076-86 (1997) (discussing the petty offense exception to a jury trial and the United States Supreme Court's cases regarding the aggregation of penalties for a petty offense);

[8] The Fourth, Seventh, Ninth, and Tenth Circuit Courts of Appeals initially followed *Codispoti*. In *United States v. Coppins*, 953 F.2d 86, 90 (4th Cir. 1991), the Fourth Circuit stated that "there is no apparent reason why the Court's holding in *Codispoti* . . . that consecutive sentences of imprisonment actually imposed for a series of contempts committed during a single trial should be aggregated for this purpose should not apply also to require aggregation of any maximum sentences authorized by statute . . . ." The Seventh Circuit similarly stated that *Codispoti* "impels us to hold that the district court exceeded its summary contempt powers in imposing a one year contempt sentence." *United States v. Prewitt*, 553 F.2d 1082, 1089 (7th Cir. 1977). In *Rife v. Godbehere*, 814 F.2d 563, 565 (9th Cir. 1987), the Ninth Circuit found that a defendant had the right to a jury trial when the trial judge had discretion, in cases involving multiple petty offense, to impose a sentence of more than six months by ordering consecutive sentences. Finally, the Tenth Circuit held that a defendant was entitled to a jury trial "only if he is actually threatened at the commencement of trial with an aggregate potential penalty of greater than six months' imprisonment." *United States v. Bencheck*, 926 F.2d 1512, 1518 (10th Cir. 1991) (quoting *Haar v. Hanrahan*, 708 F.2d 1547, 1553 (10th Cir. 1983)).

Christine E. Pardo, *Multiple Petty Offenses with Serious Penalties: A Case for the Right to Trial by Jury*, 23 Fordham Urb. L.J. 895, 905 (1996); Colleen P. Murphy, *The Narrowing of the Entitlement to Criminal Jury Trial*, 1997 Wis. L. Rev. 133, 159 (1997).

[27] As a result of this split among the federal appellate courts, the Supreme Court directly addressed the issue in *Lewis v. United States*, 518 U.S. 322 (1996). *Lewis* involved the criminal prosecution of a postal service employee charged with two counts of obstructing mail, a federal offense that carried a maximum prison term of six months. *Id.* at 324. Although he had requested a jury, the trial court instead granted the government's request for a bench trial, "because she would not, under any circumstances, sentence petitioner to more than six months' imprisonment." *Id.* at 324. Departing from the reasoning for aggregation stated in *Codispoti* and its progeny, the majority refused to adopt the reasoning of the defendant and reaffirmed the objective standard, articulated in its prior cases – that the court determine whether a case is serious or petty by looking at the maximum potential penalty set by the legislature:

> [W]e determine whether an offense is serious by looking to the judgment of the legislature, primarily as expressed in the maximum authorized term of imprisonment. Here, by setting the maximum authorized prison term at six months, the Legislature categorized the offense of obstructing the mail as petty. The fact that the petitioner was charged with two counts of a petty offense does not revise the legislative judgment as to the gravity of that particular offense, nor does it transform the petty offense into a serious one, to which the jury trial right would apply.

Lewis, 518 U.S. at 327.[9] The Court dismissed the defendant's reliance on *Codispoti*, stating that case was inapposite. *Id.* at 328. In *Codispoti*, the "Court was unable to determine the legislature's judgment of the character of that offense, however, because the legislature had not set a specific penalty for criminal contempt." *Id.* Where the legislature does not indicate the maximum penalty for a contempt offense, "courts use the severity of the penalty actually imposed as the measure of the

[9] Notably, the Court also recognized common law authority indicating that aggregation of multiple petty offenses did not warrant a jury trial. *Lewis*, 518 U.S. at 327 ("We note that there is precedent at common law that a jury trial was not provided to a defendant charged with multiple petty offenses. See, *e.g.*, *Queen v. Matthews*, 10 Mod. 26, 88 Eng. Rep. 609 (Q.B.1712); *King v. Swallow*, 8 T.R. 285, 101 Eng. Rep. 1392 (K.B.1799).").

character of the particular offense." *Id.* In *Lewis*, it was undisputed that the offense of obstruction of mail carried a maximum penalty of six months' confinement. "Here, in contrast, we need not look to the punishment actually imposed, because we are able to discern Congress' judgment of the character of the offense." *Id.*

[28] Unlike the offense of contempt in the federal realm, our legislators have set a specific penalty for contempt. *See* 18 U.S.C. § 401 (general federal contempt statute). According to 7 GCA § 34101(b), a person convicted of contempt is treated as if he or she had committed a petty misdemeanor. Therefore, like *Lewis* and unlike *Codispoti*, we are able to discern the Guam Legislature's "judgment of the character of the offense" of contempt.[10] *Lewis*, 518 U.S. at 328. Section 34101(b) clearly provides that contempt is treated as a petty offense.

> Where we have a judgment by the legislature that an *offense* is "petty," we do not look to the potential prison term faced by a *particular defendant* who is charged with more than one such petty offense. The maximum authorized penalty provides an objective indicatio[n] of the seriousness with which society regards the offense, and it is that indication that is used to determine whether a jury trial is required, not the particularities of an individual case. Here, the penalty authorized . . . manifests its judgment that the offense is petty, and the term of imprisonment faced by petitioner by virtue of the second count does not alter that fact.

