IN THE SUPREME COURT OF GUAM

LEONARDO M. RAPADAS, Attorney General of Guam, Office of the Attorney General,
Petitioner-Appellee,

v.

Deputy Director MARIE BENITO, in her capacity as Acting Director of Department of Revenue and Taxation, Government of Guam, and JOHN P. CAMACHO, in his official capacity as Director of the Department of Revenue and Taxation, Government of Guam,
Respondents.

v.

GUAM MUSIC, INC.,
Intervenor-Appellant.

Supreme Court Case No. CVA10-003
Superior Court Case No. SP0141-08

GUAM MUSIC, INC., a Guam Corporation,
Petitioner-Appellant,

v.

JOHN P. CAMACHO, as Director of the Department of Revenue and Taxation, Government of Guam,
Respondent-Appellee.

Supreme Court Case No. CVA10-002
Superior Court Case No. SP0219-08

OPINION

Cite as: 2011 Guam 28

Appeal from the Superior Court of Guam
Argued and submitted May 27, 2011
Hagåtña, Guam

Appearing for Petitioner-Appellee:
J. Patrick Mason, *Esq.*
Office of the Attorney General
Civil Litigation Div.
287 W. O'Brien Dr.
Hagåtña, GU 96910

Appearing for Intervenor/Petitioner-Appellant:
Peter C. Perez, *Esq.*
Lujan Aguigui & Perez, LLP
DNA Bldg., Ste. 300
238 Archbishop Flores St.
Hagåtña, GU 96910

BEFORE: KATHERINE A. MARAMAN, Presiding Justice[1]; MIGUEL S. DEMAPAN, Justice *Pro Tempore*[2]; ALEXANDRO C. CASTRO, Justice *Pro Tempore*.

MARAMAN, J.:

[1] Intervenor-Appellant Guam Music, Inc. ("GMI") requests this court to review the decisions in SP0141-08 and SP0219-08. Both cases pertain to the Department of Revenue and Taxation's ("DRT") revocation of GMI's licenses[3] for certain amusement devices. In SP0141-08, the trial court denied GMI's Motion to Set Aside, Motion for a New Trial and Motion to Stay Proceedings because it held that "the court [was] unable to identify any practical relief that the setting aside of the order, judgment and writ would grant [GMI]." Appellant's Excerpts of Record (CVA10-003) ("ER2"), tab 5 at 4 (Dec. & Order, Jan. 25, 2010). In SP0219-08, GMI was denied its Writ of Mandamus to compel DRT to reissue the licenses because GMI's petition "fail[ed] to identify which rights to property it claims it is entitled a vested property interest." Appellant's Excerpts of Record (CVA10-002) ("ER1"), tab 3 at 7 (Dec. & Order, Jan. 28, 2010). Oral argument in CVA10-002 and CVA10-003 were consolidated on the motion of the Attorney General ("AG"). *See* Order, May 17, 2011. The matters in both cases are addressed in this consolidated opinion.

[2] We reverse the trial court's finding of mootness in both cases. We find that the trial court did not consider the administration and enforcement provisions found in Title 11, Chapter 26,

[1] Chief Justice F. Philip Carbullido and Associate Justice Robert J. Torres were disqualified from this matter. Justice Maraman as the senior member of the panel was designated Presiding Justice.

[2] Justice *Pro Tempore* Miguel S. Demapan heard oral argument in this case. Prior to issuance of this Opinion, he retired as Chief Justice of the Commonwealth of the Northern Marianas Supreme Court.

[3] Throughout the opinion, the term amusement device "license" will be used. However, the Chapter at issue is entitled, "Tax on Amusement Devices," and furthermore, the provisions of the Business Privilege Tax Law provide administration and enforcement of the chapter. 11 GCA §§ 26101-26120 (2005). Therefore, although the usage of the term "license" may seem as if amusement device "licenses" should be administered and enforced by Title 11, Chapter 70, or the Business License Law, this is not the case here and the Business Privilege Tax Law shall provide the available remedies when an amusement device license is revoked.

Article 1 of the Guam Code Annotated, that apply to the taxes paid by GMI to operate the contested amusement devices. *See* 11 GCA § 22101 (2005) and 11 GCA §§ 26101-26120. Further, the trial court should have provided GMI with the opportunity to present evidence and arguments on the *sua sponte* finding of mootness. In order to find mootness, the trial court should have determined whether GMI's amusement devices were in fact illegal gambling devices. This is because although the court could not have ordered the reissuance of expired licenses, it could have determined whether the licenses were properly revoked. GMI's right to operate the amusement devices would not have been properly revoked if the trial court found that the amusement devices were not gambling devices.

[3] We therefore remand this case to the trial court to consider what remedies, if any, are available to GMI under the Business Privilege Tax Law, Title 11, Chapter 26, Article 1 of the Guam Code Annotated.

