IN THE SUPREME COURT OF GUAM

A. B. WON PAT GUAM INTERNATIONAL AIRPORT AUTHORITY, by and through its BOARD OF DIRECTORS
Petitioner-Appellee,

v.

DOUGLAS B. MOYLAN, ATTORNEY GENERAL of GUAM
Respondent-Appellant.

OPINION

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Supreme Court Case No.: CVA03-013
Superior Court Case No.: SP0055-03

Appeal from the Superior Court of Guam
Submitted on a Motion September 5, 2003

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BEFORE: FRANCES M. TYDINGCO-GATEWOOD, Chief Justice (Acting)[1]; RICHARD H. BENSON, Justice *Pro Tempore*; JOHN A. MANGLONA, Justice *Pro Tempore*.

PER CURIAM:

[1] The Respondent-Appellant, the Attorney General ("AG") Douglas B. Moylan, appeals a Superior Court order granting a petition for peremptory writ of mandate. The Petitioner-Appellee, A. B. Won Pat Guam International Airport Authority's ("GIAA"), filed a motion to dismiss the instant case for lack of jurisdiction. We find that Rule 58 of the Guam Rules of Civil Procedure, which requires the entry of a final judgment in civil cases, applies in special proceedings in the Superior Court seeking writs of mandamus. We further find that the entry of a final judgment in a writ of mandate proceeding is a prerequisite to this court's exercise of appellate jurisdiction over decisions made in such proceedings. Because the lower court has not entered a final judgment in the instant case, we lack jurisdiction over this appeal. Accordingly, the appeal is dismissed without prejudice.

I.

[2] On March 7, 2003, GIAA filed a Petition for Writ of Mandate in the Superior Court, requesting that the court compel the AG to approve a contract for legal services entered into by GIAA and the law firm of Mair, Mair, Spade & Thompson. After briefing and a hearing, the lower court issued a Decision and Order granting GIAA's Petition for a Writ of Mandate on May 12, 2003. The May 12th Decision and Order was entered on the lower court's docket on June 6, 2003.

[3] The AG thereafter filed a Notice of Appeal on June 23, 2003, appealing the May 12, 2003 Decision and Order.

[4] On July 1, 2003, a Peremptory Writ of Mandate was filed in the lower court. A Notice of Entry was not issued for the Peremptory Writ.

[5] On September 5, 2003, GIAA filed the instant motion to dismiss the appeal, arguing that this court lacks jurisdiction. Specifically, GIAA argued that under Rule 4 of the Rules of Appellate Procedure

[1] Chief Justice F. Philip Carbullido recused himself from this case and as the next senior panel member, Associate Justice Frances M. Tydingco-Gatewood, was appointed Acting Chief Justice.

("GRAP 4"), as well as this court's case law, an appeal may only be taken from a final judgment entered on the lower court's docket. GIAA argued that while the Peremptory Writ of Mandate issued on July 1, 2003 is a final judgment in this case, it was not "entered on the docket" within the meaning of GRAP 4, and therefore this court lacks jurisdiction over the instant matter. The AG filed an opposition to the motion on September 8, 2003, arguing that it appeals from the May 12, 2003 Decision and Order which is a final appealable order that was entered on the docket on June 6, 2003. GIAA filed a reply on September 11, 2003, arguing that the May 12, 2003 Decision and Order is not a final judgment, and that because the peremptory writ has not been entered on the lower court's docket, it is not appealable at this time.

[6] After considering the matter, this court issued an order on November 21, 2003, informing the parties that it appeared, upon review of the local statutes governing writs of mandamus, that, like a civil action, a writ proceeding must be terminated by the entry of a final judgment set forth on a separate document. The court also set out the additional requirements of entry on the docket and notice of the entry. In accordance with this finding, the court directed the AG to file a supplemental statement of jurisdiction attaching a final judgment entered by the Superior Court, as well as a notice of entry indicating that the judgment was entered on the docket; or to appear and show cause as to why the appeal should not be dismissed for lack of jurisdiction.

