IN THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA
APPELLATE DIVISION

STATE OF CHUUK,	)	APPEAL CASE NO. C2-2003
	)	CIVIL ACTION NO. 1992-1039
Appellant,	)	
	)	
vs.	)	
	)	
MENRY DAVIS,	)	
	)	
Appellee.	)	
_____	)	

Argued: August 17, 2004
Decided: March 21, 2005

BEFORE:

Hon. Andon L. Amaraich, Chief Justice, FSM Supreme Court
Hon. Dennis K. Yamase, Associate Justice, FSM Supreme Court
Hon. Judah C. Johnny, Temporary Justice, FSM Supreme Court*

*Chief Justice, Pohnpei Supreme Court, Kolonia, Pohnpei

APPEARANCES:

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COURT'S OPINION

ANDON L. AMARAICH, Chief Justice:

The State of Chuuk ("State") appeals a writ of garnishment issued in favor of Menry Davis ("Davis") and directed to the FSM national government to be applied against funds it holds for the State. The writ of garnishment was issued below on May 19, 2003, to enforce a judgment for damages and attorneys' fees awarded to Davis in 1996, compensating her for physical injuries suffered as a result of civil rights violations committed by the State and some of its police officers. This appeal followed.[1]

We affirm the writ's issuance. Our reasons follow.

I. BACKGROUND

The history of this case is long. On April 17, 1992, Menry Davis suffered a gunshot wound from a stray bullet shot by a Chuuk State police officer. The police had been

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[1] The notice of appeal filed on May 28, 2003 by the then Chuuk Attorney General was ostensibly on behalf of all the defendants below – Jim Kutta, Halverson Nimeisa, Resauo Martin, Eradio William, State of Chuuk, Francis Ruben, and Johnson Silander – all of whom were jointly and severally liable for all (State of Chuuk) or parts (all other defendants) of the Davis judgment. Since the writ of garnishment was directed solely against state funds, the other defendants were not real appellants in interest. Their only possible interest in this appeal was, and is, directly adverse to the State's. This is because if state funds satisfy the Davis judgment then the other defendants' liability is extinguished without any payment by them. It is thus to their advantage that the writ of garnishment against the State was issued and honored.

Furthermore, Davis sought the relief of garnishment only against the defendant State and the May 19, 2003 order in aid of judgment appealed from directly affected only the defendant State. Consequently, this appeal was briefed and argued as if the State was the sole appellant.

summoned to the scene of an altercation between a crowd of people and one police officer. Davis was not a member of that crowd, but was shot as an unarmed, otherwise uninvolved bystander. Her injuries required extensive medical and surgical attention, both in Chuuk and in Guam. Davis sued for compensatory and punitive damages stemming from her injuries.

The trial court entered judgment in her favor on August 9, 1996, in the amount of $130,000.00 for which the Defendant State was found jointly and severally liable. Davis v. Kutta, 7 FSM Intrm. 536, 549-50 (Chk. 1996). The judgment derived from plaintiff's claims of civil rights violations brought under 11 F.S.M.C. sec. 701 et. seq. Id. On December 5, 1997, the amount of $42,900.00 in attorneys' fees and $208.97 in costs was added to the amount due. Davis v. Kutta, 8 FSM Intrm. 218, 224 (Chk. 1997).

Over the course of approximately seven years following final judgment, the State made numerous filings, defended against several motions to show cause, and generally failed to comply with court orders requiring it to satisfy the judgment. On March 17, 2003, Davis filed a request for further proceedings, suggesting, *inter alia*, that the Court issue a writ of garnishment to the Federated States of Micronesia ("FSM") concerning funds held for the State in

order to satisfy the judgment. On May 19, 2003, the trial court issued an order in aid of judgment and a writ of garnishment to the FSM. Davis v. Kutta, 11 FSM Intrm. 545, 549 (Chk. 2003).

