IN THE SUPREME COURT OF GUAM

HUGH L. SULE, DDS,
Plaintiff-Appellant,

v.

GUAM BOARD OF EXAMINERS FOR DENTISTRY, and STANLEY Y. YASUHIRO, ROGER J. KANESHIRO, MARIA C.V. ALEGRIA, JANICE P. MALILAY, and ANTONIO M. RAPADAS,
Defendants-Appellees.

OPINION

Cite as: 2011 Guam 5

Supreme Court Case No.: CVA10-007
Superior Court Case No.: CV1785-09

Appeal from the Superior Court of Guam
Argued and submitted on September 7, 2010
Dededo, Guam

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BEFORE: ROBERT J. TORRES, Chief Justice[1]; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

TORRES, C.J.:

[1] This appeal arises out of a complaint filed in the trial court by Plaintiff-Appellant Hugh L. Sule, DDS ("Dr. Sule") seeking declaratory and injunctive relief against the Defendants-Appellees Guam Board of Examiners for Dentistry, Stanley Y. Yasuhiro, Roger J. Kaneshiro, Maria C.V. Alegria, Janice P. Malilay, and Antonio M. Rapadas (collectively the "Dental Board") stemming from a disciplinary action taken against him by the Dental Board during meetings that took place in violation of the Open Government Law of Guam. In addition, Dr. Sule brought a claim pursuant to the Enforcement of Proper Government Spending Act, also related to the improperly-noticed Dental Board meetings. Dr. Sule applied *ex parte* for a temporary restraining order (TRO). After a hearing on the matter, the trial court denied Dr. Sule's application for a TRO. Dr. Sule timely appealed. For the reasons set forth below, we affirm the trial court's denial of the TRO, but vacate the portion of the decision and order ruling on the merits of the Enforcement of Proper Government Spending Act claim.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] The Dental Board brought a disciplinary case against Dr. Sule, a licensed and practicing dentist in Guam. The alleged violation forming the basis of the disciplinary case was Dr. Sule's failure to disclose in his 2003 and 2005 applications for renewal of his dentistry license the fact

[1] The signatures in this opinion reflect the titles of the justices at the time this matter was considered and determined.

that there was a pending malpractice case against him.[2] The Dental Board did not properly notice, in accordance with the Open Government Law, the November 19, 2008[3] regular meeting of the Dental Board wherein the Dental Board approved the specification of charges against Dr. Sule – Disciplinary Proceeding Case No. 08-01. As a consequence, on June 26, 2009, the hearing officer in the matter filed a Findings of Fact & Conclusions of Law dismissing the specification of charges voted on at the November 19, 2008 meeting, citing as his sole basis for dismissal that charges were a legal nullity because of the Dental Board's failure to give proper notice of that meeting in violation of the Open Government Law.

[3] Several months later, at its September 16, 2009 regular board meeting, the Dental Board voted to bring the same charges against Dr. Sule that had previously been dismissed for the notice violation – this time under Disciplinary Proceeding Case No. 09-01. The October 28, 2009 date set for the initial hearing on the charges had to be rescheduled to November 4, 2009, again because of a failure to properly notice the hearing in accordance with the Open Government Law. Dr. Sule alleges that at the November 4, 2009 hearing, the Dental Board set a scheduling order for the disciplinary case and voted to remove the hearing officer from deciding pending motions. In a letter to Dr. Sule's counsel dated December 1, 2009, counsel for the Dental Board advised that there was a problem with the November 4, 2009 initial hearing relative to the Open Government Law and that this hearing would be reset for December 9, 2009. Counsel for the Dental Board stated that at the December 9, 2009 hearing, the Dental Board

[2] The factual details underlying the disciplinary charges filed against Dr. Sule by the Dental Board are not relevant to the issue before the court, as the decision and order on review is the denial of a TRO.

[3] The record is inconsistent as to the date on which this meeting took place – referred to in some places as November 19, 2007 (*see* Excerpts of Record ("ER") at 1 (Find. Fact & Concl. L., Dec. 9, 2009); *see also* Appellees' Br. at 8 (July 29, 2010)), and in other places as November 19, 2008 (*see* ER at 2 (Find. Fact & Concl. L.). Based on how the events evolved, however, it appears that the 2008 date is the correct reference.

would "begin again from scratch" and issue a new scheduling order. Supplemental Excerpts of Record ("SER") at 79 (Ltr. from Atty. Highsmith to Atty. Moylan, Dec. 1, 2009).