Lewis, 518 U.S. at 328 (internal citation and quotation marks omitted) (emphasis in original). In

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[10] We are not persuaded that, because *Codispoti* is more factually analogous to the instant case than *Lewis* is, we should therefore hold that *Codispoti* controls here. The *Codispoti* Court acknowledged that "[i]n the context of the post-verdict adjudication of various acts of contempt, it appears to us that there is posed the very likelihood of arbitrary action that the requirement of jury trial was intended to avoid or alleviate." 418 U.S. at 515. The Court then quoted with approval its prior holding in *Bloom*, where it stated that "in contempt cases an even more compelling argument can be made for providing a right to jury trial as a protection against the arbitrary exercise of official power." *Id.* (quoting *Bloom*, 391 U.S. at 201-02).

The danger of the arbitrary exercise of power, in this case, could only arise from the imposition of consecutive sentences of two days for the forty incidents of contempt; in short, if there were an actual likelihood that Benjamin would serve an eighty-day sentence for the offense of contempt as a petty misdemeanor. There is no danger here that the court would impose such a sentence in this case. The record before us reveals that, based on an agreement that the parties had entered into below, "the Government and the parties stipulated that [Benjamin] would not serve any jail time if he was found in contempt." ER, p. 237 (Findings & Recommended Order, Jan. 24, 2004). The stipulation in this case can be analogized to the situation in *People v. Kriho*, 996 P.2d 158, 177 (Colo. Ct. App. 1999), where, before trial, the People filed a document stating that it would not seek a jail sentence in excess of six months. The trial court treated the document "as an irrevocable stipulation that Kriho could not receive a sentence exceeding six months." *Id.* at 177. Based on this document, the Colorado appellate court "reject[ed] Kriho's assertion that she was denied the right to a jury trial." *Id.* at 177-78.

Lewis, the Court reaffirmed its prior holdings that in cases where the legislature has established the maximum penalty, such penalty is the definitive factor in determining whether an offense is petty and thus does not implicate the right to a jury trial. The Court also reaffirmed the converse proposition that in cases where the legislature has not set a maximum penalty (such as federal contempt offenses), it is appropriate to look at the actual penalties imposed to determine whether an offense is petty or serious and whether there is a right to a jury trial. In unpublished opinions, a few federal appellate courts have had occasion to follow *Lewis* and have rejected arguments that petty offense penalties be aggregated. *See, e.g., United States v. Sherman*, 97 F.3d 1450 (4th Cir. 1996) (unpublished opinion); *United States v. Spafford*, Nos. 96-4102, 96-4205, 1998 WL 427129 (10th Cir. 1998) (unpublished opinion); *United States v. Thornton*, No. 99-30265, 2000 WL 732929, at *1 (9th Cir. 2000) (unpublished opinion). State courts are in accord. *See, e.g., Burgess v. United States*, 680 A.2d 1033 (D.C. 1996); *People v. Foy*, 673 N.E.2d 589 (N.Y. 1996); *United States v. Sostre Narvaes*, 279 F. Supp. 2d 82 (D. P.R. 2003); *State v. Ford*, 929 P.2d 78, 86 n.4 (Haw. 1996); *Harkins v. State*, 735 So. 2d 317 (Miss. 1999). *Cf. Walls v. Spell*, 722 So. 2d 566 (Miss. 1998) (where the court declined to rely on *Lewis* and instead applied the rule in *Codispoti* because "[i]n Mississippi, there is no maximum penalty for the crime of criminal contempt" and therefore, after examining the actual sentence imposed, found reversible error based on the denial of the defendant's right to a jury trial).

[29] Here, the Guam Legislature concluded that the offense of contempt is to be treated as a petty misdemeanor, and thus, set the maximum penalty of imprisonment for this offense at a "definite term not to exceed sixty (60) days." 9 GCA § 80.34(b). Because the Legislature has deemed contempt to be a petty offense, the actual sentence imposed upon Benjamin is irrelevant.

[30] Benjamin next asserts that reading all relevant Guam statutes in harmony reveals that the Legislature must have contemplated aggregating sentences for multiple offenses. He argues that if contempt pursuant to 7 GCA § 34102(b) is punishable as a petty misdemeanor, and this court holds

that petty misdemeanor sentences cannot be aggregated because the Legislature has deemed these offenses to be petty, then the right to a jury trial provided in 7 GCA § 34102(f) is rendered meaningless. Section 34102(f) states, in its entirety: "If the person charged with contempt is entitled to a trial by jury, such trial shall be provided." 7 GCA § 34102(f).

[31] We agree that as a general rule statutes should be constructed "so as to avoid rendering superfluous" the language of the statute. *Astoria Federal Savings & Loan Ass'n v. Solimino*, 501 U.S. 104, 112 (1991). However, the function of section 34102(f) is not to mandate a jury trial under specified conditions; rather, its function is to provide a jury trial when the evolving constitutional law in this area requires it. At the time section 34102(f) was enacted, *Lewis* had not yet been decided. *See* Guam Pub. L. 20-170:17 (May 15, 1990). The right to a jury trial in cases of contempt pursuant to section 34102(b) was still an open question in 1990, and in enacting section 34102(f) the Legislature left the resolution of that question to the courts. Thus, section 34102(f) is not superfluous in that it continues to direct this court to apply constitutional law to the question of whether contempt triggers the right to a jury trial. Absent a more specific directive from the Legislature, we interpret Benjamin's rights to be no more and no less than what is required under those constitutional provisions incorporated into our law pursuant to 48 U.S.C. § 1421b(u). *See Guam v. Guerrero*, 290 F.3d 1210, 1217-18 (9th Cir. 2002) ("[A] territorial court lacks the authority to interpret a federal statute or federal constitutional provision contrary to the interpretation the U.S. Supreme Court has given it.").