The trial court noted that when payment is delayed for more than six and a half years in a civil rights case, it "diminish[es] the constitutionally guaranteed right that the judgment is meant to vindicate." Id. The court, therefore, found that "6 F.S.M.C. 707,[2] which prohibits the garnishment of funds owed by the FSM to a state is unconstitutional as it applies to the judgment for a violation of civil rights" because it effectively eliminates "the only means of securing [for the plaintiff] a reasonably expeditious satisfaction of the judgment." Davis, 11 FSM Intrm. at 549 (footnote added).

On May 28, 2003, the State filed a notice of appeal. On January 16, 2004, the State filed a short brief of seven pages, but failed to file an appendix as required by Rule 30 of the FSM Rules of Appellate Procedure. On January 29, 2004, Davis filed a Motion to Strike Brief of Appellant and Dismiss Appeal for failure to file an appendix as required by Rule 30, and for failure to cite to the record as required by Rule 28(e) of the FSM Rules of Appellate Procedure.

[2] Congress amended Title 6 of the FSM Code to add section 707 following the decision in Louis v. Kutta, 8 FSM Intrm. 208 (Chk. 1997), where the court issued an order of garnishment directed to the national government to pay the judgment based on civil rights claims in that case.

On February 10, 2004, Davis filed her responsive brief. Davis also filed an appendix on the same day. The State never filed any written opposition to Davis' Motion to Strike Brief and Dismiss Appeal, nor did it in any way remedy its non-compliance with the FSM Rules of Appellate Procedure.

On March 19, 2004, Davis filed a satisfaction of the original judgment, including all attorneys' fees and costs to date. Davis reserved her right to seek additional attorneys' fees and costs pursuant to 11 F.S.M.C. 701 et. seq. for defending against this appeal.

II. APPELLEE'S MOTION TO DISMISS

Davis' Motion to Dismiss was based on two significant violations of the FSM Rules of Appellate Procedure committed by the State. The first alleged violation is that the State failed to abide by Rule 30.

Rule 30 requires an appellant to file "with appellant's brief an appendix to the brief which shall contain relevant and essential portions of the record." Rule 30 continues in subparts (1) through (8) to specify the exact documents that should be included in an appellant's appendix, including, *inter alia*, the trial court docket sheet, the notice of appeal, relevant portions of pleadings filed below, the judgment sought to be reviewed, and any portions of the transcript of proceedings below to be relied upon.

Rule 30(f) does provide for the possibility of hearing appeals without an appendix, but that is by special order of the Court only. "[A]n appendix is an essential element of an appellant's brief and the requirement that it be included is not waiveable by appellant." Nakamura v. Bank of Guam(I), 6 FSM Intrm. 224, 228 (App. 1993). Indeed, "[o]nly in limited circumstances at the court's discretion and by court order" may the appendix requirement be waived. Id.

An appellant's failure to satisfy the requirements of Rule 30 can result in the dismissal of the appeal. Indeed, in this Court, an appeal has been dismissed for, among other reasons, failure of a party "to file a transcript to be included in the record on appeal." Kephas v. Kosrae, 3 FSM Intrm. 248, 255 (App. 1987) (three month delay in serving appellant's brief and failure to file transcript or correct transcript and file it are grounds for dismissal when appeal is based on insufficient evidence to convict).

The second violation committed by the State is a failure to make *any* citation to the record in its brief. Rule 28(e) requires the parties in their briefs to cite to the record as included in the appendix or the record as a whole. We take such citations to the record seriously. As the Nakamura Court stated, "[e]qually as important as the provision of an appendix to both the appellate panel and appellee's counsel

is the proper referencing to the record in appellant's brief. Clear identification of parts of the record containing matter that forms the basis for appellant's argument is the responsibility of the brief writer, as the Court is not required to search the record for error." Nakamura, 6 FSM Intrm. at 228.

