IN THE SUPREME COURT OF GUAM

IN THE APPLICATION OF DEPARTMENT OF HEALTH AND SOCIAL SERVICES FOR ADMINISTRATIVE INSPECTION AND SEARCH WARRANT OF WISE OWL ANIMAL HOSPITAL

Supreme Court Case No.: CVA16-005
Superior Court Case No.: SP0137-14

OPINION

Cite as: 2017 Guam 15

Appeal from the Superior Court of Guam
Argued and submitted on October 27, 2016
Hagåtña, Guam

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

MARAMAN, J.:

[1] Petitioner-Appellant Dr. Joel Joseph appeals a Superior Court judgment declining to enforce the return of various substances seized from Wise Owl Animal Hospital pursuant to an administrative inspection and search warrant granted to the Department of Public Health and Social Services. On appeal, Dr. Joseph argues that the Superior Court abused its discretion by construing a motion filed pursuant to 8 GCA § 35.45 as a complaint and that it erred by applying the wrong standards to the resulting proceeding and by finding he was not entitled to the return of the seized substances.

[2] For the reasons stated below, we vacate the Superior Court judgment and remand the case for further proceedings.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] Dr. Joseph is a veterinarian practicing at Wise Owl Animal Hospital. As part of his veterinary practice, Dr. Joseph uses certain controlled substances. To enable legal possession of these substances, Dr. Joseph has a Controlled Substance Registration certificate ("CSR") issued by the Department of Public Health and Social Services of the Government of Guam ("DPHSS"). He is also registered with the federal Drug Enforcement Agency as a practitioner permitted to possess controlled substances. Dr. Joseph does not have a permit to import controlled substances.

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

[4] Dr. Joseph has not continually held a license to practice veterinary medicine or a CSR. He timely submitted a renewal for his CSR on April 25, 2012, but DPHSS did not renew it, and it expired April 30, 2012. On May 4, 2012, DPHSS issued an order to show cause why Dr. Joseph's CSR should not be revoked. Shortly thereafter, DPHSS rescinded its order and subsequently notified Wise Owl Animal Hospital that the CSR was approved and could be picked up. But DPHSS never released the CSR to Dr. Joseph and did not issue a subsequent order to show cause.

[5] On November 20, 2012, Dr. Joseph submitted a veterinary license renewal application to the Guam Board of Allied Health Examiners ("Board"). On December 28, 2012, the Board—without prior notice of its intention and without offering Dr. Joseph a meaningful opportunity to be heard—voted not to renew Dr. Joseph's license to practice veterinary medicine, which then expired December 31, 2012. This action was predicated in part on DPHSS's refusal to issue the CSR. On January 3, 2013, Dr. Joseph filed a petition for a writ of mandate with the Superior Court, requesting that it compel the Board to renew the license.

[6] While the writ petition was pending, DPHSS was granted an administrative inspection and search warrant to seize controlled substances found in violation of the Guam Uniform Controlled Substances Act and to inspect and copy physical and digital documents at Wise Owl Animal Hospital. Officers of the Guam Police Department accompanied representatives of DPHSS to execute the warrant the next day, May 8, 2013. Substances, files, computers, cameras, and cash were seized under the warrant. No criminal charges were ever filed.

[7] The Superior Court did not grant the full relief requested in Dr. Joseph's petition for a writ of mandate, but it ordered the Board to reconsider its decision not to renew Dr. Joseph's

license in light of the record evidence. As part of this decision, the court opined that DPHSS's failure to release the CSR or properly issue an order to show cause was a violation of applicable law. In March, 2014, DPHSS issued Dr. Joseph's CSR.