[32] Supreme Court case law clearly establishes that, where a legislature has deemed by the maximum penalty imposed, that an offense is a petty offense, there is no right to a trial by jury. We hold that the Guam Legislature, in enacting 7 GCA § 34101(b) and providing that contempt of court pursuant to section 34102(b) be punishable as a petty misdemeanor, contemplated that it was a petty offense. Therefore, in accordance with United States Supreme Court jurisprudence, we hold that

penalties for multiple counts of contempt under section 34102(b) cannot be aggregated, and Benjamin does not have the right to a jury trial.

B. Whether "Fundamental Fairness" is Grounds for a New Trial

[33] Benjamin next argues that the trial court erred in denying his motion for a new trial. He alleges that Carolyn arranged for his arrest in Referee Ingle's courtroom "on trumped up charges that [he] had lied to Referee Ingles" and that such conduct was "nothing short of outrageous." Appellant's Br., p. 8 (Jan. 10, 2006). He also alleges that he sought to have the proceeding before Referee Ingles stayed while he attempted to clear his name on the perjury charge, but that the request was denied. He therefore argues that he should be granted a new trial "if for no other reason than to provide fundamental fairness." Appellant's Br., p. 8 (Jan. 10, 2006).

[34] Rule 59(a) of the Guam Rules of Civil Procedure ("GRCP") indicates that "[a] new trial may be granted to all or any of the parties and on all or part of the issues . . . in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of Guam." GRCP 59(a) (2004). Benjamin argues that the fact that a "trial was not fair to the moving party" is grounds for granting a new trial. Appellant's Br., p. 8 (Jan. 10, 2006). We agree. However, Benjamin fails to articulate a rule of law upon which we can base a finding that the proceeding below was fundamentally unfair, nor does he cite to any analogous case law. He is asking this court, in essence, to find the lower court proceeding to be unfair based on the surrounding circumstances.

[35] In order to conduct a meaningful review, the parties must articulate their arguments in a way that allows this court to apply recognized rules of law:

> It is not sufficient for a party "simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position."

Wilson v. Taylor, 577 N.W.2d 100, 105 (Mich. 1998) (quoting *Mitcham v. Detroit*, 94 N.W.2d 388

(Mich. 1959)). Nevertheless, one can infer from Benjamin's description of the circumstances that he is arguing that Referee Ingles was biased by the perjury arrest and indictment. Specifically, he appears to be arguing that Referee Ingles considered inadmissable or irrelevant evidence of Benjamin's character in deciding in Carolyn's favor.

[36] Although our Rules of Evidence go to great length to protect juries from exposure to improper evidence, "a judge presiding over a bench trial is presumed to consider only relevant, admissible evidence." *Chicago Title Ins. Co. v. IMG Exeter Assoc. Ltd. P'ship*, 985 F.2d 553, *4 (4th Cir. 1993) (unpublished opinion); *see also Tampa Bay Shipbuilding & Repair Co. v. Cedar Shipping Co.*, 320 F.3d 1213, 1216 (11th Cir. 2003) ("[I]t is presumed that the . . . judge will rely only upon properly admitted and relevant evidence"); *cf. People v. Miranda*, 1 P.3d 73, 80 (Cal. 2000) ("A judge, unlike a jury, is presumed to be able to avoid the risks of prejudice . . . ." (internal quotation marks omitted)). To hold otherwise would make bench trials nearly impossible, since a judge would not be able to rule on the admissibility of evidence and at the same time make factual or legal determinations. Referee Ingles was a trained attorney exercising a judicial function analogous to a judge at a bench trail. She would have known that mere evidence of an arrest for perjury was irrelevant to the interpretation of the Canadian order or procedural decisions such as whether to grant a stay or a jury trial. Benjamin does not point to any specific language in the Findings and Recommended Order or the transcripts that demonstrate that Referee Ingles was biased as a result of his arrest. Indeed, Benjamin does not provide any transcripts of the proceedings at all. Therefore, because we have no evidence upon which to overcome the presumption that Referee Ingles considered only relevant evidence, the argument that the proceeding was fundamentally unfair must fail.

C. Standard of Review

[37] Benjamin next argues that the Superior Court erred in failing to conduct a *de novo* review of the Referee's findings and recommended disposition of the case. The trial court reviewed the

Referee's Findings and Recommended Order for an abuse of discretion, stating that "the Superior Court should accord deference to the findings of the administrative referee, and only reject such findings and recommendations where such decisions are based on erroneous conclusions of law or where the record contains no evidence which the referee could have rationally based her decision." RA, Tab 155, p. 3 (Decision & Order, July 25, 2005). This is essentially an abuse-of-discretion standard. The court examined the purposes of the Rules for Expedited Process in child support cases, which were "to speed up the bureaucratic governmental quagmire" in child support cases and "to elevate the burdens of evidentiary hearings in child support cases on the dockets of the trial judges by transferring and consolidating these matters before an administrative referee." RA, Tab 155, p. 3 (Decision & Order, July 25, 2005). The court reasoned that adopting a different standard would be inconsistent with the purpose of establishing the Rules for Expedited Process.

