

IN THE SUPREME COURT OF GUAM

**ROBERT L.G. BENAVENTE, TRINI T. TORRES,
FRANK DUENAS CRUZ, PETER ANTHONY SAN NICOLAS,
JAMES THOMAS MCDONALD,**
Petitioners-Appellants,

vs.

**GERRY TAITANO, DIRECTOR,
GUAM ELECTION COMMISSION and
THE GUAM ELECTION COMMISSION,**
Respondents-Appellees.

Supreme Court Case No.: CVA06-015
Superior Court Case No.: SP0140-06

OPINION

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Emergency Motion for a Procedural Order Expediting a Schedule of
Briefing and Argument for an Appeal of Trial Court's Order Dismissing a
Petition and Granting Injunctive Relief
Filed November 3, 2006
Hagåtña, Guam

For Petitioners-Appellants:

Thomas J. Fisher, *Esq.*
Van de veld Shimizu Canto & Fisher
Suite 101, De La Corte Bldg.
167 East Marine Corps Dr.
Hagåtña, Guam 96910

For Respondents-Appellees:

Cesar Cabot, *Esq.*
Cabot Mantanona LLP
BankPacific Bldg., Second Fl.
825 S. Marine Corps Dr.
Tamuning, Guam 96913

BEFORE: F. PHILIP CARBULLIDO, Chief Justice; RICHARD H. BENSON, Justice *Pro Tempore*; J. BRADLEY KLEMM, Justice *Pro Tempore*.

CARBULLIDO, C.J.:

[1] Petitioners-Appellants Robert L.G. Benavente, Trini T. Torres, Frank Duenas Cruz, Peter Anthony San Nicolas and James Thomas McDonald, on November 3, 2006, sought injunctive relief pending this court’s resolution of their challenge to the 2006 Primary Election. More specifically, Petitioners-Appellants request that this court order the Guam Election Commission to cancel or otherwise postpone the General Election scheduled for November 7, 2006. They also seek expedited consideration of their appeal.

[2] For the reasons stated herein, the request for injunctive relief is denied, and the request for expedited treatment is granted.¹

I.

[3] Petitioners-Appellants Robert L.G. Benavente, Trini T. Torres, Frank Duenas Cruz, Peter Anthony San Nicolas, and James Thomas McDonald (collectively, “Petitioners”) challenged the results of the Primary Election conducted on September 2, 2006. They alleged constitutional violations, specifically, violations of the Fifth and Fourteenth Amendment rights of equal protection under the law and due process of law, and violations of the First Amendment rights of association and speech. Petitioners also alleged statutory violations under 3 GCA and the Organic Act of Guam. They filed a suit against Respondents-Appellees Gerry Taitano, Director of the Guam Election Commission and the Guam Election Commission in the Superior Court of Guam. After the

¹ This Opinion supersedes the Order issued on November 5, 2006.

Commission succeeded on its motion to dismiss, Petitioners appealed to this court. *See Benavente v. Taitano*, 2006 Guam 15. We reversed the case, instructing the trial court to vacate its Judgment of dismissal.

[4] On November 3, 2006, the trial court orally dismissed the underlying case. That same day, Petitioners appealed the dismissal² and filed the instant emergency motions. The Commission opposed.

II.

[5] This court has jurisdiction over an appeal from a final judgment. 48 U.S.C. § 1424-1(a)(2) (West, Westlaw through Pub. L. 109-414 (excluding Pub. L. 109-401) (approved Dec. 18, 2006)); 7 GCA § 3107(b) (2005).

III.

A. Emergency Motion for Temporary Injunction

1. Authority to issue temporary injunction

[6] We first consider Petitioners' request to "temporarily enjoin the regular general election scheduled for November 7[], 2006 by commanding the [Guam Election] Commission not to conduct the [] general election." *Benavente v. Taitano*, CVA06-015 (Emergency Mot. for Temp. Inj. at 1, 8 (Nov. 3, 2006)).