[7] On December 3, 2003, the AG filed a supplemental statement of jurisdiction, attaching a copy of the lower court's Peremptory writ of Mandate filed on July 1, 2003. The AG argued that the peremptory writ issued in this case was the equivalent of a "final judgment," and, therefore, the lack of a final judgment was not fatal to the instant appeal. The court thereafter directed GIAA to file a response to the AG's arguments. GIAA filed their response, as directed, and maintained its earlier position that even assuming the AG's argument is correct that the peremptory writ was an appealable document, this court nonetheless lacks jurisdiction because the peremptory writ was not entered on the lower court's docket as required under GRAP 4.

[8] The issue of whether a final judgment is a jurisdictional prerequisite to appealing a peremptory writ of mandate is one of first impression, which we herein address.

II.

A. Requirements for Appellate Jurisdiction.

[9] Pursuant to Title 7 GCA § 3107(b), this court has jurisdiction over "appeals arising from judgments, final decrees, or final orders of the Superior Court . . . ." Title 7 GCA § 3107(b) (1994). While 7 GCA § 3107(b) confers jurisdiction over "final orders," such jurisdiction must be viewed in light of Title 7 GCA §§3108(a) and (b), which "additionally require, between them, either a final judgment or the satisfaction of criteria justifying interlocutory consideration." *Merchant v. Nanyo*, 1997 Guam 16, ¶ 3; *see* Title 7 GCA § 3108(b) (1994). In other words, to appeal an order which has the effect of disposing of the case, the order must be reduced to a "final judgment," or must be an order which is subject to immediate appellate review "as provided by law," or in accordance with this court's discretionary jurisdiction over interlocutory appeals. *See* 7 GCA § 3108(b); *Merchant*, 1997 Guam 16 at ¶ 3.

[10] Furthermore, appellate jurisdiction is also limited by the "separate document rule." *Gill v. Seigel*, 2000 Guam 10, ¶ 6. Under the "separate document rule," an appeal may only be taken from a judgment which is set forth on a separate document as required under Rule 58 of the Guam Rules of Civil Procedure. *Id*. ("*In Merchant v. Nanyo Realty, Inc.*, 1997 Guam 16, ¶ 15, this court adopted strict adherence to the 'separate document rule' which interprets Rule 58 of the Guam Rules of Civil Procedure as requiring a formal, separate judgment prior to this court's ability to obtain jurisdiction on appeal."); *see also Merchant*, 1997 Guam 16 at ¶ 16 (dismissing the case for lack of jurisdiction because a judgment was not entered on a separate document).

[11] Additionally, appellate jurisdiction is dependent upon the filing of a timely notice of appeal. *Gill*, 2000 Guam 10 at ¶ 5 ("The filing of a timely notice of appeal to take an appeal as of right is an absolute requirement from which this court has no discretion to digress. . . . [A] timely notice of appeal is mandatory and jurisdictional.") (citation omitted). In accordance with Rules 3 and 4 of the Guam Rules of Appellate Procedure, "a timely notice of appeal from a civil action must be filed within thirty days from the date of entry of judgment or this court cannot obtain jurisdiction." *Gill*, 2000 Guam 10 at ¶ 5. A judgment is "entered," for purposes of appeal, upon the happening of two events: (1) the judgment is literally "entered" on the lower court's docket; and (2) notice is given to the parties that the judgment was entered. *See Sky Ent. v. Kobayashi*, 2002 Guam 24, ¶ 16 ("Rule 4(a) requires both entry and notice of entry to start the

time for an appeal."); *see* GRAP 4(a). This court lacks jurisdiction over an appeal which is filed prior to the "entry" of a judgment set forth on a separate document. *See Merchant*, 1997 Guam 16 at ¶ 16.