[38] Because neither the Expedited Judicial Process Act, 19 GCA §§ 5501-5504 (2005), nor the Guam Rules for Expedited Process ("GREP") indicate what standard the Superior Court should use in reviewing a referee's findings and conclusions, Carolyn argues that a referee is analogous to a Rule 53 master. Therefore, the Superior Court should review a referee's findings for abuse of discretion. *See* GRCP 53(e)(2) (2004) ("[T]he court shall accept the master's findings of fact unless clearly erroneous.") Benjamin argues that a referee is not a master, in part because a master is appointed for a specific purpose, while a referee is appointed by the presiding judge of the Superior Court under statutory authority.

[39] Masters are appointed pursuant to Rule 53(a), which states in relevant part: "The court on any one case may appoint a master for any specific purpose. As used in these rules, the word 'master' includes a referee, an auditor, an examiner, a commissioner, or an assessor."[11] GRCP 53(a) (2004). We agree with Benjamin that the definition of a master in Rule 53(a) seems to indicate a case-by-

[11] This language does not appear in the June 1, 2007 version of the GRCP, which no longer defines the word "master."

case appointment on specific cases or issues. This is not the situation here, where the Child Support Referee is a full-time position of the Superior Court, and is responsible for hearing child support and certain juvenile proceedings. One cannot, therefore, equate a child support referee with a master appointed in accordance with Rule 53(a).

[40] Title 19 GCA § 5501 (2005) governs the expedited judicial process and creates an "expedited judicial process agency . . . administered by one (1) or more referees." In describing the functions and duties of a referee, the statute indicates only that they are "[u]nder the authority of the Superior Court." 19 GCA § 5503 (2005). No mention is made of how a referee is to be supervised by the Superior Court or the exact nature of their relationship. Some courts describe the trial court as being in the position of an intermediate appeals court with regard to the court's relationship to the referee. *See, e.g. Sylvester v. Vitagliano*, 2002 ME 141, ¶ 9, 804 A.2d 391, 393 (finding the district court "properly acted in an appellate capacity" in reviewing a referee's child support order.). Other jurisdictions, such as Ohio, view the relationship between a trial court and the referee more pragmatically, requiring only that the trial court make an effort to review the referee's findings. *Inman v. Inman*, 655 N.E.2d 199, 201 (Ohio Ct. App. 1995) ("The trial court does not sit in the position of a reviewing court when reviewing the referee's report; rather, the trial court must conduct a *de novo* review of the facts and conclusions contained in the report."). Although a trial court is not required to provide a written analysis of every contested issue, they are required to do more than simply "rubber stamp" the referee's report. *Id.*

[41] Clearly the Legislature created the position of family court referee for the purpose of expediting the process of determining child support. 19 GCA § 5502 (2005) (stating that the principal purpose of the division is to provide "a speedy and efficient legal process in child support cases"). If the Superior Court were required to conduct a full appellate review of the referee's findings every time an objection was raised under GREP Rule 7.1, the process could hardly be called expeditious. Moreover, Rule 6.7 only allows the Superior Court ten days to reject a referee's

findings before they are automatically "adopted by the Court without signature." GREP 6.7. Ten days is not sufficient time to conduct a full appellate review.[12] We therefore adopt the pragmatic approach and require only that the trial court make a good faith effort to supervise the referee and correct any obvious errors.

[42] Although in an ideal world the trial judge would have the time and resources to make a full written review of every objection, the reality is that a Superior Court judge must at times rely on the competency and experience of his or her assisting referee. If a judge is sufficiently confident in the findings of the referee, he or she may simply accept the referee's conclusions with minimal comment. However, we caution that no supervision at all is also contrary to the intent of the statute. *Cf.* 19 GCA § 5503 (referees are "[u]nder the authority of the Superior Court"). Referees' reports that are summarily converted into judgments without any evidence of review of Rule 7.1 objections may compel this court to remand for proper review.

[43] In the present case, the referee determined that the C$343,000 of Cell-Loc stock was transferred to Carolyn as a division of marital assets rather than for the purpose of meeting Benjamin's support obligations. As such, it was an interpretation of a Canadian judgment, which is a question of law requiring *de novo* review on appeal. *See State ex rel. Div. of Child Support Enforcement v. Hill*, 53 S.W.3d 137, 141 (Mo. Ct. App. 2001) (finding that the interpretation of a paternity judgment was a question of law); *Stokes v. Polley*, 37 P.3d 1211, 1213 (Wash. 2001) ("Interpreting a dissolution decree involves a question of law reviewed de novo."). Had the Superior Court functioned as an appeals court in reviewing the referee's conclusions, it would have been error to apply an abuse of discretion standard to this issue. Benjamin's assignment of error on this point, however, is irrelevant in light of our holding herein that we do not require full review by a Superior

[12] Benjamin argues that the limited time frame of GREP 6.7 does not allow enough time to order transcripts that would be necessary for an abuse-of-discretion review. We agree, but also note that the rule does not allow enough time for a full, written *de novo* review either.