I. FACTUAL AND PROCEDURAL BACKGROUND

[4] On May 29, 2008, DRT issued to GMI "License Non-Renewal Notices" to operate certain amusement devices. ER1, tab 1 at ¶ 24 (Pet. Writ. Mand., Nov. 13, 2008). On June 23, 2008, GMI appealed and requested that its licenses be reissued while the appeal proceeded. On June 30, 2008, the Governor of Guam directed DRT to issue new licenses. DRT complied. GMI subsequently received new licenses on June 30, 2008. On July 3, 2008, then Attorney General Alicia Limtiaco issued a letter demanding DRT revoke the licenses issued, and on July 11, 2008, filed a Petition for Writ of Mandamus to compel DRT to so act. On August 18, 2008, Judge *Pro Tempore* Robert Klitzkie issued a Decision and Order granting Limtiaco's Writ of Mandamus.

A. CVA10-003

[5] On August 22, 2008, GMI filed a Motion to Intervene and a Motion to Stay Enforcement of the Order Entered. On September 10, 2008, GMI's motions to intervene and stay enforcement were denied. On September 30, 2008, GMI filed its notice of appeal. On August 24, 2009, this court reversed the denial of the motion to intervene and remanded the matter for further proceedings. Upon remand, the trial court dismissed GMI's motion for a retrial on the basis of mootness. The trial court stated it was unable to identify any possible justifiable remedy. The trial court's decision is now on appeal in CVA10-003.

B. CVA10-002

[6] While GMI waited for this court to review its appeal on the trial court's denial of its motion to intervene in SP0141-08, GMI filed a Petition for Writ of Mandamus on November 13, 2008 to compel DRT to reissue the licenses. The trial court issued a Decision and Order on January 28, 2010, stating that it was unable to identify any adequate or speedy remedy by which GMI could obtain relief. The court stated that GMI failed to identify what property right it had to justify a granting of the writ requested. The court, therefore, denied the request. GMI appeals from this decision in CVA10-002.

C. Issues on Appeal

[7] In CVA10-003, GMI appeals the denial of its motion for a new trial on the grounds of mootness. GMI alleges the trial court adjudicated the case in a manner contrary to the standards for relief pursuant to Rule 60(b) of the Guam Rules of Civil Procedure as laid out by *Duenas v. Brady*, 2008 Guam 27. GMI also argues that the trial court misinterpreted the mandate of this court issued in CVA08-010. GMI argues that the Supreme Court granted intervention for GMI

to seek a more favorable resolution. GMI alleges that the trial court did not do this because it neither set aside writ orders nor allowed GMI to fully participate in the case.

[8] In CVA10-002, GMI appeals the dismissal of its petition for writ of mandamus on the grounds of mootness and lack of jurisdiction. GMI enumerates what it believes to be live or actual controversies, mainly concerning the deprivation of due process. GMI also appeals the trial court's dismissal of GMI's petition on grounds of lack of jurisdiction and its grant of summary judgment in favor of the AG. Lastly, GMI requests the Supreme Court to compel DRT to reissue GMI's licenses.

II. JURISDICTION

[9] This court has jurisdiction over an appeal from a final judgment. 48 U.S.C.A. § 1421-1(a)(2) (Westlaw through Pub. L. 112-54 (2011)); 7 GCA §§ 3107, 3108(a) (2005). However, the trial court in this case did not enter a separate document setting forth the entry of a final judgment in SP0219-08 or SP0141-08 when the Notices of Appeal were filed for both cases on February 19, 2010. With regard to filing an appeal before a final judgment is entered, in *Quijano v. Atkins-Kroll, Inc.*, 2008 Guam 14, we stated,

> Under Rule 58(a)(1) of the Guam Rules of Civil Procedure, "[e]very judgment and amended judgment must be set forth in a separate document". . . . Guam R. Civ. P. ("GRCP") 58(a)(1) (2007). If no separate judgment is entered, Rule 58(b)(2)(B) allows a judgment to be effectively entered, for the purpose of the separate document rule, 150 days after entry of the underlying Decision and Order on the docket. GRCP 58(b)(2)(B). The Decision and Order granting summary judgment to Atkins-Kroll was entered November 30, 2007. Therefore, a final judgment was entered for the purposes of the separate document rule on April 28, 2008. *See* GRCP 58(b)(2)(B). Although the Notice of Appeal was prematurely filed, Rule 4(a)(2) of the Guam Rules of Appellate Procedure allow a prematurely entered Notice of Appeal to refer to the subsequently entered judgment. Thus, the appeal was timely and proper once judgment was effectively entered on April 28, 2008.