[8] On October 3, 2014, Dr. Joseph's counsel's staff attempted to file a motion pursuant to 8 GCA § 35.45 in the search warrant case, No. SW0040-13, seeking an order for return of Dr. Joseph's property. The Superior Court refused to accept the motion for filing at that time. On Tuesday, October 7, 2014, Dr. Joseph's counsel emailed the Clerk of Court to enquire about the rejection. On Friday, October 10, 2014, Dr. Joseph's counsel followed up—again by email. On that same day, Dr. Joseph's counsel's staff succeeded in filing the motion under SW0040-13 and paying a fee for filing the motion. But on October 13, 2014, the Clerk of Court instructed that the filings be brought back to the Superior Court so that they could be stamped with a special proceeding case number. That same day, Dr. Joseph's counsel's staff brought the filings back to the Superior Court and they were stamped with SP0137-14—the case now on appeal before this court. Counsel's staff paid a fee for initiating a special proceeding.

[9] A few months later, the Superior Court ordered the return of seized property, with the exception of the substances. The Superior Court also ordered DPHSS to prepare a list of the seized substances, explaining DPHSS's objection to the return of each.

[10] The list set out thirty-seven substances. DPHSS did not object to the return of seventeen of them, and the court ordered their return.

[11] The Superior Court held an evidentiary hearing to determine the future of the substances DPHSS objected to returning. At the beginning of that hearing, DPHSS moved to dismiss the case for lack of jurisdiction, arguing that a motion without an underlying cause of action is

anomalous and that the rules of civil procedure would not permit the action as filed. The court took the motion under advisement, but DPHSS withdrew its motion at the end of the hearing.

[12] The Superior Court entered its Findings of Fact and Conclusions of Law and later amended them to correct clerical errors. The Superior Court determined that the remaining substances should not be returned because Dr. Joseph could not prove that he was authorized to import drugs and did not have proper import-export records.

[13] DPHSS then moved for entry of judgment. DPHSS argued that 7 GCA § 30102—which states that "[a] judgment in a special proceeding is the final determination of the rights of the parties therein"—implies that a judgment is required in a special proceeding. Record on Appeal ("RA"), tab 44 at 2 (Mot. Entry J., Nov. 19, 2015) (quoting 7 GCA § 30102 (2005)). DPHSS also argued that Rule 52 of the Guam Rules of Civil Procedure ("GRCP")—which states that "[i]n all actions tried upon the facts without a jury . . . judgment shall be entered pursuant to Rule 58"—requires entry of judgment in the instant case. *Id.* at 2-3 (quoting Guam R. Civ. P. 52).

[14] The Superior Court granted DPHSS's motion before the time allotted for Dr. Joseph's opposition had run and entered judgment consistent with its findings on the same day. Dr. Joseph filed a motion to vacate that judgment. The Superior Court granted Dr. Joseph's motion and vacated its judgment.

[15] After receiving Dr. Joseph's opposition to DPHSS's motion for entry of judgment, the Superior Court held a hearing. The Superior Court again granted DPHSS's motion for entry of judgment and entered judgment the same day. The Superior Court found that Dr. Joseph's initial filing, though otherwise captioned, was best understood as a complaint initiating a civil action. As such, judgment was the proper disposition.

[16] Dr. Joseph appealed from the Judgment and the Superior Court's decision and order granting DPHSS's motion for the entry of that judgment.

[17] Because the Judgment in this case did not "set forth the relief to which the prevailing party is entitled or the fact that the plaintiff has been denied all relief," *Reytblatt v. Denton*, 812 F.2d 1042, 1044 (7th Cir. 1987), and because it "incorporate[d] . . . other document[s]," *id.*, this court ordered supplemental briefing on three related issues concerning this court's jurisdiction. This court asked the parties to explain:

> First, the requirements for a valid Judgment under Guam Rule of Civil Procedure 58(a)(1); second—assuming the purported Judgment in this case does not comply with the requirements of Guam Rule of Civil Procedure 58(a)(1)—whether defects in the purported Judgment deprive this court of jurisdiction to hear an appeal predicated on that document or are instead subject to harmless-error or other analysis; third—assuming defects in the purported Judgment would otherwise deprive this court of jurisdiction—whether Guam Rule of Civil Procedure 58(b)(2)(B) would nonetheless permit this appeal to proceed based on the Amended Findings of Fact, Conclusions of Law, and Order where that document does not itself fully set forth the rights and obligations of the parties.