B. Application of Jurisdictional Rules in the Present Case.

[12] In its motion to dismiss, GIAA conceded that the Peremptory Writ, which was filed on July 1, 2003, is the equivalent of a final judgment. The AG originally argued that the Decision and Order filed on May 12, 2003 granting the petition for a Peremptory Writ is a final appealable order, and later changed its position arguing that the July 1, 2003 Peremptory Writ was the equivalent of a final judgment. We find that Rule 58 of the Guam Rules of Civil Procedure, which requires the entry of a final judgment in civil cases, applies in special proceedings for petitions for writs of mandate.

[13] Title 7 GCA § 31501 governs the procedure applicable in writ of mandate, review, and prohibition special proceedings, and provides:

> Except as otherwise provided in this Chapter, the provisions of Part 2 of this Title are applicable to and constitute the rules of practice in the proceedings mentioned in this Chapter.

Title 7 GCA § 31501 (1993).

[14] The Compiler's note to section 31501 clarifies that "Part 2 of this Title" referenced in section 31501 commences with Chapter 10 of Title 7 of the Guam Code Annotated, but that "the procedure referred to also includes the Guam Rules of Civil Procedure because those Rules have replaced much of th[e] . . . [rules in Part 2 of Title 7]." Thus, section 31501, interpreted in light of the adoption of the Rules of Civil Procedure, essentially provides that the Rules of Civil Procedure apply to writ of mandamus proceedings unless otherwise provided in the Chapter related to writ proceedings.

[15] Rule 58 of the Guam Rules of Civil Procedure governs the entry of judgment in civil cases. It provides in full:

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> **Entry of Judgment.**
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> Subject to the provisions of Rule 54(b)[2]: (1) upon a general verdict of a jury, or upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the court; (2) upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it. Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth. Entry of the judgment shall not be delayed for the taxing of costs. Attorneys shall submit forms of judgment except upon direction of the court.

Guam R. Civ. P. 58.

[16] We have found no provision in Title 7 GCA, Div. 3, Ch. 31, which "otherwise provides" that a judgment not be issued in writ proceedings. In fact, Title 7 GCA § 31212 appears to contemplate that a judgment in fact be issued in writ proceedings, and that such judgment precede the issuance of the writ. *See* Title 7 GCA § 31212 (1993) ("*If judgment be given for the applicant*, he may recover the damages which he has sustained, as may be determined by the court, together with costs; and for such damages and costs an execution may issue; and a peremptory mandate must also be awarded without delay.") (emphasis added); *see Palma v. U.S. Indus. Fasteners, Inc.*, 681 P.2d 893, 900 n.9 (stating that section 1095 of the California Civil Code, from which Title 7 GCA § 31212 was taken and mirrors, "requires that a judgment precede issuance of a writ of mandate"). Thus, in light of 7 GCA § 31501 which makes the Rules of Civil Procedure applicable in writ proceedings, GRCP 58 which requires the entry of a judgment in a civil case, and section 31212 which contemplates the issuance of a judgment in mandamus proceedings, we conclude that "a proceeding in which is sought a writ of mandate, like any other civil action, must be

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[2] Rule 54(b) provides:

> **Judgment Upon Multiple Claims or Involving Multiple Parties.** When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay, and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties, shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Guam R. Civ. P. 54(b).

terminated by a judgment. This judgment, if in favor of the plaintiff, should direct that the writ issue, and from such a judgment an appeal may be taken." *State ex rel. Amende v. City of Bremerton*, 205 P.2d 1212, 1214 (Wash. 1949) (finding that the rules pertaining to judgments are applicable in writ proceedings in light of the prior determination that "[p]ursuant to the statutes of th[e] state, an application for a writ of mandate 'has in it all the elements of a civil action'") (citation omitted).