Quijano v. Atkins-Kroll, Inc., 2008 Guam 14 ¶ 5. In its briefs, the AG attempts to differentiate *Quijano* from the instant case by arguing that in *Quijano* a judgment was entered. Appellee's CVA10-002 Brief ("AG's Br. 1") (Aug. 23, 2010) at 4; Appellee's CVA10-003 Brief ("AG's Br. 2") (Aug. 23, 2010) at 5. The AG argues that in this case,

> Guam Music did not request the entry of a final judgment from the superior court as provided by GRAP Rule 58(d)("A party may request that judgment be set forth on a separate document as required by Rule 58(a).") And Guam Music did not file a renewed notice of appeal 150 days after the decision and order was entered on the docket.

AG Br. 1 at 4; AG Br. 2 at 5. The facts in *Quijano*, however, do not show that a final judgment was entered. In *Quijano*, this court held that "a final judgment was entered for the purposes of the separate document rule on April 28, 2008," exactly 150 days after the Decision and Order was entered. *Quijano*, 2008 Guam 14 ¶ 5. Even if a separate document had been entered, this court decided to use the date 150 days from the Decision and Order, rather than the date of the supposed entry of a requested final judgment. *See id.* Furthermore, in *Quijano*, the appeal was seen as timely filed without a renewed notice of appeal. *See id.* Thus, the AG's argument that parties must file a renewed notice of appeal 150 days after the Decision and Order was entered on the docket is incorrect.

[10] Appeals in both SP0219-08 and SP0141-08 were filed on February 19, 2010. Therefore, GMI's appeals were timely and proper arising from July 19, 2010. As a result, this court has jurisdiction.

III. STANDARD OF REVIEW

[11] In CVA10-002, GMI seeks review of the trial court's dismissal of the petition for writ of mandate in SP0219-08. A trial court's grant of a motion to dismiss a petition for writ of mandamus is reviewed *de novo*. *DCK Pac. Guam, LLC v. Morrison*, 2010 Guam 16 ¶ 6. An

order for dismissal for lack of jurisdiction is reviewed *de novo*. *Castino v. G.C. Corp.*, 2010 Guam 3 ¶ 14 (citing *Amerault v. Intelcom Support Servs., Inc.*, 2004 Guam 23 ¶ 9).

[12] In CVA10-003, GMI is appealing the trial court's dismissal of its Motion to Set Aside, Motion for New Trial and Motion to Stay Proceedings. A trial court's denial of a Rule 60(b) motion is reviewed for an abuse of discretion. *Midsea Indus. Inc. v. HK Eng'g Ltd.*, 1998 Guam 14 ¶ 4 (citing *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 687 (9th Cir. 1988). The trial court's denial of a motion for new trial is similarly reviewed for abuse of discretion. *People v. Flores*, 2009 Guam 22 ¶ 59. Lastly, courts elsewhere review a trial court's denial of plaintiffs' motion to stay enforcement under the abuse of discretion standard of review. *Bains v. Moores*, 91 Cal. Rptr. 3d 309, 337 (Ct. App. 2009) (citing *Avant! Corp. v. Super. Ct.*, 94 Cal. Rptr. 2d 505, 513 (Ct. App. 2000) (applying the abuse of discretion standard of review to determine whether the trial court erred in denying party's motion to stay proceedings in light of pending related criminal proceeding.); *In re Involuntary Termination of Parent-Child Relationship of A.K. & Kilbert*, 755 N.E.2d 1090, 1098 (Ind. Ct. App. 2001) ("In reviewing a motion to stay proceedings, we apply an abuse of discretion standard of review.") (citation omitted).

[13] In both CVA10-002 and CVA10-003, however, the predominant ground for dismissal was mootness. Although this court has not established a standard for reviewing dismissals of actions on the basis of mootness, the Ninth Circuit reviews dismissals on this ground *de novo*. *Native Vill. of Noatak v. Blatchford*, 38 F.3d 1505, 1509 (9th Cir. 1994) (citing *Friends of the Payette v. Horseshoe Bend Hydroelec. Co.*, 988 F.2d 989, 996 (9th Cir. 1993)) ("A district court's dismissal of an action on the ground of mootness is reviewed de novo."). Because the

trial court found each case to be moot, this court only has before it the trial court's analysis of mootness. The standard of review for mootness, *de novo*, will therefore be applied to each case.

IV. ANALYSIS

[14] We begin with a discussion of when mootness can be found, and will next discuss the administration and enforcement provisions of the Amusement Device Tax and whether the revocation of GMI's licenses is subject to a hearing under the Administrative Adjudication Laws ("AAL"). Lastly, we will discuss whether the trial court should have allowed parties the opportunity to brief the court on the issue of mootness.

