IN THE SUPREME COURT OF GUAM

ROBERT H. AMERAULT,
Plaintiff-Appellant,

vs.

INTELCOM SUPPORT SERVICES, INC., A PENNSYLVANIA CORPORATION, LIBERTY MUTUAL SERVICES COMPANY, A MASSACHUSETTS CORPORATION DBA LIBERTY MUTUAL GROUP, LIBERTY MUTUAL RISK SERVICES, A MASSACHUSETTS CORPORATION, AND DOES I THROUGH XX, AND BLACK CORPORATION, WHITE CORPORATION, AND BLUE CORPORATION, Defendants-Appellees.

Supreme Court Case No.: CVA03-007
Superior Court Case No.: CV0001-02

OPINION

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Appeal from the Superior Court of Guam
Argued and submitted on November 10, 2003
Hagåtña, Guam

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BEFORE: FRANCES M. TYDINGCO-GATEWOOD, Chief Justice (Acting);[1] JANET HEALY WEEKS and RICHARD H. BENSON, Justices *Pro Tempore.*

WEEKS, J.:

[1] Plaintiff-Appellant Robert H. Amerault ("Amerault") appeals the entry of judgment from the court below following the trial court's dismissal of his case for lack of subject matter jurisdiction pursuant to Guam Rule of Civil Procedure 12(b)(1) on a motion submitted by Defendant-Appellees Intelcom Support Services, Inc., ("Intelcom") and Liberty Mutual Insurance Company ("LMIC").[2] The trial court held that dismissal of Amerault's claims was required by the controlling precedent of the District Court of Guam's Appellate Division's decision in *Pasmore v. Republic of Nauru (Guam), Inc.*, Civ. No. CV94-00069A, 1995 WL 604378 (D. Guam App. Div. Sept. 19, 1995), regarding the exclusivity provision of Guam's worker's compensation law codified at Chapter 9 of Title 22 of the Guam Code Annotated. Title 22 GCA §§ 9101 *et seq.* We affirm the trial court's dismissal of Amerault's claims.

I.

[2] Amerault was injured on November 1, 1993 in the course of his employment with Intelcom. Following his injury, Amerault filed a claim with Guam's Worker's Compensation Commission ("WCC"). Intelcom began making payments to Amerault shortly after his injury through its worker's compensation insurance provider, LMIC, pending the issuance of a compensation order by the WCC. On February 26, 1996, although the substantive merits of Amerault's worker's compensation claim had not yet been heard, the WCC issued its first compensation order requiring Intelcom to continue providing medical treatment to Amerault. Intelcom did so through LMIC.

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[3] On September 19, 1996 a hearing was held before the WCC regarding Amerault's claim. Amerault

[1] Chief Justice F. Philip Carbullido recused himself from this matter and thus Associate Justice Frances Tydingco-Gatewood, as senior member of the panel, serves as Acting Chief Justice herein.

[2] Intelcom and LMIC will be referred to collectively as "Appellees" herein.

raised several issues regarding his difficulty in securing payment of his worker's compensation medical care benefits. On October 10, 1997 a second compensation order was issued by the WCC. The order addressed the medical care issues raised by Amerault and reiterated Intelcom's continued obligation to provide medical treatment to Amerault as prescribed by law. Amerault did not seek further administrative enforcement of this order pursuant to sections 9115, 9119, 9122 or 9128 of Title 22 of the Guam Code Annotated.

[4] On January 2, 2002 Amerault filed his complaint in the case at bar regarding Appellees' alleged failure to provide him with medical care as required by law. Amerault alleged three causes of action, those being breach of statutory duty, negligence and bad faith.

[5] Prior to filing his complaint in the present case, Amerault filed a virtually identical federal lawsuit in the United States District Court of Guam against the same two defendants, based on federal diversity jurisdiction. *Amerault v. Intelcom Support Serv., Inc.*, CV-99-00098 (D. Guam 1998). Thus the trial court there was charged with applying local law to the matter. Amerault's case was dismissed on two separate occasions by the federal court.[3] Amerault then filed the present case in the Superior Court of Guam.