In this case, the State neither filed an appendix nor made a single citation to the record in its brief. The State in fact submitted nothing to the Court which even documented the trial court's decision under review. Such egregious omissions are evidence of negligence, and at oral argument counsel for the State was unable to give us any satisfactory explanation for its lapse.

These violations of procedural rules present problems with both the form and substance of appellate review. The assertions made by the State in its brief are utterly unsupported by proof of what the trial court did or did not do below. We should not be put in the position of having to take an appellant at its word.

As noted by the Nakamura Court when discussing a similar, if less egregious, violation of the appellate rules: "Among the factors which the court considers on a motion to dismiss under Rule 31(c) is the length of delay in filing the brief; evidence of prejudice to the appellee; nature of the

reason for appellant's failure to file on time; and extent of appellant's efforts in mitigation." Nakamura, 6 FSM Intrm. at 227. In this case, the State never properly completed its filing with the Court, having never filed an appendix nor provided any citations to the record in its brief. The State neither sought to cure the problems raised by appellee's Motion to Dismiss, nor did it file any sort of explanation with the Court. The State has failed in its responsibility to assist the Court in this case.

"The Court should not have to instruct attorneys that the Rules of Court mean what they say. An attorney practicing before this Court is expected to know the rules and abide by them." Nakamura, 6 FSM Intrm. at 229. The State has provided us with no reasonable explanation for its neglect of the clearly stated Rules of Appellate Procedure.[3]

However, Davis stated at oral argument that she had suffered no prejudice due to the State's neglect. Moreover, the appeal at hand relates primarily to legal issues that may be addressed using only the appendix filed by Davis. When an appellant fails to provide a necessary appendix and that appendix is provided by an appellee and the appellee prevails, the cost of producing the appendix may be taxed in

[3] The disregard shown this Court and its rules by appellant's counsel may merit further judicial review for possible disciplinary actions pursuant to the applicable rules of appellate procedure and attorney discipline.

the appellee's favor. Santos v. Bank of Hawaii, 9 FSM Intrm. 306, 308 n.2 (App. 2000). For these reasons alone, we deny Davis' Motion to Strike Brief of Appellant and Dismiss Appeal, and will consider this appeal on the merits.

III. ISSUES

As framed by the State, the issues are:

A. Whether money from the General Fund or special funds of the FSM national government can be withdrawn by the court process of writ of garnishment.

B. Whether properties of the sovereign or subdivision thereof can be taken by way of judicial enforcement of judgment.

IV. DISCUSSION

A. ISSUE A: Whether "by law" refers solely to Art. IX powers of Congress

The State first argues that the trial court's writ of garnishment is prohibited by a provision in the FSM Constitution. Specifically, Article XII, Section 1(a) states: "Public money raised or received by the national government shall be deposited in a General fund or special funds within the National Treasury. Money may not be withdrawn from the General Fund or special funds except by law."

The State asserts that "the only method . . . by which withdrawal of money from the General Fund or special funds of the National Government can be made is by law," Appellant's Br. at 2, and further, that "a legislative enactment, approved by the President, is what is meant by the phrase 'by law.'" Id. Appellants go on to say that the "law" mentioned refers only to those laws passed by Congress when exercising its Article IX powers. Id.

Though we fundamentally disagree with appellant that the Constitution's reference to "law" in this provision must necessarily refer only to laws passed by Congress exercising its Article IX powers, we need not address that assertion to resolve this question. Appellant's first issue fails for a simpler reason.

The writ of garnishment issued by the trial court directed payment of the judgment to come out of "Chuuk's current account with the FSM." Appx. 3 at 1. At oral argument, when questioned as to whether that language meant that the judgment would be paid out of funds which the FSM had already credited to the State of Chuuk, the State's counsel answered that it would.[4] The State's counsel further

[4] Appellant further argued that if the money had already been credited to the State of Chuuk, the issue then became one relating to the state constitution. Because the appellant failed to raise the state constitutional provision as an argument in its brief, we will not consider it now.

stated that the funds derived from tax dollars collected by the national government and then allocated back to the states.