A. When Can Mootness Be Found?

[15] In CVA10-003, the trial court stated that "the most salient issue . . . absent from the 17 self-identified issues raised . . . is the mootness of any available remedy." ER2, tab 5 at 3 (Dec. & Order). In CVA10-002, the trial court stated,

> [T]he petition contains no assertion that a license for 2009-2010 was sought or revoked. Nor is there any assertion or argument, despite the instant motion arising after the 2009-2010 licensing year had begun and the 2008-2009 year lapsed, that the petition meets the capable of repetition yet evading review test reaffirmed by the Guam Supreme Court in 2007.

ER1, tab 3 at 5-6 (Dec. & Order). On the basis of the trial court's finding of mootness of any available remedy, the trial court granted the AG's motion to dismiss GMI's Petition for Writ of Mandate, which was the basis for appeal in CVA10-003, and denied GMI's Motion to Set Aside, Alternative Motion for New Trial and Motion to Stay Proceedings, which was the basis for appeal in CVA10-002.

[16] This court has stated that "[t]he test for mootness is whether 'the issues involved in the trial court no longer exist' because intervening events . . . [have] render[ed] it impossible for the [reviewing] court to grant the complaining party effectual relief." *Tumon Partners, LLC v. Shin*,

2008 Guam 15 ¶ 37 (quoting *In re A. Minor*, 537 N.E.2d 7, 10 (Ill. 1989); *see also Sullivan v. McDonald*, 913 A.2d 403, 405 (Conn. 2007) (citing *Private Healthcare Sys., Inc. v. Torres*, 898 A.2d 768 (Conn. 2006)) ("When, during the pendency of an appeal, events have occurred that preclude an appellate court from granting any practical relief through its disposition of the merits, a case has become moot.") (internal quotations omitted); *In re Matter of Inspection of Minn. Auto Specialties, Inc.*, 346 N.W.2d 657, 658 (Minn. 1984) ("If, pending an appeal, an event occurs which makes a decision on the merits unnecessary or an award of effective relief impossible, the appeal will be dismissed as moot.") (citations omitted); Furthermore, "[m]ootness can arise at any stage of litigation." *Town House Dep't Stores v. Ahn*, 2000 Guam 32 ¶ 9 (citing *Calderon v. Moore*, 518 U.S. 149, 150 (1996)). Therefore, at any point, our courts may lose jurisdiction since "[c]ourts may not give opinions upon moot questions or abstract propositions."[4] *Id.* Moreover, this court has recognized that intervening events or changed circumstances that make it impossible for a reviewing court to grant the complaining party effectual relief will render a case moot. *Id.*

[17] Here, the changed circumstance is that the court may be unable to order reinstatement of the license that GMI seeks. This depends on whether the devices are in fact illegal. On December 10, 2009, Respondent Ilagan signed a declaration stating,

[4] There is a developed body of jurisprudence that stands for the principle that newly introduced facts or issues may render a case on appeal moot. *See, e.g.*, *Cnty. of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979)) ("(1) there is no reasonable expectation that the alleged violation will recur, and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation."); *see Simeon v. Hardin*, 451 S.E.2d 858, 866 (N.C. 1994) (citing *In re Peoples*, 250 S.E.2d 890, 912 (N.C. 1978)) ("[D]uring the course of litigation it develops that . . . the questions originally in controversy between the parties are no longer at issue, the case should be dismissed . . . ."); *Darring v. Kincheloe*, 783 F.2d 874, 876-77 (9th Cir. 1986) (holding that after an inmate is transferred, and no "reasonable expectation" nor a "demonstrated probability" that the inmate would return to the prison against which he sought injunctive relief, the claim for injunctive relief was moot); *Meyer v. Strouse*, 221 A.2d 191, 192 (Pa. 1966) (holding that that the intervening expiration of the appellant's term of office rendered the appeal moot.).

> Since the time I signed the declaration filed on August 4, 2009, I have received sufficient information to verify that the devices that are the subject of this lawsuit are being used as gambling devices and therefore are not entitled to be licensed according to 11 GCA § 22202.

AG's Br. 1 at 19. Guam code prohibits machines or amusement devices set to make progressive or automatic payouts. 11 GCA § 22202 (2005). In Guam, a "gambling device means any coin operated device which, when operated, may return winnings (other than free games not redeemable for cash) of value to the user based partially or completely upon chance, by the operation of which a person may become entitled to receive winnings of value." 9 GCA § 64.20(b) (2005). Any gambling device shall be subject to seizure and forfeiture. 9 GCA § 64.20(c).

[18] We find that it was reasonable to review the issue for mootness in light of DRT's determination that the devices were illegal. Upon review, the trial court concluded that because GMI had not requested a remedy that the court could grant, the case was moot. As a result, it dismissed GMI's Motion to Set Aside, Motion for a New Trial and Motion to Stay Proceedings in SP0141-08 and denied GMI's Petition for Writ of Mandamus on the ground of mootness. GMI, however, maintains that it is entitled to have licenses for its amusement devices reinstated pending completion of a formal hearing on this matter under the AAL. We now examine whether GMI is entitled to a hearing under the AAL.

