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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

ARTHUR PAGUIO,
Plaintiff-Appellee,

v.

MARTINA E. PAGUIO,
now known as **MARTINA E. TIMMERMAN-LEVANAS,**
Defendant-Appellant.

Supreme Court Case No.: CVA13-030
Superior Court Case No.: DM0816-06

OPINION

Cite as: 2014 Guam 36

Appeal from the Superior Court of Guam
Argued and submitted on April 29, 2014
Hagåtña, Guam

Appearing for Defendant-Appellant:
Peter C. Perez, *Esq.*
The Law Offices of Peter C. Perez
DNA Bldg.
238 Archbishop Flores St., Ste. 309
Hagåtña, GU 96910

Appearing for Plaintiff-Appellee:
Phillip Torres, *Esq.*
Torres Law Group
130 Aspinall Ave., Ste. 2A
Hagåtña, GU 96910

BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; ALBERTO E. TOLENTINO, Justice *Pro Tempore*.

CARBULLIDO, J.:

[1] Defendant-Appellant Martina E. Paguio, now known as Martina-Eva Timmermann-Levanas (“Martina”), appeals the trial court’s Findings of Fact and Conclusions of Law declining to hold Arthur Paguio (“Arthur”) in contempt for failure to pay a mortgage pursuant to an Interlocutory and Final Decree of Divorce incorporating a Settlement Agreement, and a Decision and Order requiring Arthur to continue making payments.

[2] We find that this court does not have jurisdiction to hear appeals of contempt orders and dismiss the appeal for lack of jurisdiction.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] Arthur and Martina entered into a Divorce and Property Settlement Agreement and Consent to Divorce (“Settlement Agreement”). The parties agreed as part of the Settlement Agreement that Martina would receive “Unit 411 Oka Towers Condominium, Tamuning.” Record on Appeal (“RA”), tab 52 at 2 (Settlement Agreement, July 2, 2007). The parties agreed that Arthur would assume the “BankPacific Mortgage, secured by Unit 411, Oka Towers and all debts and liabilities associate [sic] with Unit 411 until January 1, 2008.” *Id.* at 4.

[4] Subsequently, the trial court filed its Interlocutory Decree of Divorce and the Final Decree of Divorce, granting the divorce and incorporating the Settlement Agreement by reference into both decrees.

[5] Initially, Arthur made regular mortgage payments pursuant to the Settlement Agreement, but subsequently stopped. After the bank contacted Martina to inform her of past due mortgage

payments and that the bank would be foreclosing on Unit 411, Martina borrowed \$3,175.78 to cure the arrears.

[6] Martina requested an order to show cause, which the court signed and filed. In the order, Martina requested that Arthur show cause as to “[w]hy [Arthur] should not be held in contempt for violating [the trial court] Orders, specifically, the Interlocutory and Final Decrees of Divorce dated July 2, 2007 incorporating the [Settlement Agreement], all of which collectively require [Arthur] to assume the Bank Pacific mortgage [sic] for Oka Towers Unit 411 and to hold [Martina] harmless thereon.” RA, tab 65 at 1 (Order Show Cause, July 27, 2011).

[7] The trial court filed a Decision and Order requiring Arthur to continue assuming the remaining mortgage on Unit 411, but refused to hold him in contempt. RA, tab 72 (Dec. & Order, Oct. 28, 2011).

[8] Arthur failed to make payments pursuant to the court’s Decision and Order, and as a result the bank issued a Notice of Sale Under Mortgage. To avoid imminent foreclosure, Martina sold Unit 411.

[9] Martina requested a second Order to Show Cause, which the trial court signed and filed. First, the trial court instructed Arthur to show “[w]hy [he] should not be held in contempt for violating [its] Orders, specifically, the Interlocutory and Final Decrees of Divorce dated July 2, 2007 incorporating the [Settlement Agreement], and [its] Decision and Order filed October 28, 2011, all of which collectively require [Arthur] to assume the Bank Pacific mortgage [sic] for Oka Towers Unit 411 and to hold [Martina] harmless thereon.” RA, tab 81 at 1 (Second Order Show Cause, Feb. 11, 2013). Second, the trial court instructed Arthur to show why he “should not be ordered by the Court to pay [Martina’s] attorneys’ fees in bringing this action to enforce

said orders.” *Id.* Finally, the trial court ordered Arthur to show why “all amounts due and unpaid from [Arthur] for the BankPacific mortgage [sic] for Oka Towers Unit 411, and any and all fees, costs, and damages resulting from [Arthur’s] violations of [its] orders should not be reduced to judgment.” *Id.*

[10] The trial court held a hearing on the order to show cause. After the hearing, the court issued its Findings of Fact and Conclusions of Law. The court declined to hold Arthur in contempt for failure to pay the mortgage. The trial court determined that Martina failed to meet her burden to show that Arthur had the ability to comply with the order and that Arthur willfully failed to comply with the order. In addition, the trial court found that Arthur had successfully established his defense of inability to pay the mortgage by a preponderance of the evidence.