During oral argument, counsel for Davis clarified that the funds garnished were held by the FSM for the State under authority granted by Title 54, Section 805 of the FSM Code. That statute directs the FSM national government to pay specific percentages of revenues "into the treasury of the State government to which the taxes are attributable for appropriation by the State legislature."[5] The funds garnished, therefore, came from tax revenues already credited to the State of Chuuk and held by the FSM pending disbursement.

Article XII, Section 1(a), which was invoked by the State of Chuuk as being prohibitive of the trial court's order, refers explicitly and exclusively to funds in the "National Treasury." The funds credited to the states in accordance with Title 54, Section 805, however, are those that are to be automatically paid into the "treasury of the State government" by statute and are simply held by the FSM national government. The funds garnished by the trial court's writ, then, represented a portion of the total amount

[5] This statute implements Article 9, Section 5 of the FSM Constitution, which states that "[n]ot less than 50% of the revenues shall be paid into the treasury of the state where collected."

initially withdrawn from the National Treasury according to law passed by Congress. Those funds had been credited to the State of Chuuk, and it was from that account that satisfaction of judgment was made. The State's argument that this money was not withdrawn from the National Treasury "by law," therefore, is incorrect. The money held for the State of Chuuk by the national government was withdrawn by law; the funds garnished by order of the trial court were withdrawn from the State's accounts alone.

The State neither briefed nor argued that part of the trial court's order holding 6 F.S.M.C. 707 unconstitutional as it applies to a judgment for violations of civil rights. Davis, therefore, correctly took the position that this issue was waived and did not address it. Appellee's Br. at 14. For these reasons, we do not consider this issue now.

B. ISSUE B: Whether the judiciary can enforce a civil rights judgment against a state through writ of garnishment

The State asserted in its brief and at oral argument that civil rights protections afforded the people by the Constitution may be interpreted by the Court, but that the Court is not empowered to enforce its judgments. At oral argument, the State urged the Court to "have faith" that the Chuuk State Legislature would take the court's decision

seriously and eventually appropriate funds to compensate Davis.

The State further stated in its brief that "the people at large, who instituted the guaranty, must decide the manner and the degree of protection such civil rights are to be given," and that the election of new members of the legislature who will pay the judgment is the best solution to the state's recalcitrance. Appellant's Br. at 6. In other words, the State argues that the will of the people – vested in the state legislature – should determine whether a litigant will receive satisfaction of a civil rights judgment issued by a national court interpreting a national law, which implements protections guaranteed by the national constitution. Appellant's argument plainly fails.

The FSM Congress, by enactment of the civil rights statute under which the original judgment was issued, has already decided the "manner and the degree of protection" to be given an FSM citizen's civil rights. Once the law is enacted, it becomes the role of the courts to interpret it. The trial court, in providing relief to Davis under the duly enacted civil rights statute, was interpreting the protection afforded FSM citizens by their Congress and allowing for its implementation.

The State asserts that "when judgment is rendered against a sovereign . . . the court's power [is] limited to the determination that there is a debt and the entry of judgment therefore." Appellant's Br. at 5. Contrary to the State's assertion, however, the courts are not given the responsibility of interpreting the law, but deprived of the authority to apply it. The judiciary's power to pass judgment goes hand in hand with its power to enforce those judgments as justice requires.

An earlier – and unchallenged – trial court decision in this case made clear that "the court has the power to issue an order to a state official to perform a purely ministerial act – the issuance of a check – in order to cause Chuuk to conform its conduct to the requirements of both the FSM Constitution and the national statute at issue." Davis v. Kutta, 10 FSM Intrm. 98, 99 (Chk. 2001).