Court of every objection considered by a referee, and because we generally do not remand questions of law. When the Superior Court approves or modifies the findings of a referee, and converts the entire matter into a judgment, the opinions of the judge and referee merge into a single judgment which is then reviewable in its entirety by this court. We therefore take note of Benjamin's objection to the lower court's interpretation of the Canadian judgment, and review the interpretation *de novo*.

D. Whether Benjamin can be Held in Contempt

[44] As we have stated in prior opinions, we review lower court findings of contempt for abuse of discretion:

> We review the trial court's findings of contempt for an abuse of discretion. In reviewing a contempt judgment, we will not reweigh the evidence or judge the credibility of the witnesses. If the evidence and all reasonable inferences which may be drawn therefrom support the trial court's decision, that decision stands.

Rodriguez v. Rodriguez, 2003 Guam 8 ¶ 14 (citations and quotation marks omitted). Neither the Referee nor the trial court cited the test we articulated regarding contempt. "The elements of contempt are generally: '1) a valid order, 2) knowledge of the order, 3) ability to comply with the order, and 4) willful failure to comply with the order.'" *Rodriguez*, 2003 Guam 8 ¶ 15 (quoting *In re Ivey*, 102 Cal. Rptr. 2d 447, 451 (Ct. App. 2000)). Benjamin argues that no finding was made with regard to his ability to comply with the support order and that he did not willfully fail to comply because he assumed that the transfer of the 3001497 Cell-Loc shares was to be credited to his support obligations. We address each of these arguments in turn.

1. Benjamin's Ability to Pay

[45] Benjamin challenges the lower court's findings regarding his ability to pay because it did not make a specific finding in this respect. We stated in *Rodriguez* that "'where the order is a family law order for payment of support or attorney fees, and the family law court has already determined the alleged contemner's ability to pay the underlying order, ability to comply with the order is not an element of the contempt.' Instead, the inability to pay is an affirmative defense." *Id.* ¶ 15

(quoting *In re Ivey*, 102 Cal. Rptr. 2d 447, 451 (Ct. App. 2000)). Contrary to his assertion that the court must show he has the ability to pay, Benjamin carries the burden of showing he does *not* have the ability to pay.

[46] Justice Scanlan's April 6, 2000 Decision recognized that, as a partner in a medical partnership with his brother, Benjamin had earned "in recent years . . . about [C]$400,000.00 per year, less expenses." RA, Tab 1, p. 16 (Decision, Apr. 6, 2000). Justice Scanlan concluded: "It is not at all unreasonable in the circumstances of this case, based on the evidence that I have before me, to accept the position as urged by the petitioner that the respondent was earning at least [C] [C]$300,000.00 in the practice of radiology." RA, Tab 1, p. 16 (Decision, Apr. 6, 2000). Benjamin could rely on only two documents in the record to demonstrate inability to pay. One of the documents is a profit and loss statement for Guam Imaging Consultants/RADS, Inc. (the company he had owned with former partner Nathaniel Berg) which states that the company had a net loss of $19,348.93 between February 8 through August 15, 2003 . ER, p. 55 (Profit & Loss Statement, Aug. 15, 2003). The second document is an Income Tax Examination Changes form filed in January 2004, which states that he had no income in 2001 and an income of $176,895.00 in 2002. RA, Tab 114 (Income Tax Examination Changes). Benjamin offered no other documents relating to his ability to pay in the record before this court. These documents do not "convincingly establish" Benjamin's inability to pay because they do not counter the finding of the Canadian court that Benjamin had access to a very significant fortune. *Rodriguez*, 2003 Guam 8 ¶ 15; RA, Tab 1, p. 25 (Decision, Apr. 6, 2000) ("The spousal maintenance . . . takes into account the substantial assets [Benjamin] now has at his disposal."). We note that at the time of the trial, the estimated value of the marital estate was between 17 and 26 million Canadian dollars. Benjamin provided no evidence that his share of the marital estate has been dissipated or has been otherwise rendered valueless in the interim, and we must therefore assume that he has sufficient assets to cover his monthly support obligations.

2. Whether Benjamin Should Receive Credit for the Cell-Loc Shares

[47] Benjamin argues that the Ex Parte Order of March 10, 2000 transferred the 3001497 Cell-Loc shares to Carolyn for the purpose of offsetting his child and spousal support obligations. The shares were subsequently liquidated for C$343,000. He argues that the liquidation value of the shares, combined with his attempt to tender checks for the remainder of what he owes for child support, brings him up to date on his support obligations. In support of his position, Benjamin points to the language of the March 10, 2000 Decision accompanying the Ex Parte Order (subsequently memorialized in written form on March 30, 2000) where Justice Scanlan indicated that the shares would be held by Carolyn's attorneys, who were then directed "to subsequently convey or dispose of those shares as directed by Carolyn . . . at her discretion so as to allow her to start making payments on the maintenance portion of the previous order. That will be spousal and child maintenance until we see if we can get this matter straightened out." ER, p. 97 (Decision, Mar. 30, 2000). The Ex Parte Order itself makes no mention of the purpose for transferring the 3001497 Cell-Loc shares in trust for Carolyn.