[3] The federal court first dismissed Amerault's case on January 28, 2000 by granting a defense motion to dismiss similar to the motion granted by the trial court in the case at bar and holding that due to the exclusivity provision of the Guam's worker's compensation law it lacked subject matter jurisdiction. Appellee Intelcom Support Services, Inc.'s, Supplemental Excerpts of Record ("SER") 18 Exhibit 1 (*Amerault v. Intelcom Support Serv., Inc.*, CV-99-00098 (D. Guam 1998) (Order Granting Defendants' Motion to Dismiss (Jan. 28, 2000))). Amerault appealed the dismissal to the Ninth Circuit Court of Appeals and the appellate court, without reaching the substantive merits of Amerault's appeal, held that Amerault had not properly established diversity jurisdiction before the trial court. SER 18 Exhibit 2 (*Amerault v. Intelcom Support Serv., Inc.*, 00-15420 (Memorandum (9th Cir. Aug. 3, 2001))). The appellate court remanded the case to the trial court to allow Amerault an opportunity to file an amended complaint regarding the jurisdictional flaw. *Id.* (Memorandum at 5). The appellate court did not address the trial court's dismissal of the case on substantive grounds since it determined that "[b]ecause the district court could not properly exercise diversity jurisdiction over Amerault's action, it should not have reached the merits of Amerault's claims." *Id.* Appellee LMIC avers in its responsive brief before us that upon remand to the District Court of Guam, Amerault failed to cure the jurisdiction flaw identified by the appellate court and the trial court thereafter dismissed his case for lack of jurisdiction on Appellees' motion. While District Court of Guam records supporting such a contention were not provided to this court in the present appeal, such is irrelevant to the present issues before us and we consider it no further. Thus, regardless of what became of Amerault's claims upon remand to the federal trial court, we will consider persuasive the federal trial court's prior well-documented analysis of the worker's compensation exclusivity issue in granting the motion to dismiss. We further note that while the federal appellate court did not reach the substantive basis for the trial court's dismissal of Amerault's claims, in its remand order it commented that Amerault "should consider whether apparent exclusivity of the workers compensation scheme precludes any claim for relief." *Id.* (Memorandum at 5 n.3).

[6] On March 8, 2002 Appellees submitted their motion to dismiss Amerault's claims pursuant to Rule 12(b)(1) of the Guam Rules of Civil Procedure for lack of subject matter jurisdiction based on worker's compensation exclusivity.[4] The motion was later processed and filed by the court on April 2, 2002. The motion was very similar to that first granted by the federal trial court prior to the appellate court's holding regarding the diversity jurisdiction issue. Amerault opposed the motion below. Oral argument was heard on February 19, 2003. On March 28, 2003 the trial court issued its Decision and Order granting Appellees' motion to dismiss. A judgment dismissing the case was entered on the civil docket on April 16, 2003. Amerault filed his notice of appeal on April 28, 2003.

[7] This appeal is timely under Rule 4(a) of the Guam Rules of Appellate Procedure which requires that an appeal be taken in a civil case within thirty (30) days from the entry of judgment on the civil docket.

II.

[8] We have jurisdiction over this appeal from a final judgment pursuant to sections 3107 and 3108(a) of Title 7 of the Guam Code Annotated (1994). *Gibbs v. Holmes*, 2001 Guam 11, ¶ 9.

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III.

[9] A trial court's decision granting a motion to dismiss for lack of subject matter jurisdiction is

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[4] The exclusivity provision that is found within the worker's compensation law states, in part, that "[t]he liability of an employer prescribed in § 9104 shall be exclusive and in place of all other liability of such employer to the employee . . . or anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death." Title 22 GCA § 9106. Although not relevant in the present case, as discussed immediately below, it is generally accepted that when such exclusivity applies and a claimant establishes that the administrative remedies available under the law have been exhausted or a claimant shows that pursuing such administrative remedies would be futile, an exception to exclusivity is established and the claimant's case may therefore proceed at law. In apparent anticipation that Amerault would attempt to take advantage of this exception, Appellees also argued that the exception was not available to him in this case. However, Amerault did not attempt to invoke the exception, rather arguing that exclusivity does not apply to the claims he was pursuing at law and thus his case should be allowed to proceed. In this context, Amerault argues that since exclusivity does not apply to him, the administrative remedies available under the law also do not apply and therefore there was effectively nothing for him to exhaust. However, because we find herein that exclusivity applies to medical benefit claims such as Amerault's, in order to take advantage of the futility or exhaustion exception to exclusivity a party in Amerault's position must factually establish their eligibility for the exception. Because Amerault has made no attempt to do so, the futility or exhaustion exception is not available to him and we need consider it no further.

reviewed *de novo. Perez v. GHURA*, 2000 Guam 33, ¶ 9. Review of an interpretation of Guam's worker's compensation law is had *de novo. Gibbs*, 2001 Guam 11 at ¶ 12.