As required by the FSM Constitution, "[i]n rendering a decision, a court shall consult and apply sources of the Federated States of Micronesia." FSM Const. art. IX, § 11. However, where appropriate, "[t]he FSM Supreme Court can and should consider decisions and reasoning of United States courts and other jurisdictions in arriving at its own decisions." Panuelo v. Amayo, 10 FSM Intrm. 558, 563 (App. 2002). Because there is very little law in the FSM governing

the enforcement of national civil rights judgments against the states, we will look to case law of the United States for guidance, as civil rights protections in the United States and FSM are similar. Estate of Mori v. Chuuk, 10 FSM Intrm. 123, 124 (Chk. 2001); Estate of Mori v. Chuuk, 10 FSM Intrm. 6, 13 (Chk. 2001); Bank of Guam v. O'Sonis, 9 FSM Intrm. 106, 113 (Chk. 1999); Plais v. Panuelo, 5 FSM Intrm. 179, 204 (Pon. 1991).

The United States federal appeals case of Gates v. Collier, 616 F.2d 1268 (5th Cir. 1980), is particularly instructive when considering the instant appeal. In Gates, the State of Mississippi had received a civil rights judgment against it for damages and attorneys' fees, which seven years later it had yet to pay. Finally enforcing its judgment, the Gates court found that "where a state expresses its unwillingness to comply with a valid judgment of a federal district court, the court may use *any* of the weapons generally at its disposal to ensure compliance." Id. at 1271 (emphasis added).

In Spallone v. City of Yonkers, 487 U.S. 1251, 109 S. Ct. 14, 101 L. Ed. 2d 964 (1988), the U.S. Supreme Court affirmed a trial court order imposing a fine of $1 million per day on the Yonkers city council for every day the city failed to pass legislation required by court order to rectify

civil rights violations. The court noted that "it is both less disruptive and more effective to order compliance with that order than to usurp completely the council's legislative authority and enact the legislation" needed to comply with the court's judgment. Id. at 1258, 109 S. Ct. at 18, 101 L. Ed. 2d at 906.

Likewise, the remedy applied by the trial court in this case was among the least drastic acts it could have taken under the circumstances. Indeed, after seven years and numerous disregarded court orders, we believe the trial court showed great restraint in its approach with the recalcitrant state. When issuing a writ of garnishment becomes necessary to satisfy a civil rights judgment, the judiciary is clearly empowered to do so. The fact that the garnished is a state within this federation (and the garnishee is the national government) does not change our analysis.

The FSM Constitution guarantees this nation's citizens certain protections, and Congress has passed laws allowing its citizens to sue for damages where those rights have been violated. It is not for one state to roll back those rights and privileges afforded by the national government, and we would be derelict in our duty to allow it to do so. The trial court's action in this case was appropriate and within the bounds of its authority. The judgment is affirmed.

Our holding today applies only to cases where satisfaction of a judgment for physical injuries resulting from civil rights violations has been denied a plaintiff for an unreasonably long period of time. We do not decide, and take no position on, whether plaintiffs whose damages from civil rights violations are strictly economic in nature may satisfy their judgments through similar writs of garnishment.

V. CONCLUSION

For the foregoing reasons, Appellee's Motion to Strike Brief and Dismiss Appeal is denied. The Writ of Garnishment issued by the trial court on May 19, 2003 is affirmed, Appellee Davis shall recover her attorneys' fees and costs for this appeal. The appellate clerk shall tax the costs. FSM App. R. 39(d). The matter is remanded to the trial court for determination of appellee's reasonable attorneys' fees on appeal.

DONE this 21st day of March, 2005.

/s/ Andon L. Amaraich
Andon L. Amaraich
Chief Justice

/s/ Dennis K. Yamase
Dennis K. Yamase
Associate Justice

/s/ Judah C. Johnny
Judah C. Johnny
Temporary Justice

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Entered this 21st day of March, 2005.

/s/ Kohsak M. Keller
Chief Clerk of Court