[11] Martina filed a timely Notice of Appeal. This court issued an order requiring the parties to address whether the Supreme Court has jurisdiction to hear appeals of contempt orders in light of 7 GCA § 25102(a).

II. STANDARD OF REVIEW

[12] We review issues involving statutory interpretation *de novo*. *Town House Dep’t Stores, Inc. v. Dep’t of Educ.*, 2012 Guam 25 ¶ 11 (citing *Mendiola v. Bell*, 2009 Guam 15 ¶ 11). Jurisdictional issues are reviewed *de novo*. *Id.* (citing *Core Tech Int’l Corp. v. Hanil Eng’g & Constr. Co., Ltd.*, 2010 Guam 13 ¶ 16).

III. JURISDICTION

[13] We initially must address the issue of whether this court has jurisdiction over this appeal. Specifically, we look at whether we have jurisdiction to hear appeals of contempt orders in light of 7 GCA § 25102(a). Pursuant to section 25102:

An appeal in a civil action or proceeding may be taken from the Superior court in the following cases:

(a) From a judgment, except (1) an interlocutory judgment other than as provided in subdivisions (h), (i) and (j); [and] (2) a judgment of contempt which is made final and conclusive by § 34106 of this Title (Contempts).

7 GCA § 25102(a) (2005) (alteration in original). Under section 34106, “[t]he judgment and orders of the court or judge, made in cases of contempt, are final and conclusive.” 7 GCA § 34106 (2005).

[14] In *Rodriguez v. Rodriguez*, we held that section 25102(a) granted this court jurisdiction over appeals of contempt orders. See 2003 Guam 8 ¶ 6. In *Rodriguez*, a wife entered into a divorce settlement with her husband which required him to pay spousal and child support. *Id.* ¶ 2. The husband failed to pay the amount of spousal support and child support required under the divorce settlement agreement, and the wife filed a motion for an order to show cause. *Id.* ¶¶ 3-4. The trial court granted the wife’s motion, and the husband appealed. *Id.* ¶ 5. On appeal, this court cited to 7 GCA § 25102(a) to find that “[a] judgment of contempt is . . . appealable.” *Id.* ¶ 6 (citing 7 GCA § 25102(a) (1993)).

[15] We now overrule *Rodriguez* to the extent that we find section 25102(a) denies this court jurisdiction over appeals of contempt orders. “Statutory interpretation always begins with the language of the statute.” *Guam Resorts, Inc. v. G.C. Corp.*, 2012 Guam 13 ¶ 7 (citing *Aguon v. Gutierrez*, 2002 Guam 14 ¶ 6). “[W]here a statute is clear on its face, the court shall not read further.” *Castino v. G.C. Corp.*, 2010 Guam 3 ¶ 58; see also *Guam Resorts, Inc.*, 2012 Guam 13 ¶ 7; *Core Tech Int’l*, 2010 Guam 13 ¶ 19.

[16] Here, we read section 25102(a) to provide two exceptions to the general rule that an appeal in a civil action may be taken from a judgment. That is, we read all the language after the word “except” in section 25102(a) to be included in the exception language of the statute. 7 GCA § 25102(a). Specifically, pursuant to section 25102(a), a judgment of contempt which is made final and conclusive by section 34106 is an exception to the general rule that judgments are appealable. Therefore, we find that section 25102 clearly does not grant this court jurisdiction to hear an appeal of a contempt order.

[17] Although a party may not appeal an order of contempt, that party may seek to challenge the contempt order through a *habeas* proceeding or writ of *certiorari*. Section 25102(a) derives from the former Guam Code of Civil Procedure section 936.1. *See* 7 GCA § 25102, SOURCE (2005). Section 936.1 was added to the Guam Code of Civil Procedure by Public Law 12-85, the Court Reorganization Act of 1974. *See* Pub. L. 12-85 (1974).

[18] Section 936.1 closely tracks the language of section 904.1 of the California Code of Civil Procedure. *Compare* Guam Code Civ. Proc. § 936.1, *with* Cal. Code Civ. Proc. § 904.1 (2008) (added by 1968 Cal. Stat. 812). Section 904.1(a) currently reads:

(a) An appeal, other than in a limited civil case, is to the court of appeal. An appeal, other than in a limited civil case, may be taken from any of the following:

(1) From a judgment, except (A) an interlocutory judgment, other than as provided in paragraphs (8), (9), and (11), or (B) a judgment of contempt that is made final and conclusive by Section 1222.