B. Does the AAL provide GMI a right to a hearing?

[19] The AG argues that GMI's effort to reissue licenses for now illegal gambling devices would be futile. AG Br. 1 at 22. The AG also argues that GMI loses its interest in the licenses since GMI is not entitled to have its devices registered in perpetuity. AG Br. 1 at 36-40. To substantiate this argument, the AG cites to *Beer Co. v. Massachusetts*, 97 U.S. 25, 32 (1877), *Nw. Fertilizing Co. v. Vill. of Hyde Park*, 97 U.S. 659, 664 (1878) and *Mugler v. Kansas*, 123

U.S. 623, 8 S.Ct. 273 (1887)). The AG also cites authority stating that an unlawfully or mistakenly conferred benefit that is subsequently taken away when a statute is properly construed or changed is not a violation of due process. AG Br. 1 at 41. Here, the AG cites *Lerner v. Gill*, 751 F.2d 450, 459 (1st Cir. 1985) and *Glenn v. Johnson,* 761 F.2d 192, 194-95 (4th Cir. 1985). These cases will be discussed in turn.

[20] On the issue of licenses and permanent rights, the AG's citation to U.S. Supreme Court precedent, although relevant, is not directly on point. First, *Beer, Nw. Fertilizing Co.* and *Mugler* deal with subsequent laws passed by a state legislature that voided an existing contract or took away an existing right. In *Beer*, the voided contract was the plaintiff's charter, granted by the Massachusetts legislature, giving it the right to manufacture and sell alcohol. *Beer*, 97 U.S. at 29-31. The Supreme Court in *Beer* allowed a subsequent law passed by the Massachusetts legislature prohibiting the manufacture and sale of intoxicating liquors to repeal the plaintiff's charter. *Id* at 31-33. In *Nw. Fertilizing Co.,* the plaintiff had the right to manufacture and transport agricultural fertilizer matter. *Nw. Fertilizing Co.*, 97 U.S. at 663-64. Here, the U.S. Supreme Court upheld a change in the law by the Illinois legislature granting neighboring townships the power to enact restrictive measures against the fertilizer plant. *Id.* This change in the law led to the effective halt of the originally chartered activity. *Id.* at 665. Lastly, in *Mugler,* four years after the plaintiff constructed a brewery, the legislature passed a law that prohibited the sale of intoxicating liquor. *Mugler*, 8 S. Ct. at 273-74. The Supreme Court in *Mugler* upheld judgments against him for violating the new law. *Mugler*, 123 U.S. at 675.

[21] In contrast to the case at hand, all three cases cited by the AG concerned a change in law handed down by a legislature. In this case, the change in law was merely a change in opinion as

to legality of an amusement device as determined by the Director of the Department of Revenue and Taxation.

[22] With regard to the unlawfully or mistakenly conferred benefit argument, the AG cites to *Lerner v. Gill* and *Glenn v. Johnson*. AG's Br. 1 at 41. In *Lerner,* the plaintiff relied on a previous interpretation of the parole statute which allowed him eligibility for parole after ten years. *Lerner*, 751 F.2d at 453. The plaintiff was transferred to a minimum security facility, receiving certain benefits as a result, and his family moved closer to him. *Id.* A subsequent interpretation of the statute sent him back to the maximum security facility. *Id.* The plaintiff argued that this was a violation of his due process rights since his parole eligibility was withheld. *Id.* at 457. The First Circuit stated that "[o]nly in rare circumstances have courts allowed the misconstructions of officials to estop the proper execution of state or federal law[.]" *Id.* at 459. Similarly, in *Glenn*, the Fourth Circuit read a parole statute strictly, as opposed to the more humane way in which the Parole Commission and the trial court approached the statute. *Glenn*, 761 F.2d at 193-94. As a result, the plaintiff, and several other prisoners who initially were eligible for parole after ten years had to wait a quarter of their determinate sentence, which in the plaintiff's case was twenty-eight and three fourths years. *Id.* at 193. The Fourth Circuit described the situation by stating, "[a] wrong turn near the outset of a journey usually extends the trip unnecessarily. That is what happened here." *Id.* at 193.

[23] *Lerner* and *Glenn*, much like the other cases presented by the AG, are helpful, but do not determine the outcome here. Both cases pertain to interpretations of parole statutes. Moreover, both cases rely on subsequent interpretations of a statute and not a re-evaluation of the subject of

the statute. Lastly, a prisoner's right to a parole hearing concerns a prisoner's liberty interest[5] -- something not at stake in this case.

