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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

PETER L. MARRIOTT,
Plaintiff-Appellant,

v.

BRENDA T. MARRIOTT,
Defendant-Appellee.

Supreme Court Case No. CVA13-028
Superior Court Case No. DM0824-07

OPINION

Cite as: 2014 Guam 28

Appeal from the Superior Court of Guam
Argued and submitted May 19, 2014
Hagåtña, Guam

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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; and KATHERINE A. MARAMAN, Associate Justice.

TORRES, C.J.:

[1] After dissolution of their marriage, Plaintiff-Appellant Peter L. Marriott (“Peter”) and Defendant-Appellee Brenda T. Marriott (“Brenda”) litigated over the disbursement of Peter’s Government of Guam retirement benefits. The trial court ruled that Brenda was entitled to a portion of Peter’s retirement benefits and ordered Peter to begin making payments to Brenda and to pay arrears. Following an Order to Show Cause hearing, the trial court issued a Judgment of Division of Community Assets, again ordering Peter to pay Brenda the amounts specified in the court’s previous ruling. Peter appealed the Judgment, arguing that his retirement benefits are entirely his separate property. On appeal, Brenda raised a jurisdictional issue with regard to the timeliness of Peter’s appeal. For the reasons set forth below, we dismiss the appeal for a lack of jurisdiction.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] Peter and Brenda married in 1990 and divorced in 2009. Peter began working for the Government of Guam in 1974 and retired in 1999. Thus, the parties were married nine years during the time Peter was working for the Government of Guam.

[3] Peter contributed to the Government of Guam Retirement Fund during his entire tenure as an employee. Prior to retirement, Peter purchased an additional five years of retirement benefits through the Early Retirement Incentive Program, paid for by a loan.

[4] The trial court issued an interlocutory decree of divorce and final decree of divorce on July 23, 2009. In the final divorce decree, the trial court bifurcated the case by granting the divorce but reserving the division of community property for further proceedings. After a

hearing on the division of community property, the trial court issued its Findings of Fact and Conclusions of Law (“Order”) on June 14, 2012. In disposing of the community property, the court determined that Peter’s retirement benefits were community property and ordered Peter to pay about one-fourth of his monthly retirement benefits to Brenda, including arrears. Also, Brenda was required to pay for half of the loan incurred by Peter to purchase the additional five years of retirement benefits. The Order was entered on the civil docket on June 15, 2012.

[5] On January 30, 2013, Brenda filed a motion for an Order to Show Cause (“OSC”) against Peter for failing to abide by the trial court’s Order, and the parties subsequently appeared before the trial court for the OSC hearing. In its Judgment of Division of Community Assets (“Judgment”) on August 6, 2013, the trial court again ordered Peter to pay the same monthly amount of retirement benefits to Brenda as specified in the Order. The Judgment included a larger sum of arrears and interest because of the non-payment of retirement benefits by Peter following the issuance of the Order.

[6] On September 5, 2013, Peter filed a notice of appeal.

II. JURISDICTION

[7] The Supreme Court of Guam has jurisdiction of “all appeals arising from judgments, final decrees, or final orders of the Superior Court.” 7 GCA § 3107(b) (2005). A final judgment is one that disposes of the case by determining the rights of the parties in an action. 7 GCA § 21101 (2005) (“A judgment is the final determination of the rights of the parties in an action or proceeding.”); *Duenas v. George & Matilda Kallingal, P.C.*, 2013 Guam 28 ¶ 15; *A.B. Won Pat Guam Int’l Airport Auth. v. Moylan*, 2004 Guam 1 ¶ 21.

[8] Pursuant to the Guam Rules of Appellate Procedure (“GRAP”), a notice of appeal in a civil case “must be filed with the Superior Court within thirty (30) days after the judgment or