[17] Considering Title 7 GCA § 31501, § 31212, and GRCP 58, we find that the lower court is in fact required to issue a judgment in this matter, and an appeal may only be taken from such final judgment set forth on a separate document. *See* 52 AMJUR.2d *Mandamus* § 480 ("Although the writ itself generally is not appealable, . . . an appeal lies from a judgment granting or denying a peremptory writ . . . and usually is deemed to be premature if there is no entry of a formal judgment.").[3]

[18] Moreover, requiring the entry of a final judgment in a special proceeding seeking a writ of mandamus is neither onerous nor burdensome to the lower court or the parties. Further, the application of such a bright-line requirement acts to give the parties to such proceedings conclusive notification that the case has ended and an appeal may thereafter be taken, thus clarifying any confusion prompted by the different procedures heretofore employed by the judges of the lower court, some of whom issue final judgments in writ proceedings, and others who do not.[4] *See Merchant*, 1997 Guam 16 at ¶ 14 ("A fundamental purpose of Rule 58 is the unambiguous demarcation of a judgment's finality. . . . The Rule should, and must be, mechanically applied in this and other cases to ensure that a determination addressed on appeal really is the trial court's final resolution, and to protect the litigants from uncertainty as to when a notice of appeal must be filed to be within the time permitted.").

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[3] We note that the AG originally argued that the May 12, 2003 Decision and Order granting the Peremptory Writ is a final appealable order. The AG relied on *Bitanga v. Superior Court*, 2000 Guam 5, as support for its position. In *Bitanga*, this court held that it had jurisdiction to review an order granting a petition for writ of *habeas corpus*. *Bitanga*, 2000 Guam 5 at ¶ 11. *Bitanga* is distinguishable in that it involved an appeal of an order granting a writ of *habeas corpus*. By statute, such orders are specifically made appealable in the absence of a final judgment. *See* Title 8 GCA § 135.74 (1993) ("An appeal may be taken to the Guam Supreme Court by the Attorney General from a final order of the Superior Court made upon the return of a writ of habeas corpus discharging a defendant after his conviction, in all criminal cases prosecuted in a court of record. . . .").

[4] The court takes judicial notice of its own court records. In the present matter, the lower court did not issue a final judgment directing the issuance of a writ. By contrast, in another matter presently before the court, *Pacific Rock Corp. v. Perez*, CVA03-010, the lower court issued a "Judgment" directing that a writ of mandamus shall issue. *See Pacific Rock Corp. v. Perez*, Sup. Ct. Case No. CVA03-010 (State. of Jxn, June 16, 2003).

[19] In this case, the lower court filed and entered a Decision and Order granting GIAA's Petition for a Writ of Mandamus, and issued a Peremptory Writ of Mandamus, neither of which, we hold, are the equivalent of a final judgment.

[20] An order granting a petition for mandamus relief may be characterized as "final" in the sense that it apparently disposes conclusively of the petitioners' request for relief. However, as stated earlier, this court has adopted the "separate document rule" in this jurisdiction, which states that an appeal may only be taken from a judgment entered on a separate document. Orders containing lengthy analysis with a conclusion directing the issuance of a peremptory writ are *not* appealable as final judgments. *See Merchant*, 1997 Guam 16, ¶¶ 3, 16 (finding that an order dismissing a case was not a final judgment); *see also Barber v. Whirlpool Corp.*, 34 F.3d 1268, 1274 (4th Cir. 1994) (interpreting Rule 58 of the Federal Rules of Civil Procedure, from which GRCP 58 was taken, as "require[ing] that a final judgment be set forth in a document separate from the opinion explaining the judgment"); *Clough v. Rush*, 959 F.2d 182, 185 (10th Cir. 1992) ("The order which the district court entered disposing of the motion for summary judgment does not meet Rule 58 requirements. In addition to being fifteen pages long, it contains detailed legal analysis and reasoning. Thus, it could not, standing alone, trigger the appeal process."); *Long v. Coast Resorts, Inc.*, 267 F.3d 918, 922 (9th Cir. 2001) ("Here, the 'order and judgment' entered on December 31, 1998 was not a final judgment because it did not constitute separate entry of judgment, but rather contained facts and legal analysis.").