[24] The more important question that the AG never addressed, however, is whether GMI is entitled to a hearing under Guam's AAL. Although our AAL sets out the procedures for a hearing if licenses are revoked, it does not necessarily follow that there is a *right* to a hearing. *See* 5 GCA § 9202 (2005).

[25] In some jurisdictions, the administrative adjudication laws are clear in providing a right to a hearing when a renewal of a license is denied or a license is revoked. *See, e.g.*, 5 M.R.S.A. § 10003(1) (2002) ("[No agency may refuse to] renew any license unless it has afforded the licensee either an opportunity for an agency hearing in conformity with [Maine's Administrative Procedure Act] or an opportunity for a hearing in the District Court. . . ."); N.J. Stat. Ann. § 52:14B-11 (1995) ("No agency shall revoke or refuse to renew any license unless it has first afforded the licensee an opportunity for hearing. . . ."). In contrast, Guam's Administrative Adjudication Law provides as follows:

> The procedure of any agency shall be conducted pursuant to the provisions of this Title in any proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after an agency hearing.

5 GCA § 9200 (2005). Illinois' statute is worded in a similar manner. Its statute states that "[w]hen any licensing is required by law to be preceded by notice and an opportunity for a hearing, the provisions of this Act concerning contested cases shall apply." 5 Ill. Comp. Stat. 100/10-65. On the basis of this language, the Illinois Court of Appeals held that this section did not establish a right to a hearing; rather, it directed that "procedural requirements apply where

[5] *See Jancsek v. Oregon Bd. of Parole*, 833 F.2d 1389, 1389-90 (9th Cir. 1987) ("We need not decide the threshold issue of whether the Oregon parole statute confers a liberty interest entitling prisoners to due process protection in the setting of release dates. Instead, we assume for the purposes of this decision that prisoners have such a liberty interest[.]") (internal citation omitted).

such a hearing is otherwise legally required. . . ." *Borg-Warner Corp. v. Mauzy*, 427 N.E.2d 415, 418 (Ill. App. Ct. 1981). In *Mauzy*, "the legal requirement of a hearing prior to agency action was to be found in Section 402(a) of the Federal Water Pollution Act. . . ." *Id.* at 419. After an analysis of the act, the court found that the party whose license was not renewed was *not* entitled to a hearing. *Id.* at 420.

[26] In Guam, the law pertaining to the registration of amusement devices is found in 11 GCA §§ 22201-22211 (2005). Chapter 22 of Title 11 discusses the registration and liabilities of amusement devices for tax purposes. 11 GCA §§ 22202-22206. This chapter contains much of the law regarding what amusement devices can be registered and how licenses are issued. It was therefore pursuant to this chapter that DRT revoked GMI's licenses. Record on Appeal ("RA") at 52 ¶ 6 (Pet. Writ. Mand. July 11, 2008). Citing to 11 GCA § 22202, DRT states, "pursuant to 11 GCA § 22202, no slot machine or amusement device set to make progressive or automatic payouts shall be licensed or operate." *Id.* In addition to what type of amusement devices can be registered, this chapter also explains the consequences of the failure to register amusement devices. Section 22211, for instance, provides that "[*a*]*ny* revenue producing or revenue generating amusement device that is *not* registered and licensed according to this Chapter, *shall* be subject to seizure and confiscation." 11 GCA § 22211. The chapter adds that "[t]he owner of such device *shall* be fined [$5,000.00] for each confiscated amusement device . . . [and] *shall* bear all the costs of the storage, handling, destruction and disposal of such device." 11 GCA § 22211 (emphases in original). No where in this chapter, however, is there a discussion on how to appeal a determination by DRT that an amusement device is illegal, or how to appeal a revocation of a license.

[27] Section 22101, the "Administration and Enforcement" provision, states that "[t]he provisions of Chapter 26, Article 1, of this Title . . . shall, except as otherwise provided in this Chapter, apply to taxes imposed under this Chapter." 11 GCA § 22101. Title 11, Chapter 26 of the Guam Code Annotated, otherwise known as the Business Privilege Tax Law, therefore, provides added enforcement provisions to this chapter of the code. Chapter 26, however, contains no explicit clause on how to appeal a revocation of an amusement device license or appeal a determination by DRT that an amusement device is illegal. *See* 11 GCA §§ 26101-26120. In the "General Provisions" of the Business Privilege Tax Law, the right to an informal hearing is established if a taxpayer or person believes that he has been aggrieved by a tax assessment under this section of the code. 11 GCA § 26105 (2005). There is no discussion of a right to a formal hearing, however, in Article 1 of Chapter 26.