[7] We have previously recognized that a court has the authority to provide the relief available under Chapters 12 and 16 of Title 3 Guam Code Annotated. *Benavente*, 2006 Guam 15 ¶ 45. More specifically, 3 GCA § 12115 (2005) states in its entirety:

² The merits and final disposition of the appeal can be found at *Benavente v. Taitano* ("*Benavente II*"), 2006 Guam 16.

The Court shall continue in special session to hear and determine *all issues arising in contested elections*. After hearing the proofs and allegations of the parties and within ten (10) days after the submission thereof the Superior Court shall file its findings of fact and conclusions of law, and immediately thereafter shall announce judgment in the case, either *confirming or annulling and setting aside the election*. The judgment shall be entered immediately thereafter.

(Emphases added.)

[8] In addition, 3 GCA § 16504 (2005) authorizes a court to provide the following remedy:

The Court shall hear the contest in a summary manner, and at the hearing, the Court shall cause the evidence to be reduced to writing, and shall within eight (8) days following the return, give judgment, fully stating all the findings of fact and of law. The judgment *shall decide what candidate was nominated or elected*, as the case may be, in the matter presented by the petition, and a certified copy of the judgment shall forthwith be served on the Commission, which shall place the name of the candidate declared to be nominated on the ballot for the forthcoming general election, and the judgment shall be conclusive of the right of the candidate so declared to be nominated.

(Emphasis added.)

[9] In other words, in a Primary Election challenge, a court has the authority to either confirm or annul and set aside the contested election, or decide what candidate was nominated. *Benavente*, 2006 Guam 15 ¶ 45.

[10] In the instant case, Petitioners seek relief in the form of an injunction which would, in effect, cancel or postpone the impending General Election, scheduled to be held on November 7, 2006. However, courts have recognized, and we agree, that where an election law provides a remedy to those who seek to bring forth an election challenge, such remedy shall constitute the *exclusive* remedy available to such challengers. *See Funakoshi v. King*, 651 P.2d 912, 914 (Haw. 1982) (concluding that the statute did not provide for the remedy sought by the plaintiff, which was an order placing all Democratic Party nominees in the primary election for the office of State

Representative on the ballot in the General Election, because “the legislature clearly intended that the only remedy that could be given for primary election irregularities was the statutory remedy of having this Court decide which candidate was nominated or elected.”); *Ex parte Vines*, 456 So. 2d 26, 28 (Ala. 1984) (“Election challenges are, but for few exceptions not present here, strictly statutory proceedings, and courts are expressly limited in the relief to be awarded in election contests.”); *In re Wilbourn*, 590 So. 2d 1381, 1386 (Miss.1991) (stating that other than limited exceptions, “the statutory provision is the exclusive remedy for deciding election contest issues, of which the legality of votes cast is one”); *State ex rel. Shriver v. Hayes*, 76 N.E.2d 869, 872 (Ohio 1947) (“The exclusive remedy for the correction of errors, fraud or mistakes occurring in elections is the statutory remedy of contest.”); *Johnson v. Boundary School Dist. No. 101*, 63 P.3d 457, 461 (Idaho 2003) (“In light of a statutory procedure for the contest of an election, the remedy provided by the statute is exclusive as to matters that might be contested.”); *Evans v. Charles*, 56 S.E.2d 880, 884 (W.Va. 1949) (stating that the “remedy thus provided [by the elections statutes] is an election contest and that remedy is not only adequate but it is also exclusive of any other course of procedure.”); *Warren v. State ex rel. Barnes*, 141 So. 901, 902 (Miss. 1932) (stating that in challenging election results, “[t]he statute provides the exclusive remedy for the trial of such an issue.”).