[21] The AG argues that the Peremptory Writ is a final adjudication of the parties' rights with nothing left to be done, thus acting as a final judgment. We disagree and find that the Peremptory Writ filed on July 1, 2003 is not a final judgment. It has been recognized that "[a] peremptory writ of mandamus is regarded at common law as the final determination of the rights of the parties . . . ." *State ex rel. Amende*, 205 P.2d at 1214. Guam law similarly defines a judgment as "the final determination of the rights of the parties in an action or proceeding." Title 7 GCA § 21101 (1994). Here, the Peremptory Writ arguably meets this definition. However, under GRCP 58, a judgment must not only be final as so defined, but be set forth on a separate document. Here, the Writ was set forth on a separate document, however, it was not labeled as a "judgment" directing the issuance of the writ as contemplated under 7 GCA § 31212. We agree that labels do not necessarily control our jurisdiction. In fact, certain orders may suffice as a separate judgment,

even though not officially titled a "judgment." *See Clough v. Rush*, 959 F.2d 182, 185 (10th Cir. 1992).[5] However, we must emphasize that the lack of specificity that the document is in fact a judgment, labeled as such, "would detract from the evident purposes of the separate document requirement, namely, ensuring that the parties have clear notice of the entry of final judgments, thus allowing them to know with some certainty when an appeal must be noticed." *Kanematsu-Gosho, Ltd. v. M/T Messiniaki Aigli*, 805 F.2d 47, 49 (2d Cir. 1986) (stating the importance of preserving the purpose of the separate document requirement and that "[o]ne clear way to do this is to call a judgment a judgment."). As has been recognized by another court, "the usual procedure is for the court to enter its formal judgment awarding or denying the peremptory writ. Such final judgment is *usually separate and distinct* from the peremptory writ itself, because the peremptory writ is supposed to issue as a consequence of the judgment awarding it." *City of Bradenton v. State ex rel. Perry*, 160 So. 506, 508 (Fla. 1935) (emphasis added). The very existence of such procedure negates the implication that the two documents, the judgment and the writ, are one in the same. We therefore hesitate to dispense with such procedure on the ground of semantics.

[22] In light of the relevant local statutes governing the procedure in writ cases, as well as the policies supporting a bright-line rule governing appeals to this court, we herein adopt the procedure of issuing a judgment separate from the writ itself, and decline to create, in this very case, an exception which would act to dilute the rule. This is especially so in light of one important aspect of this case. The Peremptory Writ, issued on July 1, 2003, was not entered on the docket as contemplated under GRAP 4 because a Notice of Entry on Docket was not filed with regard to the Writ. Thus, even if we were to treat the Peremptory Writ as a separate judgment under GRCP 58, we nonetheless would lack jurisdiction over this appeal. Considering that jurisdiction would not otherwise lie, we deem it pointless to view the Peremptory Writ as a separate judgment under GRCP 58, and instead hold that in this case, as well as with future cases, "it is necessary to enter a formal judgment before the case may be reviewed by an appellate court; and . . . a formal judgment must be rendered as the basis for the peremptory writ before it can issue, and no appeal will lie from a writ as such." *See State ex rel. Amende*, 205 P.2d at 1214 (citation omitted).

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[5] Specifically, "orders containing neither a discussion of the court's reasoning nor any dispositive legal analysis can act as final judgments, [and thus satisfy Rule 58], if they are intended as the court's final directive and are properly entered on the docket." *Id*.

[23] The lower court failed to enter a formal judgment set forth on a separate document in this matter. Thus, this appeal is premature and must be dismissed for lack of jurisdiction. *See id*; *see also Merchant*, 1997 Guam 16 at ¶ 5 ("Given the absence of any judgment we cannot and will not exercise jurisdiction in this matter.").

III.

[24] In accordance with the foregoing, we hold that an appeal of the lower court's grant of a petition for a writ of mandamus must be taken from a final judgment entered on the lower court's docket. Because no final judgment has been entered in this matter, we lack jurisdiction over the appeal at this time. GIAA's motion to dismiss the appeal is hereby **GRANTED.** The appeal is dismissed without prejudice.

[25] In its December 12, 2003 response, GIAA requested sanctions in this matter. The issue of sanctions will be addressed in a separate order.