IV.

[10] The issue before us is whether the exclusivity provision of Guam's worker's compensation law bars tort claims at law arising out of an alleged failure to provide medical care as required by the law. *See* 22 GCA §§ 9106, 9108. Amerault argues that his claims are not barred by exclusivity and asks this court to reverse the trial court, thereby allowing his claims to proceed at law. Amerault argues that the District Court's decision in *Pasmore,* which bound the trial court but which is merely persuasive on this court, was wrongly decided and therefore should not be followed. Alternatively, Amerault argues that even if *Pasmore* was correct at the time it was decided, recent court decisions establish a modern trend away from the holding in *Pasmore* and support allowing his case to proceed at law. Amerault's arguments are unpersuasive.[5]

A. The *Pasmore* precedent

[11] Generally, decisions of the District Court of Guam's Appellate Division are binding on the Superior Court of Guam. *See Fajardo v. Liberty House Guam,* 2000 Guam 4, ¶ 17. Thus the trial court here correctly held that it was required to grant Appellees' motion to dismiss for lack of subject matter jurisdiction based on the controlling precedent of *Pasmore*. *See Pasmore,* 1995 WL 604378. However, as acknowledged by all parties, it is similarly settled that we are not so bound by *Pasmore*. *See Quenga,* 1997 Guam 6 at ¶ 13 n.4. As this court has stated, "[t]hough pre-existing precedent continues

[5] Amerault's breach of statutory duty, negligence and bad faith tort claims allegedly arise out of Appellees' failure to provide medical care as required by law. It is important to note at this juncture that Amerault's claims are not based on intentional wrongdoing or conduct "so extreme and outrageous as to exceed all bounds of decency," which courts interpreting a similar statutory scheme have held is required to allow an independent cause of action to proceed in the face of worker's compensation exclusivity. *Burlew v. American Mut. Ins. Co.*, 472 N.E. 2d 682, 685 (N.Y. 1984) (In interpreting a worker's compensation statute very similar to Guam's, the highest court in New York held that a claimant must allege this level of conduct in order to avoid operation of the exclusivity provision). Since no such claims are made by Amerault, the "extreme and outrageous" exception is not available to him in the present case. Our analysis will be confined to whether the *Pasmore* court correctly applied the exclusivity provision of the worker's compensation law to medical care claims such as Amerault's and, if so, whether recent developments in the law support a divergence by this court from the *Pasmore* precedent.

to operate until addressed by this Court, decisions of the federal courts are not controlling upon our construction of the law." *Sumitomo Const. Co. Ltd. v. Zhong Ye,* 1997 Guam 8 ¶ 6. "And while we will not disturb precedent that is 'well established in law and well reasoned', we clearly are within our authority to modify those interpretations previously addressed by federal courts." *Id.* (quoting *People of the Territory of Guam v. Dwayne S. Quenga*, CRA96-005, 7 n.4 (Sup. Ct. Guam, May 13, 1997)). Thus this court must only consider Appellate Division decisions as persuasive authority, although we note that the *Sumitomo* and *Quenga* courts elevated the weight of such "persuasive" status in stating that it would not deviate from such precedent if it was "well established in law and well reasoned," *Sumitomo*, 1997 Guam 8 at ¶ 6, or "unless reason supports such deviation," *Quenga,* 1997 Guam 6 at ¶ 13 n.4. Amerault argues that a modern trend exists in the law allowing claims such as his to proceed at law rather than being barred by worker's compensation exclusivity. Appellees argue that no such trend exists. In so doing, Appellees thoroughly distinguish the cases cited by Amerault. We agree with Appellees and find no modern trend in the law supporting a divergence from the continued application of worker's compensation exclusivity to claims such as Amerault's. Thus, in keeping with the approach articulated by this court in both *Quenga* and *Sumitomo*, because we find no sound reason to do so, and because we find that it is well reasoned and established in law, we do not disturb *Pasmore*.