[28] On the other hand, with regard to certain other types of licenses in the Guam Code, the revocation of a license or a denial of a renewal prompts a hearing under the Administrative Adjudication Law. *See, e.g.*, 21 GCA § 70117(a) (2005) ("In every case where it is proposed to refuse to . . . renew a license, the Contractors License Board *shall* give the person concerned notice and hearing in conformity with the Administrative Adjudication Law."); 22 GCA § 32121(g) (2005) ("No certificate of registration or authorization [of Professional Engineers, Architects or Land Surveyors] shall be suspended, revoked or denied renewal by the Board, except after a hearing in accordance with the provisions of the Administrative Adjudication Law."); 10 GCA § 7123(a) (2005) ("No nursing home license may be suspended, revoked, denied or renewal denied without a hearing . . . ."). Furthermore, a number of sections in the

Business License Law discuss the requirement for a "formal hearing" if a general Business license is revoked.[6]

[29] Although DRT, in a letter to GMI revoking its licenses, states that there is a right to a hearing under the Administrative Adjudication Law, our review of 11 GCA §§ 22101-22211 and 11 GCA §§ 26101-26120 leads us to conclude that DRT was incorrect. *See* GMI's Br. 1 at 6. In this case, GMI has lost its individual amusement device licenses. The revocation of individual amusement device license does not trigger the right to a "formal hearing." Only an "informal hearing" is allowed when a party disagrees with a tax assessment, and presumably, the result of this informal hearing is appealable to the Superior Court of Guam. *See* 11 GCA § 26105. This parallels the manner in which Business Privilege Tax laws operate elsewhere.[7]

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[6] In many sections of Business License Law, the revocation of a business license requires a "formal hearing." *See* 11 GCA § 70120 (2005) (revoking license when it is found that the business is being operated inimical to public interest); 11 GCA § 70127 (2005) (revoking a license when a business fails to certify the intended departure of any alien labor); 11 GCA § 70129 (2005) (revoking a license when the business engages in employment discrimination). Section 70131 describes in greater detail what a formal hearing entails:

> Any person engaging in, transacting, conducting, continuing, doing, or carrying on a business within Guam which is otherwise required by law to have a current business license and, as may be required by all applicable laws of Guam, a certificate of authority from the Director of the Department of Revenue and Taxation, or other applicable regulating agency or board, but does not have one, shall be closed promptly by the Department of Revenue and Taxation, *after a hearing pursuant to the Administrative Adjudication Law*, until all required returns are filed and all taxes paid or arrangements are made to pay them . . .

11 GCA § 70301(a) (2005) (emphasis added). In contrast, no where in the registration provision of amusement devices (11 GCA, Chapter 22) or the Business Privilege Tax Law (11 GCA, Chapter 26) is the revocation of a license to operate an amusement device subject to a "formal hearing." The closest right one has to a hearing is an "informal hearing" when the business owner disagrees with an assessment under the Business Privilege License Law. 11 GCA § 26105.

[7] In other jurisdictions, a formal administrative hearing is not provided when a business privilege taxpayer disagrees with the actions of the tax authority. Instead, the taxpayer seeks remedy at the trial court. *See, e.g.*, D.C. Code § 47-3303 (2011) ("Any person aggrieved by any assessment by the District of any . . . business privilege . . . tax or taxes . . . may within 6 months after the date of such assessment appeal from the assessment to the Superior Court of the District of Columbia . . . ."); *Ad Hoc Comm. for Keeping New Brighton Progressive v. Borough of New Brighton*, 471 A.2d 609 (Pa. 1984) (finding that when a committee challenged the borough's business privilege tax, the common pleas court ruled on the committee's petition without an evidentiary hearing).

[30] After a review of the law, we find that GMI is not entitled to a hearing pursuant to the procedures set forth in the AAL.[8] Because GMI is not entitled to a hearing under the AAL, we remand this case to the trial court to determine what remedies are available to GMI, including any remedies under the Business Privilege Tax, Title 11, Chapter 26, Article 1 of the Guam Code Annotated. We therefore need not address the individual issues raised in CVA10-002 concerning whether the trial court erred in denying GMI's Petition for Writ of Mandate, in dismissing GMI's petition for Writ of Mandate, or in granting summary judgment in favor of the AG. We are not herein mandating DRT to reissue GMI's licenses. Similarly, we need not address the issues raised in CVA10-003, namely, whether the trial court erred in denying GMI's Motions to Set Aside, for New Trial, and to Stay Enforcement Proceedings or for Rule 60(b) relief on the ground of mootness. Nor do we reach the issue of whether the trial court violated our mandate issued in CVA08-010.

C. Should the Trial Court Allow Parties to Brief the Court on Mootness?

[31] In the past, this court upheld trial court decisions that did not extensively address the merits of a motion when the trial court found the underlying basis for the motion was moot. *See Duenas v. Brady*, 2008 Guam 27 ¶ 29 (finding no abuse of discretion in the trial court's denial of a motion to set aside its dismissal of the complaint); *Santos v. Carney*, 1997 Guam 4 ¶ 10 (finding that it is not *per se* abuse of discretion to dismiss an action for failure to prosecute without first issuing advance warnings or lesser sanctions).