[4] In the intervening time between the November 4, 2009 hearing and the rescheduled December 9, 2009 hearing, Dr. Sule brought suit in the trial court against the Dental Board and its individual members seeking to enjoin them from taking any further disciplinary action against him, citing as authority for the suit the provisions of the Open Government Law. Dr. Sule also sought to have the Dental Board repay monies he alleges were illegally spent, pursuant to the Enforcement of Proper Government Spending Act.

[5] Dr. Sule filed a Memorandum and Supplemental Memorandum Supporting Temporary Restraining Order & Permanent Injunction on November 27, 2009 and December 7, 2009, respectively. On December 16, 2009, Dr. Sule and the Dental Board entered into a stipulation and order wherein the Dental Board agreed to not meet on any matters pertaining to Dr. Sule's disciplinary case until Dr. Sule's request for injunction was heard by the trial court. The Dental Board filed its opposition to Dr. Sule's motion for restraining order on December 31, 2009, and within the same document, filed a motion to dismiss Dr. Sule's complaint pursuant to Rule 12(b)(6) of the Guam Rules of Civil Procedure (GRCP).

[6] On January 5, 2010, Dr. Sule filed his reply to the Dental Board's opposition to his motion for restraining order, as well as his opposition to the Dental Board's motion to dismiss. The trial court heard arguments on the application for restraining order on January 8, 2010, and issued its decision and order on March 22, 2010.[4] In its decision and order, the trial court found that Dr. Sule had not met the first criterion required for obtaining a TRO or preliminary

[4] Although neither party ordered transcripts of the trial court hearing, it appears that argument was confined to the motion for restraining order and did not address the Dental Board's motion to dismiss.

injunction, which is a factual showing of irreparable harm. Finding that Dr. Sule's failure to meet this requirement negated the need for the court to discuss the second criterion, which is his likelihood of success on the merits, the trial court denied Dr. Sule's *ex parte* application for a TRO. The Decision and Order was entered on the docket, and Dr. Sule timely appealed.

II. JURISDICTION

[7] This court has jurisdiction to hear appeals of orders other than final judgments pursuant to 7 GCA § 3108(b) if "provided by law." 7 GCA § 3108(b) (2005); *see also HongKong & Shanghai Banking Corp. v. Kallingal,* 2005 Guam 13 ¶ 16; *Guam Imaging Consultants, Inc. v. Guam Mem'l Hosp. Auth.,* 2004 Guam 15 ¶ 14. "An order denominated a TRO that possesses the qualities of a preliminary injunction is a reviewable interlocutory order." *Serv. Emp. Int'l Union v. Nat'l Union of Healthcare Workers*, 598 F.3d 1061, 1067 (9th Cir. 2010). An appeal from a decision granting or denying a preliminary injunction[5] is permitted under 7 GCA § 25102(f) (2005); *Guam Imaging Consultants, Inc.*, 2004 Guam 15 ¶ 14.

III. STANDARD OF REVIEW

[8] "Even though the overall review [of denial of preliminary injunction] is for an abuse of discretion, [t]he district court's interpretation of the underlying legal principles . . . is subject to

[5] The Guam Rules of Civil Procedure ("GRCP") allow the trial court to issue a TRO without written or oral notice to the adverse party or that party's attorney if it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition. Guam R. Civ. P. 65(b). Unlike a TRO, which is limited in duration to no more than ten days absent an extension, a preliminary injunction is intended to maintain the status quo until a hearing on the merits may be had and may not issue without notice to the adverse party. GRCP 65(a). In this case, the Dental Board was provided notice. Moreover, the parties had an opportunity to file written argument and present oral argument on the matter. Although Dr. Sule originally filed an *ex parte* application for a TRO, the trial court held a hearing on the application before issuing its order. The Ninth Circuit, applying the Federal Rules of Civil Procedure on which the GRCP are based, has found that when the trial court affords the parties the opportunity to file written materials and present oral argument, the matter is "akin to a preliminary injunction" and reviewable as such, even though it is termed a TRO. *See Bennett v. Medtronic*, Inc., 285 F. 3d 801, 804 (9th Cir. 2002).