B. *Pasmore* correctly held that worker's compensation exclusivity applies to medical care

[12] This court, in a recent consideration of the exclusivity provision of the worker's compensation law, has articulated the continued viability of the exclusivity provision, stating that "[i]f the employer has obtained the coverage prescribed by the statute then *the liability of the employer for compensation is exclusive and in place of all other liability* of such employer to the employee." *Villalon v. Hawaiian Rock Prods., Inc.*, 2001 Guam 5, ¶ 10 (emphasis added) (citing Title 22 GCA § 9106 (1996)). This court also stated in *Bondoc v. Worker's Comp. Comm'n*, 2000 Guam 6, ¶ 34:

> In *Frieze,* the plaintiff suffered an injury as a result of slipping on water that had collected on the stage on which she was performing. Claiming that she was an independent contractor, the plaintiff argued that she was entitled to compensation beyond that which the worker's compensation laws . . . provided. (Citation omitted.) The Superior Court disagreed. Citing Guam Government Code section 37002(i) [now codified as 22 GCA

> § 9103(i) (1996)], the court explicitly found that "any person who has entered into the employment of or works under contract of service ... with an employer" was a statutory employee whose relief was limited to only what the Act provided. (footnote omitted.) The court also stated that "*[t]he law is crystalline that under these sections, [plaintiff] is an employee for the purpose of worker's compensation and may not seek relief elsewhere . . . .*"

Bondoc v. Worker's Comp. Comm'n, 2000 Guam 6 at ¶ 34 (quoting *Frieze v. Sandcastle, Inc.*, CV0139-94, p. 4 (Sup. Ct. Guam, Aug. 1, 1994) (emphasis added))). Amerault argues, however, that the exclusivity provision does not apply to claims based on an employer's alleged failure to provide medical care.

[13] In *Pasmore*, the trial court held that exclusivity barred the employee's bad faith claim from proceeding at law. SER 18 Attachment A11-A31 (*Pasmore v. Republic of Nauru (Guam), Inc.*, CC314-88 (Sup. Ct. Guam, Aug. 23, 1989 (Decision and Order))). The District Court of Guam's Appellate Division affirmed the trial court, finding the trial court's decision regarding the application of exclusivity to the employee's bad faith claim regarding the non-payment of bills for medical care "legally sound" since exhaustion of administrative remedies was not shown by Pasmore. SER 18, p. A31 *Pasmore v. Republic of Nauru (Guam), Inc.*, Civ. No. CV94-00069A, 1995 WL 604378 at **3 (D. Guam App. Div. Sept. 19, 1995)). In this case, Amerault argues that *Pasmore* was incorrect in applying worker's compensation exclusivity to claims related to an employer's alleged failure to properly provide medical treatment as required by worker's compensation laws. In support of this, he argues that because the exclusivity provision specifically states that it applies to an employer's liability for "compensation," and because payments for medical care are not considered compensation under the worker's compensation statutory scheme, the exclusivity provision does not apply to claims related to such medical payments.

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[14] In determining the plain meaning of a statutory provision, we look to the meaning of the entire statutory scheme containing the provision for guidance. "In cases involving statutory construction, the plain language of a statute must be the starting point." *In re Request of Governor Camacho Relative to Interpretation and Application of Section 11 of Organic Act of Guam*, 2003 Guam 16, ¶ 17 (quoting *Aguon v. Gutierrez*, 2002 Guam 14, ¶ 6 (citations omitted)). "'[I]n determining legislative intent, a statute

should be read as a whole,' and therefore, we are to 'construe each section in conjunction with other sections.'" *Id.* (quoting *Sumitomo v. Gov't of Guam*, 2001 Guam 23, ¶ 17). Section 9103 of Title 22 of the Guam Code Annotated, entitled "Definitions," defines compensation in part as "the money allowance payable to an employee or to his dependents as provided for in this Title." Title 22 GCA § 9103(f). Section 9104, entitled "Coverage," states, "[c]ompensation shall be payable under this Title in case of disability or death of an employee . . . ." Title 22 GCA § 9104(a). Section 9105, entitled "Liability for Compensation," states in part that "[e]very employer shall be liable for and shall secure payment to his employees of the compensation payable under §§ 9108, 9109, and 9110." Title 22 GCA § 9105(a). Section 9108 addresses medical care, stating that "[t]he employer shall furnish such medical, surgical, and other attendance or treatment, nurse, hospital service, medicine, crutches, and apparatus for such period as the nature of the injury or the process of recovery may require." 22 GCA § 9108(a). Similarly, section 9109 addresses disability and section 9110 addresses death benefits. 22 GCA §§ 9109, 9110. Section 9106, entitled "Exclusiveness of Liability," states that "[t]he liability of an employer prescribed in § 9104 shall be exclusive and in place of all other liability of such employer to the employee." Title 22 GCA § 9106.