[11] Furthermore, “[i]t is well established that the courts have no jurisdiction to enjoin the holding of an election. . . . The general rule is subject to exception, where injunctive relief is necessary to prevent a waste of public funds by the holding of an election under an unconstitutional election statute or any election called in violation of the constitution.” *Jordan v. Officer*, 508 N.E.2d 1077, 1079 (Ill. App. Ct. 1987) (citations omitted); *see also Kerby v. Griffin*, 62 P.2d 1131, 1135 (Ariz.

1936) (holding with regard to an initiative petition, that it “would result in an absurdity” if a court of equity “could not intervene to prevent an election being held, when every constitutional and statutory provision setting forth what must be done before holding a legal election had been violated”).

[12] We therefore hold that where, as here, an election contest is brought pursuant to Guam’s Elections Law, such provisions provide the exclusive remedy or remedies available to persons who properly bring forth an election contest. We further hold that in the context of a challenge brought forth through Guam’s Elections Law, the remedy requested by Petitioners, that is, the issuance of an injunction ordering the Guam Election Commission to not conduct the November 7, 2006 General Election, is not an available remedy. Consequently, the Emergency Motion for Temporary Injunction must be denied.

2. Rule 12(a) injunction

[13] Petitioners herein have filed their emergency motion for injunctive relief pursuant to Rule 12 of the Guam Rules of Appellate Procedure (GRAP). However, we find that even if the injunctive relief requested was a remedy available to the Petitioners under the Elections Law, the Petitioners fail to meet the requirements for injunctive relief pending appeal.

[14] GRAP 12(a) states, in relevant part:

Application for a stay of the judgment or order of the Superior Court pending appeal, or for approval of a supersedeas bond, *or for an order* suspending, modifying, restoring or *granting an injunction during the pendency of an appeal* must ordinarily be made in the first instance in the Superior Court. A motion for such relief may be made to the Chief Justice of the Supreme Court, but the motion shall show that application to the Superior Court for the relief sought is not practicable, or that the Superior Court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the Superior Court for its action.

Guam R. App. P. 12(a) (emphases added.)

[15] In granting an injunction pending appeal, the court considers: (1) a threat of irreparable harm; (2) a likelihood of success on appeal; (3) whether the injunction will substantially injure other parties in the proceeding; and (4) where the public interest lies. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (discussing factors for issuance of a stay under Rule 8(a) of the Federal Rules of Appellate Procedure, which parallels GRAP 12(a)); *see also Andreiu v. Ashcroft*, 253 F.3d 477, 486-87 (9th Cir. 2001) (observing that courts have reviewed motions for stay and motions for preliminary injunction under the same standard).

[16] Relief under GRAP 12(a) is an exercise of judicial discretion. *Virginia Ry. Co. v. United States*, 272 U.S. 658, 672-73 (1926) (stating that “[i]t is an exercise of judicial discretion” to grant a stay even where irreparable injury may result). Moreover, a preliminary injunction is a drastic remedy, *Bloodgood v. Garraghty*, 783 F.2d 470, 475 (4th Cir. 1986), which serves to maintain the *status quo ante litem*. *Feller v. Brock*, 802 F.2d 722, 727 (4th Cir. 1986).

[17] In due consideration of the interest of the public, we find that the timing of a motion to enjoin an upcoming election is a factor which may properly be considered in deciding whether to grant injunctive relief. *See, e.g. Purcell v. Gonzalez*, Nos. 06A375 (06-532) and 06A379 (06-533), 2006 WL 2988365, *2-3 (U.S. Oct. 20, 2006); *Reynolds v. Sims*, 377 U.S. 533, 585 (1964) (recognizing that “where an impending election is imminent and a State’s election machinery is already in progress, equitable considerations might justify a court in withholding the granting of immediately effective relief”); *Banks v. Bd. of Educ.*, 659 F. Supp. 394, 401-02 (C.D. Ill.1987) (holding motion to enjoin upcoming election inappropriate based on untimeliness); *Dobson v. Mayor and City Council of Baltimore City*, 330 F. Supp. 1290, 1301-02 (D. Md. 1971) (same).