de novo review and a district court abuses its discretion when it makes an error of law." *Sananap v. Cyfred, Ltd.*, 2009 Guam 13 ¶ 13 (internal citations and quotations omitted). A reviewing court will reverse the trial court's denial of a preliminary injunction where the trial court abused its discretion or based its decision on an erroneous legal standard or on clearly erroneous findings of fact. *Id.; see also San Miguel v. Dep't. of Pub. Works*, 2008 Guam 3 ¶ 18; *Church of Christ in Hollywood v. Super. Ct.*, 121 Cal. Rptr. 2d 810, 815 (A trial court abuses its discretion only when it has exceeded the bounds of reason or contravened the uncontradicted evidence.).

IV. ANALYSIS

A. Denial of Temporary Restraining Order

[9] In order to grant a preliminary injunction, the moving party must show both irreparable injury and likelihood of success on the merits. *The Hongkong and Shanghai Banking Corp., Ltd., v. Kallingal*, 2005 Guam 13 ¶ 18. The trial court's decision to grant or deny a preliminary injunction is reviewed for abuse of discretion. *Sananap*, 2009 Guam 13 ¶ 13.

> However, if a [trial] court's ruling rests solely on a premise as to the applicable rule of law, and the facts are established *or of no controlling relevance*[6], the court may undertake plenary review of [the] issues rather than limit its review in a case of this kind to abuse of discretion.

Carlson v. Guam Telephone Auth., 2002 Guam 15 ¶ 15 n.3, (quoting *Gorbach v. Reno*, 219 F.3d 1087, 1091 (9th Cir. 2000)) (internal quotations marks omitted) (emphasis added).

[10] In this case, the trial court analyzed and construed the relevant statutes – namely 5 GCA § 8115 and 10 GCA § 12436 – and, based on its legal interpretation, ruled that Dr. Sule could not

[6] Although the parties seem to bicker in their briefs about subtle differences in the facts, these differences are "of no controlling relevance" to this court's review. *Sananap*, 2009 Guam 13 ¶ 13.

show irreparable harm. Appellant's Excerpts of Record ("ER") at 16-23 (Dec. & Order, Mar. 22, 2010). Indeed, there are few if any relevant facts that are in dispute, and the trial court's ruling was largely one of law. The only truly relevant fact necessary for the trial court to rule on the application for the temporary restraining order was whether the Dental Board's initial hearing on Disciplinary Case No. 09-01 was adequately noticed. The Dental Board never contested the fact that it failed to give proper notice according to the Open Government Law, and all actions taken at that improperly-noticed meeting were voided by the Dental Board. *See* ER at 19-20 (Dec. & Order); SER at 79 (Ltr. from Atty. Highsmith to Atty. Moylan).

[11] This fact being uncontested, the trial court's analysis was, for the most part, legal construction. Accordingly, this court will review the trial court's analysis *de novo*. *See Sananap*, 2009 Guam 13 ¶ 13 (in reviewing the grant or denial of a preliminary injunction, the trial court's interpretation of the underlying legal principles is subject to *de novo* review and the trial court abuses its discretion when it makes an error of law). Furthermore, even though the trial court analyzed the pertinent statutes with a focus on whether Dr. Sule can show irreparable harm, the focus is more aptly placed on the second prong of the test – i.e., Dr. Sule's likelihood of success on the merits.

[12] A determination of irreparable harm typically focuses on categories of harm that do not easily lend themselves to monetary compensation. *See, e.g., DVD Copy Control Ass'n, Inc. v. Kaleidescope, Inc.*, 97 Cal. Rptr. 3d 856, 876 (Cal. Ct. App. 2009) ("In other words, to say that the harm is irreparable is simply another way of saying that pecuniary compensation would not afford adequate relief or that it would be extremely difficult to ascertain the amount that would

afford adequate relief.").[7] Although the trial court called its analysis one of irreparable harm, in reality, it functioned more as an analysis of the "likelihood of success" factor. Because a movant for preliminary injunction would have to establish both factors, the trial court's decision can be upheld if this court finds based on its *de novo* interpretation of the relevant statutes that Dr. Sule has not shown that he would likely succeed on the merits.