[48] Benjamin addresses this apparent discrepancy by arguing that the Decision created a trust for the purpose of meeting Benjamin's support obligations. He argues that purpose must be presumed in the Ex Parte Order as well, since the case law clearly indicates that a valid trust can only be created if it is given a purpose.[13] We find this argument to be more technical than substantive, and direct our attention instead to the real issue in this case, that is, whether Benjamin should be given credit for some or all of the value of the Cell-Loc shares with regard to his child and spousal support obligations. This determination requires a construction of the various Canadian orders and judgments, which is usually a question of law. *Hill*, 53 S.W.3d at 141.

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[13] The Ex Parte Order of March 10, 2000 transferred the 3001497 Cell-Loc stock to "MacIntosh, MacDonnell & MacDonald in Trust." ER, p. 107 (Ex Parte Order, Mar. 20, 2000). The Ex Parte Order also identifies MacIntosh, MacDonnell & MacDonald as Carolyn's solicitors. It seems likely that the "trust" in which the Cell-Loc stocks were held was one which has existed since the founding of the law firm for the purpose of transferring property to clients in a convenient and transparent manner.

[49] In support of Benjamin's interpretation, we note that none of the written memorializations of the March 1, 2000 oral decision specifically mention the 13,500 shares of Cell-Loc stock held in the name of Nova Scotia Limited 3001497. One cannot attribute the oversight to lack of detail. The April 6 Decision and the two Corollary Relief Judgments all specifically transfer 43,000 shares of Cell-Loc stock held by Nova Scotia Limited 3001495 (a slightly different numbering) to Carolyn as her share of marital assets. A reasonable interpretation for the failure to include the 3001497 Cell-Loc shares in the marital estate is that Justice Scanlan understood that the court had already transferred those shares outright for the purpose of providing child and spousal support to Carolyn. This interpretation is consistent with the wording of the March 10, 2000 Decision. Perhaps the reason that the purpose of the transfer was not mentioned in the Ex Parte Order was that the intended audience was the broker currently holding the 3001497 Cell-Loc shares. It is not uncommon for courts issuing orders to banks or brokerage houses to omit the purpose of the transfer and simply order that such transfer take place.

[50] Carolyn points to the circumstances surrounding the discovery of the 3001497 Cell-Loc shares as evidence they were matrimonial assets. She notes that the shares were discovered serendipitously, and that at the time of their discovery they were held in the name of Benjamin's brother, Daniel Hoffman, who subsequently disclaimed any interest in the shares. The implication, apparently, is that Benjamin knew those shares were subject to division as marital property and therefore attempted to hide them from Carolyn. She also points to the 50% interest in the Cell-Loc shares provided to her through the two Corollary Relief Judgments and the April 6, 2000 Decision. Carolyn, like Referee Ingles, incorrectly equates the 3001497 Cell-Loc shares with different Cell-Loc shares mentioned in the Corollary Relief Judgments and April 6 Decision. *See* Appellee's Br., p. 25 (Feb. 9, 2006); ER, p. 239 (Findings & Recommended Order, Jan. 26, 2004). Finally, with regard to Benjamin's trust theory, she argues that the trust "was nothing more . . . than a method to affect the transfer of marital property to Lamb through her attorneys." Appellee's Br., p. 26. Although we

do not necessarily agree that the 3001497 Cell-Loc shares should be categorized as marital property, we agree that the trust was nothing more than a convenient method of transferring property. *Cf. S.E.C. v. Capital Consultants, LLC*, 397 F.3d 733, 747 (9th Cir. 2005) ("All garden-variety stock brokerage firms . . . hold equities in trust for their clients, and holding the stock in street name is little more than an administrative convenience.").

[51] We are inclined to agree with Benjamin that he should be given credit for the liquidation value of the 3001497 Cell-Loc shares. A plain reading of the March 10, 2000 Decision suggests that Justice Scanlan intended the shares to be liquidated and then used as a fund to pay Benjamin's child and spousal support obligations beginning in March of 2000. However, the oral nature of the Decision has resulted in certain ambiguities[14] that have proven difficult to resolve based on the

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[14] For example, it is often difficult to discern the prior event to which the court is referring:

> MS. MACNEIL: [Y]ou recall that Mr. Justice Cacchione made an order for $100,000.00 as . . . a lump sum in November . . .
>
> THE COURT: That order [is] superseded as far as I'm concerned.
>
> MS. MACNEIL: By this order?
>
> THE COURT: Yes
>
> MS. MACNEIL: Well then my concern is that if she's going to pay him for one-half of the first and second mortgages and one-half of the value of the furniture and art work and the rest, she has not received that money which the Court intended that she would receive by way of spousal and child support in order to pay the mortgage . . .
>
> THE COURT: No but you recall that we dealt with the issue of spousal and child support by saying that the assets she was able to liquidate have basically provided for the spousal and child support. . .
>
> MS. MACNEIL: That's right.
>
> THE COURT: . . . to-date, and I asked if there was any retroactivity and you said no.
>
> MS. MACNEIL: Nope. We weren't asking for it.
>
> THE COURT: So as regards the other $100,000.00 lump sum payment which was not made, had it been made I would have factored it into the asset division. It was not paid as far as I was aware and this order supersedes it and . . . I [have] . . . basically taken a still photo based on the financial

(continued...)

record before us. Under the circumstances, justice would be better served by allowing the parties to present arguments as to the interpretation of the March 10, 2000 Decision or petition the Canadian court for clarification. We therefore remand the question of how much credit Benjamin should get for the 3004197 Cell-Loc shares to the lower court for a determination consistent with this opinion.