[18] Moreover, “[t]he decision to enjoin an impending election is so serious that the Supreme Court has allowed elections to go forward even in the face of an undisputed constitutional violation.” *Southwest Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 918 (9th Cir. 2003). The concern for the public’s interest, we believe, is further underscored by the undisputed fact that vast public resources have already been invested in reliance that the General Election will proceed on the date scheduled by law – November 7, 2006. In addition, we assume that absentee votes have already been cast, and in that sense, the election has already begun. We believe that such “investments of time, money, and the exercise of citizenship rights cannot be returned.” *Id.* at 919. We therefore hold that under the facts of this case and the procedural posture by which it is brought to this court, the public’s interest lies in the denial of any form of injunctive relief pursuant to GRAP 12(a).

[19] Furthermore, a motion for relief under GRAP 12(a) may be denied where the movant fails to establish that he or she will suffer irreparable harm if injunctive relief is not granted. *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975) (“The traditional standard for granting a preliminary injunction requires the plaintiff to show that in the absence of its issuance he will suffer irreparable injury. . . .”); *see also A.B. Won Pat Guam Int’l Airport Auth. v. Moylan*, Supreme Court Case No. CVA03-013 (Order, July 25, 2003), *reh’g denied* (July 31, 2003). In fact, where a moving party fails to establish the condition of irreparable harm, it is unnecessary to consider the likelihood of successful appeal on the merits. *Id.*

[20] In this case, the remedy available and requested by Petitioners in the underlying contest was to annul or void the Primary Election results. The Petitioners have filed the instant appeal, as allowed by the Elections Law, contending that the trial court erred in failing to grant the Petitioners such requested relief. Should this court agree with the Petitioner and similarly find that the trial

court committed reversible error, then the relief, under that scenario, would be to remand to the trial court with instructions to order that the Primary Election results be rendered null and void. In other words, because a statutory remedy is provided for in Guam's Elections Law in the form of annulling or voiding the Primary Election results, Petitioners may be granted the relief requested by their underlying petition and thus they do not suffer a risk of irreparable injury. *See, e.g., Bernard v. Local 100, Transp. Workers Union*, 873 F. Supp. 824, 827-28 (S.D.N.Y. 1995) (finding that a statutory remedy precludes a finding of irreparable harm because another election can be held).

[21] Accordingly, and again assuming that the requested injunctive relief is a remedy available to Petitioners under the Elections Law, Petitioners have failed to meet the requirements for a GRAP 12(a) injunction pending appeal.

B. Emergency Motion to Expedite Appeal

[22] We next consider Petitioners' emergency request for an expedited disposition of the instant appeal. In particular, Petitioners move this court to shorten the briefing and oral argument schedule in this matter so that this court may, in an expedited fashion, consider and resolve all issues properly before us on appeal.

[23] Upon review of an election contest or challenge filed pursuant to Title 3 of the Guam Code Annotated, this court has authority to suspend the Rules of Appellate Procedure and thereby expedite the appellate process. *Benavente v. Taitano*, 2006 Guam 15 ¶9; 3 GCA § 12121 (2005) ("Any party aggrieved by the judgment of the Superior Court of Guam may appeal therefrom to the Supreme Court of Guam, as in other cases of appeal thereto from the Superior Court, except on an expedited basis."); Guam R. App. P. 2 ("In the interest of justice or of expediting a decision or for other good cause shown, the Supreme Court may . . . suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion. . . .").

[24] Pursuant to the above authorities, Petitioners request for an expedited briefing and oral argument schedule is hereby granted. Upon entry of Judgment in the Superior Court case, the Clerk of this court shall issue an expedited briefing and oral argument schedule.

IV.

[25] The Petitioners' emergency motion for an injunction ordering the Guam Election Commission to cancel or otherwise postpone the November 7, 2006 General Election is hereby **DENIED**. The Petitioners' emergency motion for an expedited appeal is hereby **GRANTED**.