[13] One California court has explained the scope of appellate review of a trial court's decision not to grant a restraining order in this way:

> [W]hen a trial court *denies* an application for a restraining order, "it implicitly determines that the plaintiffs have failed to satisfy either or both of the 'interim harm' and 'likelihood of prevailing on the merits' factors. On [appellate review], the question becomes whether the trial court abused its discretion in ruling on *both* factors. Even if the appellate court finds that the trial court abused its discretion as to one of the factors, it nevertheless may affirm the trial court's order if it finds no abuse of discretion as to the other."

Church of Christ in Hollywood, 121 Cal. Rptr. 2d at 815 (citation omitted) (emphasis in original). As discussed below, we find that Dr. Sule failed to show a likelihood of success on the merits, even though the trial court declined to consider this prong of the analysis, focusing only on the irreparable harm factor. *See, e.g.*, *Hart v. Hart*, 2008 Guam 11 ¶ 15 (ruling that this court may affirm the trial court's reasoning under any theory supported by the record); *see also Chen v. Bd. of Trs. of Guam Mem'l Hosp. Auth.*, 1986 WL 68521 at *3 (D. Guam App. Div. 1986) ("This panel can uphold that decision by the trial court on any ground which finds support in the record.").

[7] Some factors that would more appropriately have been part of an "irreparable harm" discussion relative to Dr. Sule's claim would be potential loss of business or incalculable reputation damage as a result of either the Open Government Law violation or the alleged "executive session" violation. As far as is revealed in the record, absent a transcript of the hearing on the TRO application, Dr. Sule did not put such facts before the trial court.

1. Voiding of the Dental Board's Actions

[14] "The scope of discretion always resides in the particular law being applied; action that transgresses the confines of the applicable principles of law is outside the scope of discretion and we call such action an abuse of discretion." *Choice-In-Educ. League v. Los Angeles Unified School Dist.*, 21 Cal. Rptr. 2d 303, 307 (Cal. App. 1993) (citation omitted). One of the laws the trial court was asked to apply when determining whether to grant the TRO was the Open Government Law of Guam. Found at 5 GCA § 8101 *et seq.*, the law was put in place to carry out the policy that public agencies serving the people of Guam shall not form public policy or decisions in secret, and that the people must "[remain] informed so that they may retain control over the instruments they have created." 5 GCA § 8102 (2005). "Public agency" as used in the Open Government Law includes the Dental Board. *See* 5 GCA § 8104 (2005); 10 GCA § 12430 (2005). Regular meetings of the Dental Board require public notice five working days prior to the scheduled meeting, and another public notice at least forty-eight hours prior to the start of the meeting. *See* 5 GCA § 8107(a) (2005). When a violation of the Open Government Law has occurred or is threatened, any interested person may bring an action in the Superior Court for the purpose of stopping or preventing a violation or a threatened violation. 5 GCA § 8115(a), (c) (2005). Any action taken at a meeting held in violation of the Open Government Law "shall be void and of no effect." 5 GCA § 8114 (2005).

[15] The Dental Board voted upon the specification of charges against Dr. Sule (Disciplinary Case No. 08-01) during its November 19, 2008 regular meeting – a meeting the Dental Board conceded was not noticed in compliance with the Open Government Law. ER at 1-2 (Finds. Fact & Concl. L., Dec. 9, 2009). By stipulation of the Dental Board, the hearing officer entered in his

findings of fact and conclusions of law that the November 19, 2008 meeting violated the notice provisions of the Open Government Law. *Id.* The actions of the Dental Board were voided and the charges dismissed without prejudice. *Id.* at 3.