Order re: Suppl. Briefing at 1 (Nov. 3, 2016). The parties filed simultaneous briefs acknowledging that the Judgment is defective under GRCP 58(a) but contending this does not act to strip the court of jurisdiction where the parties have waived the separate document requirement. Appellant's Suppl. Br. at 3-4 (Nov. 15, 2016); Appellee's Suppl. Br. at 6-7 (Nov. 15, 2016).

II. JURISDICTION

[18] This court has jurisdiction over an appeal from a final judgment of the Superior Court. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 115-82 (2017)); 7 GCA §§ 3107, 3108(a) (2005). Dr. Joseph timely filed a notice of appeal from the Superior Court judgment. Guam R.

App. P. 4(a)(1) (indicating a thirty-day threshold); RA, tab 74 (Notice of Appeal, Apr. 25, 2016); RA, tab 70 (Judgment, Mar. 30, 2016).

[19] After reviewing the supplemental briefing in this case, we adopt the reasoning of *Bankers Trust Co. v. Mallis*, 435 U.S. 381 (1978) (per curiam), and recognize our jurisdiction to decide the merits of this case. *See* Part IV.A., below.

III. STANDARD OF REVIEW

[20] Whether the Judgment's failure to comply with the requirements of GRCP 58(a) constitutes a jurisdictional defect barring this court from considering this appeal is reviewed *de novo*. *See Ukau v. Wang*, 2016 Guam 26 ¶ 21.

[21] Whether the Superior Court properly construed a document styled as a motion filed pursuant to 8 GCA § 35.45 as a complaint is reviewed for abuse of discretion. *See, e.g.*, *United States v. Valadez-Camarena*, 402 F.3d 1259, 1261 (10th Cir. 2005) ("[T]he district court's prudential decision not to construe Defendant's motion under § 2255 cannot be deemed an abuse of discretion."); *Camp v. Gregory*, 67 F.3d 1286, 1290 (7th Cir. 1995) ("Gregory has . . . [not] demonstrated that the court's liberal interpretation of the motion constituted an abuse of discretion.").

[22] The Superior Court's application of the standards during the proceeding turns on statutory interpretation, and our review is *de novo*. *Guerrero v. Santo Thomas*, 2010 Guam 11 ¶ 8.

[23] Because we determine that the trial court proceeding is an action in equity, our review of the Superior Court's determination that Dr. Joseph was not entitled to the return of substances seized from Wise Owl Animal Hospital is for abuse of discretion. *Mendiola v. Bell*, 2009 Guam

15 ¶ 12 ("The trial court's decision regarding the award of equitable remedies is reviewed for an abuse of discretion." (citing *Abalos v. Cyfred Ltd.*, 2006 Guam 7 ¶ 14)); *Forest Grove Sch. Dist. v. T.A.*, 523 F.3d 1078, 1084 (9th Cir. 2008). "The [trial] court abuses its discretion when its equitable decision is based on an error of law or a clearly erroneous factual finding." *Cyfred Ltd.*, 2006 Guam 7 ¶ 14 (alteration in original) (quoting *United States v. Washington*, 157 F.3d 630, 64 (9th Cir. 1998)). We review statutory interpretation *de novo*, *Guam Top Builders, Inc. v. Tanota Partners*, 2012 Guam 12 ¶ 63, and factual findings for clear error, *Yang v. Hong*, 1998 Guam 9 ¶ 4.

IV. ANALYSIS

A. A Judgment—Defective Under GRCP 58(a)—Can Nonetheless Act as the Basis for this Court's Jurisdiction

[24] The Judgment in this case reads in its entirety:

> This Court held an evidentiary hearing on Dr. Joel Joseph's ("Movant") Motion for a Return of Property Seized Pursuant to a Search Warrant on February 20, 2015 and subsequently issued its Findings of Fact and Conclusions of Law on July 7, 2015. The Court issued its Amended Findings of Fact and Conclusions of Law on October 30, 2015.
>
> Pursuant to Rule 58(a)(1) of the Guam Rules of Civil Procedure, the Court hereby enters its **JUDGMENT** as set forth in the Findings of Fact and Conclusions of Law and Amended Findings of Fact and Conclusions of Law attached hereto and incorporated by reference as though fully set forth herein.
>
> **SO ORDERED** this 30[th] day of MARCH, 2016.