3. Whether Benjamin's Interpretation Prevents a Finding of Contempt

[52] When a support order might be interpreted in multiple ways, courts must consider whether a party's interpretation rises to the level of "willful failure to comply with the order." *Rodriguez*, 2003 Guam 8 ¶ 15. In *Sablosky v. Sablosky*, the Connecticut Supreme Court found the defendant to be in contempt for failing to pay a portion of his children's college tuition even though the phrase "undergraduate college student" was ambiguous. 784 A.2d 890, 892-93 (Conn. 2001). The court concluded that "an ambiguity in the terms of a judgment does not, as a matter of law, preclude a finding of contempt for the wilful failure to comply with the judgment." *Id.* This is particularly true where a party uses an ambiguity as an excuse for entirely ignoring their support obligations. *Ex parte Acker*, 949 S.W.2d 314, 319 (Tex. 1997). The policy reason that contempt can sometimes be appropriate in such cases is that parties should be encouraged to petition the court to clarify any ambiguities rather than resort to self help. *Sablosky*, 784 A.2d at 896. On the other hand, a good faith belief that a party's interpretation of the support order is correct may prevent a finding of wilfulness for purposes of establishing contempt. *Id.* at 894; *see also Blackwell v. Fulgum*, 652 S.E.2d 427, 430-31 (S.C. Ct. App. 2007) (finding that ex-wife was not in contempt was appropriate where she had a good faith belief that her support payments should be reduced upon the

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[14](...continued)
statements and said this is the division, dealt with the retroactive maintenance payment through the assets that were already liquidated and said those were on his account not on her account because he should have been paying it . . . and move it on forward.

ER, pp. 103-04 (Decision, Mar. 30, 2000). Justice Scanlan is likely referring to a prior order that liquidated some assets to provide for Carolyn's support before the final division of assets on March 1, 2000. However, the language is ambiguous.

emancipation of her daughter); *Riddick v. Riddick*, 906 So. 2d 813, 826 (Miss. Ct. App. 2004) (ex-husband's good faith belief that he could delay tuition payments until the court clarified his obligations in light of his ex-wife's breach of the marital agreement prevented a finding of contempt).

[53] In the instant case, Benjamin did not completely ignore his child support obligations. As a result of the Ex Parte Order, C$343,000 was transferred to Carolyn, which Benjamin interpreted to be for the purpose of child and spousal support. As soon as his accumulated support obligations approximated the liquidated value of the 3001497 Cell-Loc shares, he attempted to tender checks[15] to Carolyn and stay current with his child support obligations. We hold that there is sufficient merit to Benjamin's interpretation of the Canadian child-support order to allow a finding of good faith on his part. Moreover, Benjamin's good faith interpretation of the Canadian child-support order cannot be construed as "willful failure to comply with the order." *Rodriguez*, 2003 Guam 8 ¶ 15. For that reason, the lower court abused its discretion in finding Benjamin in contempt with respect to his child support obligations.

[54] With respect to spousal support, the April 6 written Decision makes the C$10,000 spousal support payments conditional upon a final division of the marital property, stating in relevant part that payments will continue "until such time as [Carolyn] receives her share of the division of matrimonial property." RA, Tab 1, p. 24 (Decision, Apr. 6, 2000). The record indicates that Carolyn's share of the matrimonial assets had not been transferred to her at the time of the expedited hearing. In Carolyn's June 25, 2003 affidavit, she alleges that the only significant marital assets she has been able to recover, besides "personal effects and household furnishings," are the 3004197 Cell-Loc shares and a time share property worth C$15,000. ER, pp. 19-20 (Affidavit, June 25, 2003). Benjamin's response, as discussed in Referee Ingle's January 26, 2004 Findings and Recommended

[15] We note with disapproval Benjamin's attempt to add a "waiver" to the checks and would discourage him from any future attempts to make his support payments conditional.

Order, is that "transfer of one-half of the matrimonial property is impossible because the shares do not exist." ER, p. 238 (Findings & Recommended Order, Jan. 26, 2004). In addition, Benjamin contends "that all the shares have been transferred or sold or that they are in a Brimstone Trust, but he does not know how much is in the trust." ER, p. 238 (Findings & Recommended Order, Jan. 26, 2004). Benjamin never contends, either in the Record on Appeal or in his briefs submitted to this court, that the Referee was in error in finding that the matrimonial assets have not been transferred according to the dictates of the April 6, 2000 Decision or the two Corollary Relief Judgments. As a result, we find that the C$10,000 monthly spousal support order was still in effect as of September of 2003.

[55] Even if given credit[16] for the liquidation value of the 3001497 Cell-Loc stocks, Benjamin would only be current with respect to both his child and spousal support obligations through about May of 2002. Thereafter, he attempted to meet his child support obligations, but failed to make any spousal support payments. Here, Benjamin provides no "good faith" argument as to why he failed to meet his spousal support obligations. Instead, one can reasonably infer from the record that Benjamin never had any intention of voluntarily paying spousal support to Carolyn. As a result, the lower court did not abuse its discretion in finding that Benjamin willfully failed to meet his spousal support obligations.