[16] The Dental Board later voted to recharge Dr. Sule for the alleged infractions that formed the basis of Disciplinary Case No. 08-01. This vote took place at a regular meeting of the Dental Board on September 16, 2009 – Disciplinary Case No. 09-01. *See* Appellees' Br. at 8 (July 29, 2010). Dr. Sule does not claim any notice problem with this meeting.[8] The first hearing on Disciplinary Case No. 09-01 was held on November 4, 2009, and after a notice violation for that meeting was brought to light, the Dental Board took it upon itself to void the actions taken at that meeting (such as the issuance of a scheduling order) and planned to "start again from scratch" at a future hearing that complied with the Open Government Law notice provisions. *See* ER at 19-20 (Dec. & Order); SER at 79 (Ltr. from Atty. Highsmith to Atty. Moylan). The trial court did not need to make a factual finding as to whether any meetings occurred in violation of the Open Government Law – this was conceded by the Dental Board. Apart from the November 19, 2008 and November 4, 2009 meetings, no other improperly-noticed meetings concerning action against Dr. Sule took place, and all actions taken at the improper meetings were voided. There was similarly nothing left for the trial court to void, and the only questions remaining were whether Dr. Sule could establish, based on the relevant law, that he would suffer irreparable harm without the issuance of a TRO and that he would likely succeed on the merits of his underlying complaint.

[8] As will be discussed below, Dr. Sule does ask that actions taken at this meeting be voided based on his "executive session" argument and not on any violation of the Open Government Law.

[17] Dr. Sule disagrees with the trial court's ruling that it could not render the relief sought pursuant to the Open Government Law because that claim had been rendered moot by the Dental Board voiding the actions it took at the November 4, 2009 meeting. Dr. Sule believes the Open Government Law gives him a statutory right to injunctive relief once a violation is found, and the trial court has a duty to retain jurisdiction over the Dental Board in this matter for a period of one year with reports twice annually regarding the Dental Board's compliance with the law.[9] The procedural posture of the case before the trial court is significant in understanding the relief that could be granted. The case was not before the trial court on an application for permanent injunction, or on the GRCP 12(b)(6) motion to dismiss, or on the other relief sought in any of the substantive claims in the complaint. It was merely before the trial court on Dr. Sule's application for a TRO and preliminary injunction. Thus, at that juncture, the trial court was simply

[9] The pertinent section of the Open Government Law that Dr. Sule argues supports his application for a TRO is 5 GCA § 8115, which reads:

> § 8115. Penalties and Court Jurisdiction.
>
> (a) The Superior Court shall have jurisdiction to enforce any action brought as a result of a violation of this Chapter. Any person shall have standing to sue for the enforcement of this Chapter.
>
> . . .
>
> (c) Any interested persons may commence an action by mandamus, injunction or declaratory relief for the purpose of stepping or preventing a violation or threatened violation of this Chapter by members of an agency or to determine the applicability of this Chapter to actions or threatened future action of an agency.
>
> (d) In each suit brought under the Chapter, the court shall file a written Findings of Fact and Conclusions of Law and final judgment which shall also be recorded in the minutes of body involved.
>
> (e) The court shall permanently enjoin any person adjudged to have violated this Chapter from further violating this Chapter. Each separate action taken which is not in accordance with this Chapter shall constitute a separate violation.
>
> (f) The final judgment or decree in each suit shall state that the court shall retain jurisdiction over the parties and subject matter for a period of one (1) year from date of entry and the court shall order the defendants to report in writing twice annually to the court of their compliance with this Chapter.

5 GCA § 8115 (2005).

determining whether the preliminary and temporary protection of a TRO or preliminary injunction was necessary in order to protect Dr. Sule from irreparable injury in the intervening time before the trial court could address the merits of the underlying complaint. This court has expressed that "[t]he purpose of a preliminary injunction is always to prevent irreparable injury so as to preserve the court's ability to render a meaningful decision on the merits." *Tumon Partners, LLC v. Shin*, 2008 Guam 15 ¶ 22 (internal citation and quotation omitted).

[18] When analyzing 5 GCA § 8115 to determine whether Dr. Sule would likely succeed on the merits of his Open Government Law claim, we evaluate the claim itself and the relief sought. In his complaint, Dr. Sule sought to have the actions of the Dental Board during its November 4, 2009 hearing voided, pursuant to 5 GCA § 8114. *See* SER at 9 (Verified Compl.). The trial court found that it could not grant the relief requested because the relief had already been granted by the Dental Board; thus, this claim was moot. *See* ER at 20 (Dec. & Order). This finding does not amount to an abuse of discretion by the trial court. A trial court may be found to have abused its discretion only when it has exceeded the bounds of reason or contravened the uncontradicted evidence. *Church of Christ in Hollywood*, 121 Cal. Rptr. 2d at 815. A finding of inability to render relief that has already happened neither exceeds the bounds of reason nor contravenes the evidence in this case.