[15] We find that the plain meaning of exclusivity provision found in section 9106 is clear when considered within the entire statutory scheme. When coverage is provided under section 9104, an employer must pay compensation to an employee. 22 GCA § 9104(a). The very next section, 9105, requires that every employer must secure payment of the compensation payable under sections 9108, 9109 and 9110 for his employees. 22 GCA § 9105. This includes medical care, which is provided for by section 9108. 22 GCA § 9108. Based on these various sections, when read together, we find that the exclusive "liability of an employer" under section 9106 is for the coverage required by section 9105 when provided for by section 9104. We therefore find that the only rational interpretation of section 9105 is that *when coverage exists under section 9104* every employer is required to provide compensation for his employees for the medical care required by section 9108. Amerault's attempt to read medical care out of the term "compensation" is not consistent with the statutory scheme or the purpose of the WCL and thus is without merit. Furthermore, our interpretation is consistent with other court decisions considering similar issues

against the backdrop of similar statutory schemes.

[16] A prior decision of the District Court of Guam's Appellate Division noted that "in all material respects, the [New York and Guam] statutes are identical." *Shim v. Vert Construction Co.*, 1991 WL 255832 (D. Guam App. Div. Nov. 18, 1991). Subsequent to that case, Guam courts have considered courts of other states interpreting statutes similar to laws of Guam to be persuasive authority. Regarding Guam's worker's compensation laws, this court has confirmed that we "find guidance in the case law of those jurisdictions that have adopted worker's compensation statutes that are substantially similar to Guam's statutes." *Gibbs*, 2001 Guam 11 at ¶ 15. Similarly, Guam's worker's compensation laws are substantially similar to the federal Longshore and Harbor Workers' Compensation Act ("LHWCA") which itself was modeled after the New York statutory scheme regarding workers' compensation. *Spencer-Kellogg & Sons, Inc. v. Willard*, 190 F.2d 830, 832 n.1 (3rd Cir. 1951). Therefore, we consider case law interpreting provisions of the LHWCA that are similar to provisions of Guam's worker's compensation law similarly persuasive. *Gibbs*, 2001 Guam 11 at ¶ 15.

[17] Both Guam's worker's compensation law and the LHWCA define the term "compensation" as "the money allowance payable to an employee or to his dependents." Section 9103(f) of Title 22 GCA; Section 902(12) of Title 33 U.S.C. Although neither statutory scheme defines the term "benefits," courts interpreting the LHWCA have held that medical benefits are included in compensation for enforcement purposes. In *Lazarus v. Chevron USA, Inc.*, 958 F.2d 1297, 1300 (5th Cir. 1992), the court held that for the purposes of enforcement proceedings under the LHWCA, medical benefits were part of compensation. *Lazarus*, 958 F.2d at 1300. In so holding, the *Lazarus* court noted that the structure of the LHWCA supported such an interpretation; "Congress must have intended the term 'compensation' to encompass the provision of medical benefits." *Id*. Similarly, in interpreting the LHWCA, the Ninth Circuit Court of Appeals later cited to *Lazarus* in stating that "Congress did not intend to distinguish between medical and disability benefits for the purposes of the enforceability of awards." *Hunt v. Director O.W.C.P.*, 999 F.2d 419, 422 (9th Cir. 1993). Thus, when the enforcement of compensation awards is considered by courts under the LHWCA, such courts treat medical benefits, like disability benefits, as a

component of compensation. Guam's worker's compensation law similarly requires an employer to provide medical care to an employee for whom coverage exists. Thus, we adopt the conclusion reached by the above courts under a similar statutory scheme and hold that medical care is included in the compensation for which exclusive liability is provided by Section 9106 of the worker's compensation law.

IV.

[18] Accordingly, upon our *de novo* review of the trial court's decision below, we conclude that the trial court properly applied the case of *Pasmore v. Republic of Nauru (Guam), Inc.*, Civ. No. CV94-00069A, 1995 WL 604378 (D. Guam App. Div. Sept. 19, 1995). We therefore **AFFIRM.**