[32] Courts elsewhere also have great latitude in dismissing cases *sua sponte*, but exercise caution when such a dismissal denies a party the opportunity to respond. *Doe on Behalf of Doe*

[8] GMI argues that this court should mandate DRT to reissue GMI's licenses until the completion of AAL proceedings. GMI's Br. 1 at 29. Even if this were proper procedure under the AAL, GMI's licenses will not be reissued because GMI is not entitled to a hearing under the AAL.

v. St. Joseph's Hosp. of Fort Wayne, 788 F.2d 411, 414 (7th Cir. 1986), *overruled on other grounds by Alexander v. Rush N. Shore Med. Ctr.*, 101 F.3d 487 (7th Cir. 1996) (warning that *sua sponte* dismissals on the grounds of 12(b)(6) without prior notice or opportunity to be heard are "hazardous."); *Neiderhiser v. Borough of Berwick*, 840 F.2d 213, 216 n.6 (3rd Cir. 1988) ("While the district court's consideration of the jurisdictional issue *sua sponte* was proper, the court did not afford the parties the opportunity to brief or present evidence on this issue . . . [and we find this] . . . to be improper."); *Prakash v. Am. Univ.*, 727 F.2d 1174, 1179-80 (D.C. Cir. 1984) ("The court has considerable latitude in devising the procedures it will follow to ferret out the facts pertinent to jurisdiction. . . . [It] must, however, afford the nonmoving party 'an ample opportunity to . . . present evidence relevant to the existence of jurisdiction.'").

[33] In SP0219-08, the trial court cited to Rule 12(c) of the Guam Rules of Civil Procedure, which states that "[a]fter the pleadings are closed . . . [i]f, on a motion for judgment on the pleadings, matters outside of the pleadings are presented to and not excluded by the court, the motion shall be treated as a motion for summary judgment." Guam R. Civ. P. 12(c). The trial court further stated "that parties have presented documents and affidavits outside the pleadings." ER1, tab 3 at 4 (Dec. & Order). The trial court, therefore, reviewed the AG's motion to dismiss using the summary judgment standard. *Id.* Addressing the summary judgment standard, the trial court stated that if "the movant can demonstrate that there are no genuine issues of material fact, the non-movant cannot merely rely on allegations contained in the pleading but must produce at least some significant probative evidence to support the pleading." *Id.* (citing *Edwards v. Pac. Fin. Corp.*, 2000 Guam 27 ¶ 7). The court ultimately held that the relief GMI requested (the June 2008-July 2009 licenses) was moot and that it is undisputed that GMI had not requested

licenses to be reissued for the present year. *Id.* at 5-6. As a result, the trial court found that it did not have subject matter jurisdiction to hear the case. *Id.* at 6.

[34] GMI is not entitled to a hearing under the AAL but this does not prevent GMI from seeking review of DRT's actions in the Superior Court. In *Limtiaco v. Camacho*, 2009 Guam 7, this court found that GMI had a "significantly protectable" interest "in its gaming licenses which were connected to its ownership of property, i.e. the gaming machines . . . ." 2009 Guam 7 ¶ 31. DRT revoked GMI's June 2008 - July 2009 licenses on the basis that the amusement devices were illegal gambling devices. Moreover, GMI was never given a hearing on this issue. Therefore, we find that the trial court erred in failing to allow GMI to present evidence and brief the court on the mootness issue. The trial court should have allowed GMI the opportunity to do so because the outstanding issue of whether the licenses were properly revoked has never been adjudicated.

V. CONCLUSION

[35] We hold that the trial court erred in finding mootness because it did not consider the remedies GMI was entitled to under the administration and enforcement guidelines of Article 1 of the Business Privilege Tax Law. We further hold that the trial court should have provided GMI with the opportunity to present evidence and arguments on the *sua sponte* finding of mootness. In order to find mootness, the trial court should have determined whether GMI's amusement devices were in fact illegal gambling devices. This is because although the trial court could not have ordered reissuance of expired licenses, it could have determined whether the licenses were properly revoked. GMI's right to operate the amusement devices would not have been properly revoked if the trial court found that the amusement devices were not gambling devices.

[36] For the reasons set forth above, we **REVERSE** the trial court's Decision and Orders in SP0219-08 and SP0141-08. We **REMAND** the matters for determination of what remedies GMI is entitled to, including any remedies under the Business Privilege Tax, Title 11, Chapter 26, Article 1 of the Guam Code Annotated.

Original Signed By: **Katherine A. Maraman**
KATHERINE A. MARAMAN
Presiding Justice

Original Signed By: **Alexandro C. Castro**
ALEXANDRO C. CASTRO
Justice *Pro Tempore*