[19] Counsel for the Dental Board represented that all action taken by the Dental Board at the November 4 meeting were declared null and void, and this decision occurred prior to the matter being brought before the trial court. Generally, a cause of action is moot where the precise relief sought has already been achieved by the time of trial. *See, e.g.*, *Donald v. Café Royale, Inc.*, 266 Cal. Rptr. 804, 814 (Cal. Ct. App. 1990). Dr. Sule argues that this case falls within the exception

to the mootness doctrine in that the violation is capable of repetition yet evading review. Appellant's Br. at 15 (June 29 2010); *see also Guam Election Comm'n v. Responsible Choices for All Adults*, 2007 Guam 20 ¶¶ 31-32. However, the protections of the Open Government Law and the jurisdiction it gives to the trial court in the event there is any future violation by the Dental Board makes such violation quite capable of review. Therefore, Dr. Sule has not shown that he would likely succeed on the merits of this claim, which supports the trial court's decision to deny Dr. Sule's application for a TRO. Moreover, as one court has expressed, "[a]n injunction cannot issue in a vacuum based on the proponents' fear about something that may happen in the future." *Nelson v. Pearson Ford Co.*, 112 Cal. Rptr. 3d 607, 637 (Cal. App. 2010) (citations and quotations omitted).

[20] Because the phase of the litigation that is now on review only deals with the denial of the TRO, and does not encompass remaining causes of action in the complaint or the GRCP 12(b)(6) motion to dismiss, Dr. Sule may still litigate the remaining substantive issues before the trial court, including whether he is entitled to the additional protections of the Open Government Law – namely the permanent injunction, one-year jurisdiction of the trial court, and biannual reporting of compliance.

2. Criteria for Granting a TRO

[21] It is well established that to obtain a TRO or preliminary injunction, Dr. Sule must show both irreparable harm and likelihood of success on the merits. *The Hongkong and Shanghai Banking Corp.*, 2005 Guam 13 ¶ 18. Dr. Sule's preferred reading of 5 GCA § 8115(e) is that an injunction shall automatically issue to any agency once it is shown that the agency had violated the Open Government Law, and that this mandate replaces the ordinary inquiry applied to the

determination of whether to grant a TRO. This reading, however, is not supported by the plain text of 5 GCA § 8115(e). *See generally Guam Greyhound, Inc. v. Brizill*, 2008 Guam 13 ¶ 29.

[22] The language in 5 GCA § 8115(e) that the trial court "shall permanently enjoin" refers to a person who is "adjudged" to have violated the Open Government Law, which implies that there must have been an adjudication of that fact. 5 GCA § 8115(e) (2005). Plainly, a fact is "adjudged" when it is ruled upon judicially. *See* Black's Law Dictionary, 9th Ed. (2009). This language follows subsection (d), which directs the court to file a Findings of Fact and Conclusions of Law along with a final judgment. 5 GCA § 8115(d) (2005). The mandatory "shall" relative to the permanent injunction comes into effect after adjudication is had and after the filing of a Findings of Fact and Conclusions of Law along with a final judgment. The text of the statute does not illustrate, as Dr. Sule suggests, that the legislature intended the language in section 8115(e) to supplant the well established factors for granting a TRO. The application for TRO and the adjudication of the substantive claims involving the violation of the Open Government Law are two separate procedural events.

[23] The provisions of 5 GCA § 8115 deal with standing to commence an action (subsection (a)), the types of actions that may be brought (subsection (c)), and the consequences of being adjudged to have violated the law (subsections (d), (e), and (f)). 5 GCA § 8115. They do not address the pursuit of a TRO; therefore, there is no apparent legislative mandate preempting the ordinary civil procedure rules and applicable case law on the issue. The trial court, as such, did not err in applying the "irreparable harm and likelihood of success on the merits" inquiry to Dr. Sule's application for TRO.