order appealed from is entered.” Guam R. App. P. 4(a)(1); *see also* *Rojas v. Rojas*, 2007 Guam 13 ¶ 6; *Sky Enter. v. Kobayashi*, 2002 Guam 24 ¶ 8. Entry of a judgment or order is defined by GRAP 4(a)(7). If Guam Rules of Civil Procedure (“GRCP”) Rule 58(a)(1) does not require a separate document, then the judgment or order is entered for purposes of GRAP 4(a) when the judgment or order is entered in the civil docket under GRCP 79(a). Guam R. App. P. 4(a)(7)(A). If GRCP 58(a)(1) requires a separate document, then the judgment or order is entered for purposes of GRAP 4(a) when the judgment or order is entered in the civil docket under GRCP 79(a) and when the earlier of these events occurs: (i) the judgment or order is set forth on a separate document, or (ii) 150 days have run from the entry of the judgment or order in the civil docket. Guam R. App. P. 4(a)(7)(B). It is the docket entry that controls whether a judgment has been entered when no separate document is required or when a separate document is required but the court has failed to create one. In either case, the judgment is deemed entered 150 days after the docket entry. It should be borne in mind that GRCP 58 states how a judgment is entered but does not speak to whether a judgment entered in this fashion is a “final judgment” for purposes of appeal.

[9] The Order in this case was an appealable order if it constituted a final judgment, a final decree or a final order of the Superior Court, in that it disposed of the entire case. *See Duenas*, 2013 Guam 28 ¶ 15 (“[T]o appeal an order as a final judgment, the order must have the effect of disposing of the case and must be reduced to a final judgment.”). The trial court, on the basis of a stipulation of the parties, granted the divorce on the grounds of irreconcilable differences and issued a final decree of divorce, but reserved the division of community property and debt for further proceedings. Record on Appeal (“RA”), tab 26 at 1 (Final Decree of Divorce, July 23, 2009). Upon issuance of the final decree of divorce, the dissolution of the marriage was final

subject to the subsequent division of community property and debt. In the later issued Order, the trial court divided all community assets and debts and made a ruling on Brenda's entitlement to a portion of Peter's retirement benefits. RA, tab 109 at 4-20 (Finds. Fact & Concl. L., June 14, 2012). Upon issuance of the Order, all remaining rights of the parties in the divorce action had been conclusively determined. Thus, the Order essentially disposed of the entire case and was an appealable final judgment.

[10] The Order was entered in the civil docket on June 15, 2012. RA, tab 110 at 4-20 (Notice of Entry on Docket & Mailing, June 15, 2012). A separate document setting forth the judgment was required by GRCP 58(a)(1), but the court failed to create one. Therefore, under GRCP 58(b)(2)(B) and GRAP 4(a)(7), the judgment was deemed "entered" 150 days after the entry of the Order in the civil docket. The notice of appeal was required to be filed with the Superior Court within 30 days after that date. Guam R. App. P. 4(a)(1). Peter failed to file an appeal within this time frame, having filed his notice of appeal on September 5, 2013. RA, tab 136 (Notice of Appeal, Sept. 5, 2013).

[11] Peter argues that the Order is not the final order in the case and that the Judgment issued on August 6, 2013, after Brenda moved for the OSC, is the Judgment being appealed. Since his notice of appeal was filed on September 5, 2013, within 30 days of the entry of the Judgment, Peter submits that his appeal is timely. However, the parties appeared before the court at the OSC hearing almost a year after the issuance of the Order, and the trial court issued the Judgment only because Peter failed to pay Brenda as the Order dictated. RA, tab 129 at 2 (Judgment of Division of Cmty. Assets, Aug. 6, 2013). The Judgment did not contain any unresolved or additional issues relating to the division of community property or dissolution of the marriage, but merely restated Peter's obligations under the Order and once again ordered

Peter to comply with the Order. Thus, the Judgment was not the final appealable judgment, but an enforcement tool used to force Peter to comply with the Order. The final order occurred upon the trial court's issuance of the Order, which constituted the final determination of the rights of the parties in the action or proceeding.

III. CONCLUSION

[12] The Order entered in the civil docket on June 15, 2012 was the final order in this case. Since no separate judgment document was filed, the judgment is deemed entered when 150 days have run from the entry of the Order in the civil docket, pursuant to GRCP 58(b)(2)(B) and GRAP 4(a)(7). Under GRAP 4(a)(1), the parties had 30 days after the judgment deemed "entered" to appeal. Peter filed his notice of appeal on September 5, 2013, which was past the 30-day filing deadline. Accordingly, we **DISMISS** this appeal for a lack of jurisdiction.

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

F. PHILIP CARBULLIDO
Associate Justice

Original Signed: **Katherine A. Maraman**
By

KATHERINE A. MARAMAN
Associate Justice

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

ROBERT J. TORRES
Chief Justice