E. Failure to Provide a Transcript

[56] Finally, Carolyn argues that the appeal should be dismissed because Benjamin failed to provide transcripts. She asserts that because Benjamin essentially argues the Referee's findings were unsupported by evidence, Rule 7(b)(2) (2004) of the Guam Rules of Appellate Procedure require that

[16] In the court below, Benjamin made the argument that he should be given credit for the March 1, 2000 market value of the 3001497 Cell-Loc shares, or approximately C$960,000. *See* ER, p. 16 (Decl. of Benjamin R. Hoffman, Aug. 19, 2003). That amount would be more than sufficient to cover all of his support obligations until 2006. For whatever reason, the issue was not brought up again on appeal. Without reaching the merits, we note that a "good faith" interpretation of a support order should, at a minimum, be worthy of argument before this court if it is to be used as a defense to contempt.

he include a transcript in the appeal. Rule 7(b) states, in relevant part: "If the Appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he shall include in the record a transcript of all evidence relevant to such finding or conclusion. If errors of law are raised by Appellant, all relevant sections of the record shall be transcribed." Nevertheless, it is the Appellant's decision to include transcripts, as Rule 7(b)(1) places the burden on the Appellant to make this determination to order transcripts that "he deems necessary for inclusion in the record." Guam R. App. P. 7(b)(1) (2004).

[57] The general rule is that "an appellate court has no alternative but to dismiss an appeal if the absence of the transcript precludes meaningful review." *Birchler v. Gell Co.*, 88 F.3d 518, 520 (7th Cir. 1996) (quoting *Fisher v. Krajewski*, 873 F.2d 1057, 1061 (7th Cir. 1989)); *Syncom Capital Corp. v. Wade*, 924 F.2d 167, 169 (9th Cir. 1991) ("[F]ailure to provide relevant portions of a transcript may require dismissal of the appeal."). Dismissal does not automatically follow from failure to provide a transcript, however. Rather, this court must determine whether a meaningful review is possible absent the relevant portions of the transcript. An assignment of a procedural error during trial, for example, could not be reviewed in a meaningful way without reference to the trial court transcripts. Other issues may be reviewable yet still dismissed on the merits because their resolution depends upon evidence that could have been gleaned from the transcripts. In the latter case, failure to provide evidence directly from the transcripts is simply interpreted by this court as absence of the evidence itself.

[58] Carolyn contends that three of the issues raised by Benjamin must be summarily dismissed because Benjamin has failed to provide transcripts. The first issue is whether it was "fundamentally unfair" to arrest Benjamin in court and whether that prejudiced the Referee. As we have already discussed, judges are presumed to consider only relevant evidence, and Benjamin's failure to provide transcript evidence countering this presumption is dispositive of that issue. The second issue is whether the Referee should have given Benjamin credit for the 3001497 Cell-Loc stock in meeting

his support obligations. We suspect that even the transcripts would have been of little assistance in resolving this issue, and note that either party could have provided them on appeal. As we have already discussed, the prudent course of action under these circumstances would be to remand for further proceedings consistent with this opinion.

[59] The third issue is whether the lower court failed to make a finding that Benjamin has a present ability to meet his child support payments. Referee Ingles specifically found that "Justice Scanlan determined that the Defendant had the ability to comply with the terms of the Amended Judgment" and that "[n]o evidence before this Court has been presented to the contrary." ER, p. 240 (Findings & Recommended Order, Jan. 26, 2004). A party's ability to pay is not a procedural question; rather, it is a presumption that Benjamin was required to rebut with affirmative evidence to the contrary. If that evidence is contained only in the transcripts, we would have to agree with Carolyn that he should have provided them. However, failure to do so does not mean that this court must dismiss his claim outright. Instead, we conduct a meaningful review of the issue by noting that there is insufficient evidence to find that Benjamin has no present ability to meet his support obligations.

V.

[60] In summary, we first hold that a person convicted of contempt as a petty misdemeanor under 7 GCA § 34102(b) cannot aggregate penalties of multiple counts of contempt and does not have the right to a jury trial. Furthermore, we do not have a "definite and firm conviction the trial court committed clear error of judgment" in denying Benjamin's motion for a new trial, and affirm its denial of his motion. *J.J. Moving Servs.*, 1998 Guam 19 ¶ 14. Next, we reject Benjamin's contention that the *de novo* standard should apply to the review of a referee's findings, and further conclude that a trial court does not sit as an intermediate appellate court with respect to a referee. Instead, the trial court need only make a good faith effort to supervise the referee and correct any obvious errors. We are sympathetic with Benjamin's argument that he should be given credit for the

liquidation value of the 3001497 Cell-Loc stocks, but his willful failure to provide spousal support once those funds were depleted compels this court to affirm the lower court's contempt order. We remand the determination of Benjamin's total arrearages to the lower court and instruct that the calculation be made in a manner consistent with this opinion. Finally, we reject the argument that the case be dismissed for the failure to order transcripts, as a meaningful review can be conducted nonetheless.

[61] Accordingly, the trial court is **AFFIRMED** in part and **REMANDED** in part for further proceedings consistent with this opinion.

ROBERT J. TORRES
Associate Justice

F. PHILIP CARBULLIDO
Chief Justice

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[61] Accordingly, the trial court is **AFFIRMED** in part and **REMANDED** in part for further proceedings consistent with this opinion.

Original Signed By: **Robert J. Torres**

ROBERT J. TORRES
Associate Justice

Original Signed By: **F. Philip Carbullido**

F. PHILIP CARBULLIDO
Chief Justice