3. Construction of 10 GCA § 12436

[24] Guam law governing the practice of dentistry is found at 10 GCA § 12400 *et seq.*, and is known as the Dental Practice Act. An additional argument Dr. Sule raises in his complaint, and in his two memoranda supporting his application for TRO, is that the Dental Board violated and continues to violate the Dental Practice Act by not holding disciplinary proceedings in executive session, which he claims is required by 10 GCA § 12436(b). SER at 5-6 (Verified Compl.); SER at 26-27 (Mem. Supporting TRO & Permanent Inj., Nov. 27, 2009); SER at 47 (Supp. Mem. Supporting TRO & Permanent Inj., Dec. 7, 2009). In its Decision and Order on Dr. Sule's application for TRO, the trial court analyzed whether this section of the Dental Practice Act supported a finding that Dr. Sule would suffer irreparable harm without the issuance of a TRO.

[25] The Dental Practice Act provides that:

> The Board shall comply with the requirements of the Open Government Law (P.L. 13-35) but when the Board is preparing examinations, grading examinations, discussing the eligibility of a person to be licensed to practice dentistry *or reviewing evidence obtained at a hearing for disciplinary action* the Board shall be in executive session and may exclude the press and members of the public.

10 GCA § 12436(b) (emphasis added). Dr. Sule contends that the language "or reviewing evidence obtained at a hearing for disciplinary action" means that all the meetings or hearings dealing with disciplinary action must take place in executive session, and that the continued practice of the Dental Board to address his disciplinary matter in open meetings rather than executive session constitutes irreparable harm.[10] *See* SER at 5-6 (Verified Compl.); SER at 26-

[10] Dr. Sule also prays in his complaint that the trial court void the specification of charges voted upon by the Dental Board in an open meeting on September 16, 2009 (Disciplinary Case No. 09-01) because the vote was not taken in executive session. This relief, however, is part of the underlying complaint and not the application for TRO presently on review.

27 (Mem. Supporting TRO & Permanent Injunction); SER at 47 (Supp. Mem. Supporting TRO & Permanent Injunction); Appellant's Br. at 18-23.

[26] The trial court applied the "plain meaning" rule of statutory construction and concluded that the foregoing statute does not require the Dental Board to conduct disciplinary hearings in closed executive session. ER at 21 (Dec. & Order). The trial court went on to state that, as a consequence, Dr. Sule can show no legal basis for claiming irreparable harm. *Id.* Implied in this finding is a determination that Dr. Sule also cannot show a likelihood of success on the merits, although the trial court did not actually reach this step of the TRO analysis. Nevertheless, this court can affirm the trial court, if the record supports this implicit determination. *See Church of Christ in Hollywood*, 121 Cal. Rptr. 2d at 815.

[27] This court has stated that:

> [i]f a statute is unambiguous, then the judicial inquiry into the meaning of the statute is complete. *People v. Quichocho,* 1997 Guam 13 ¶ 5. . . . The inquiry into whether a statute is ambiguous begins with looking at the plain meaning of the language in question, and, when looking at the language, the court's task is to determine if the language is plain and unambiguous. *Aguon v. Gutierrez,* 2002 Guam 14 ¶ 6.

Guam Greyhound, Inc., 2008 Guam 13 ¶ 29.

[28] Because the issue is one of statutory construction, this court's review is *de novo. See Sananap*, 2009 Guam 13 ¶ 13. The trial court will be found to abuse its discretion if it makes a clear error of law. *Id.* In its decision and order the trial court stated:

> The clause specifically uses the past tense – "evidence obtained at a hearing" – to make clear that the executive session requirement occurs after the disciplinary hearing has already taken place. Nothing within the statute suggests that the disciplinary hearing itself should be conducted within a closed, executive session. This conclusion is further supported by the legislative intent behind the Open Government Law that, with limited exceptions, requires that "Every meeting of a public agency shall be open to the public." 5 GCA § 8103.