Cal. Civ. Proc. Code § 904.1.

[19] The statutes in the Guam Code of Civil Procedure were generally adopted from the California Code of Civil Procedure. *See Foreword* to Guam Code Civ. Proc. (1953) (noting that the California codes underwent subsequent changes from those originally adapted for Guam’s

Naval Government, but that many sections were still identical or comparable). However, section 936.1 was added in 1974, decades after the original code was adopted. Similarly, California Code of Civil Procedure section 904.1 was added in 1968, after the adoption of the Guam Code of Civil Procedure. *See* 1968 Cal. Stat. 812. The Guam Legislature has not stated that California Code of Civil Procedure section 904.1 is the source of Guam Code of Civil Procedure section 936.1. However, given the similarity in the language between the two statutes, it appears that the Guam Legislature may have added Guam Code of Civil Procedure section 936.1 to bring its code up to date with the California Code of Civil Procedure.

[20] Regardless of the origin of section 936.1, we find California cases interpreting California Code of Civil Procedure section 904.1 persuasive to the extent that section 904.1 is substantially similar to Guam Code of Civil Procedure section 936.1. *See Gibbs v. Holmes*, 2001 Guam 11 ¶ 15 (“[W]e do not hesitate to find guidance in the case law of those jurisdictions that have adopted . . . statutes that are substantially similar to Guam’s statutes.”).

[21] California courts have found that contempt orders are not appealable. *See, e.g., Moffat v. Moffat*, 612 P.2d 967, 973 (Cal. 1980) (“Judgments and orders made in contempt proceedings are final and conclusive; as such, they are nonappealable” under California Code of Civil Procedure section 904.1 and 1222); *People v. Gonzalez*, 910 P.2d 1366, 1373 (Cal. 1996) (“The contemner possesses no right of appeal, however, and review of the contempt judgment is by extraordinary writ.”); *In re Buckley*, 514 P.2d 1201, 1215 (Cal. 1973). Instead, California courts have found that contempt orders are reviewed by *habeas corpus* or by *certiorari*. *In re Buckley*, 514 P.2d at 1215; 8 Witkin, Cal. Proc. 5th, *Writs* § 35 (2008). If the punishment of imprisonment for contempt is imposed, *habeas corpus* gives both the immediate release of the defendant from

custody and a review of the contempt order. *Ex Parte De Silva*, 199 P.2d 6, 8 (Cal. 1948) (“Habeas [sic] corpus is an appropriate remedy to obtain the release of the petitioner from confinement pursuant to a conviction of contempt based on violation of the void order.”); *In re Coleman*, 526 P.2d 533, 536 n.2 (Cal. 1974) (“A writ of habeas corpus, as requested by the union, may be sought to challenge the lawfulness of restraint of a person . . . or conditions of imprisonment” (citations omitted)); 6 Witkin, Cal. Proc. 5th, *Prov Rem* § 409 (2008). *Certiorari* is permissible when the punishment is a fine. *See In re Coleman*, 526 P.2d at 536 n.2; 6 Witkin, Cal. Proc. 5th, *Prov Rem* § 409. Additionally, an order refusing to hold a party in contempt may be reviewed on *certiorari*. *See Taylor v. Superior Court*, 125 P.2d 1, 3 (Cal. 1942). Given the similarities between 7 GCA § 25102(a) and California Code of Civil Procedure section 904.1, we find that California case law is persuasive and this court may review contempt orders by *habeas corpus* or by *certiorari*.¹

V. CONCLUSION

[22] We overrule the precedent established in *Rodriguez* that this court has jurisdiction to hear an appeal of a contempt order and instead hold that we lack jurisdiction to hear an appeal of a contempt order pursuant to 7 GCA § 25102(a). However, this court may still review a

¹ Guam’s statutes on writs of *habeas corpus* are proscribed in 8 GCA § 135.10 *et seq.* Pursuant to 8 GCA § 135.10, “[e]very person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint.” 8 GCA § 135.10 (2005).

Guam’s statutes on writs of *certiorari* are proscribed in 7 GCA § 31101 *et seq.* 7 GCA § 31101 (“The writ of certiorari may be denominated the *writ of review*.”). Pursuant to 7 GCA § 31102, “[a] writ of review may be granted by any court, when an inferior tribunal, board, or officer, exercising judicial functions, has exceed (sic) the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy.” 7 GCA § 31102 (2005).

contempt order by *habeas corpus* or *certiorari*. Accordingly, this appeal is **DISMISSED** for lack of jurisdiction.

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

F. PHILIP CARBULLIDO
Associate Justice

Original Signed By:
Honorable Alberto E. Tolentino

ALBERTO E. TOLENTINO
Justice Pro Tempore

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

ROBERT J. TORRES
Chief Justice