ER at 20-21 (Dec. & Order). The provisions of 10 GCA § 12436(b) are not ambiguous, and there is no need to look beyond the language of the statute itself. *See Guam Greyhound, Inc.*, 2008 Guam 13 ¶ 29, citing *People v. Quichocho,* 1997 Guam 13 ¶ 5 ("If a statute is unambiguous, then the judicial inquiry into the meaning of the statute is complete."). Upon *de novo* review, we agree with the trial court's reasoning and construction of the Dental Practice Act. Its finding that the statute cannot form a basis for claiming irreparable harm was therefore not an abuse of discretion. Taken one step further, this court finds that based on the plain meaning of the statute, Dr. Sule also cannot show a likelihood of success on the merits of his "executive session" claim.

B. The Enforcement of Proper Government Spending Act

[29] The application that was before the trial court, and on which the decision and order appealed from is based, was for a temporary restraining order.[11] Although the complaint also sought other relief in the form of a permanent injunction, that matter, as well as the other substantive causes of action in the complaint, should not have been before the trial court during the TRO hearing.

[30] In applying the appropriate inquiry to determine whether to grant an application for restraining order, the trial court necessarily had to address, at least to some extent, the merits of the complaint itself in order to determine whether Dr. Sule has established both irreparable harm

[11] Although the caption of the decision and order reads "Decision and Order on Plaintiff's Ex Parte Application for Temporary Restraining Order and Permanent Injunction," the analysis of the decision and order itself is focused on whether to grant or deny the temporary restraining order, and not on the matter of a permanent injunction. This court has recognized that "[t]he label placed upon the order or judgment by the trial court is not conclusive." *Tumon Partners*, 2008 Guam 13 ¶ 21 (quoting *Peninsula Prop. Co. v. Santa Cruz County,* 235 P.2d 635, 640 (Cal. Dist. Ct. App. 1951)) (internal quotation marks omitted). Moreover, while the trial court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application for a preliminary injunction, the court did not do so here.

and a likelihood of success on the merits. However, the trial court's concern at that stage should rightfully be confined to determining whether a TRO was necessary to prevent irreparable harm to Dr. Sule "so as to preserve [its] ability to render a meaningful decision on the merits." *Tumon Partners, LLC*, 2008 Guam 15 ¶ 22 (internal citation and quotation omitted). It should not be on *actually* rendering a decision on the merits.

[31] Thus, the trial court's analyses of the Open Government Law and the Dental Practice Act, to the extent they pertain to the criteria for granting a TRO, do not exceed the scope of the task before it. Nor do they constitute a judgment on the merits of those causes of action. However, inasmuch as the trial court decided the issue of Dr. Sule's taxpayer lawsuit pursuant to the Enforcement of Proper Government Spending Act – an analysis that was not tied to either of the prongs of the TRO analysis – the trial court was overreaching. The standards for granting a restraining order go to the first two claims in Dr. Sule's complaint – namely the Open Government Law and the Dental Practice Act. The taxpayer lawsuit is a cause of action that does not factor into this analysis and was therefore inappropriately reached by the trial court in its decision and order on Dr. Sule's application for TRO.

V. CONCLUSION

[32] The trial court's denial of Dr. Sule's application for a temporary restraining was not an abuse of discretion. Although the trial court characterized its denial of the TRO as a failure on the part of Dr. Sule to show irreparable harm, we find that the trial court's reasoning was actually an application of the "likelihood of success" factor of the TRO analysis. Because we find that Dr. Sule's application for a TRO fails to show a likelihood of success on the merits, the trial court's decision and order denying Dr. Sule's application for a TRO is **AFFIRMED**.

[33] We further hold that the trial court's decision and order exceeded the scope of the TRO application by ruling on the merits of Dr. Sule's taxpayer lawsuit. As such, we **VACATE** the portion of the decision and order relative to the Enforcement of Proper Government Spending Act claim.

[34] This matter is **REMANDED** for the trial court to determine the substantive causes of action in Dr. Sule's complaint as well as the pending GRCP 12(b)(6) motion to dismiss, consistent with this Opinion.

Original Signed By: F. Philip Carbullido
F. PHILIP CARBULLIDO
Associate Justice

Original Signed By: Katherine A. Maraman
KATHERINE A. MARAMAN
Associate Justice

Original Signed By: Robert J. Torres
ROBERT J. TORRES
Chief Justice