RA, tab 70 (Judgment).

[25] This document, standing alone, tells the reader nothing about the disposition of the case. It does not set forth who prevailed and what relief was granted or denied. A judgment of this sort does not comply with the requirements of GRCP 58(a). *See, e.g.*, *Reytblatt*, 812 F.2d at

1044 ("[A judgment] must set forth the relief to which the prevailing party is entitled or the fact that the plaintiff has been denied all relief. It should not incorporate some other document or contain legal reasoning.").

[26] In *Bankers Trust Co. v. Mallis*, the Supreme Court considered "a difficult question of federal appellate jurisdiction," deciding that the Court of Appeals had properly exercised jurisdiction over a matter, even though the separate document requirement of Federal Rule of Civil Procedure 58 was not met, where a notice of entry on the docket made clear the disposition—dismissal of the complaint in its entirety—was final, and the parties waived the requirements of Rule 58. 435 U.S. 381, 382 & n.1 (1978) (per curiam). The Supreme Court determined that the separate document requirement was meant to prevent the "inequities that were inherent when a party appealed from a document or docket entry that appeared to be a final judgment of the district court only to have the appellate court announce later that an earlier document or entry had been the judgment and dismiss the appeal as untimely." *Id.* at 385. The Court went on to decide:

> The need for certainty as to the timeliness of an appeal, however, should not prevent the parties from waiving the separate-judgment requirement where one has accidentally not been entered. As Professor Moore notes, if the only obstacle to appellate review is the failure of the District Court to set forth its judgment on a separate document, "there would appear to be no point in obliging the appellant to undergo the formality of obtaining a formal judgment."

Id. at 386 (quoting 9 James Wm. Moore, *Moore's Federal Practice* ¶ 110.08[2], at 120 n.7 (2d ed. 1970)).

[27] In *Merchant v. Nanyo Realty, Inc.*, 1997 Guam 16, this court recognized that GRCP 58(a) is similar in relevant respects to its federal counterpart, *id.* ¶ 8 n.1, but declined to apply *Mallis*

where the appellee indirectly questioned whether final judgment had been entered and there was no docket entry unequivocally indicating a final judgment, *id.* ¶¶ 10-11. The court went on to write:

> In the short time this Court has been in existence we have seen a disproportionate number of cases which have contained jurisdictional issues stemming from lack of finality of the judgment. We have also seen other cases where the process of appeal was inordinately delayed by the filing of judgments months, sometimes years, after the apparent determination of the matter below. Because we find that *Mallis* is not applicable given the different circumstances it presents, it is not necessary for us to determine whether we would, for purposes of Guam's judicial administration, accept jurisdiction over a matter like *Mallis*, where the separate document rule was not formally satisfied. *It is our view that the separate document rule should be expressly honored.*

Id. ¶ 15 (emphasis added). This court later said of *Merchant* that we "adopted strict adherence to the 'separate document rule' which interprets [R]ule 58 of the Guam Rules of Civil Procedure as requiring a formal, separate judgment prior to this court's *ability to obtain jurisdiction on appeal*." *Gill v. Siegel*, 2000 Guam 10 ¶ 6 (emphasis added) (dictum). Because we dismissed the case for lack of jurisdiction on other grounds, we again expressly declined to decide this issue in *Department of Revenue & Taxation v. Civil Service Commission*, 2007 Guam 17 ¶ 11 n.4.

[28] We are now presented with the opportunity to address the issue we left open in *Merchant* and *Department of Revenue & Taxation*, and we adopt the reasoning of *Mallis*. The Supreme Court suggests that an appellant waives the separate document requirement by taking a timely appeal from an otherwise final order while the appellee waives the requirement by not objecting to that appeal. *See Mallis*, 435 U.S. at 387. We hold that we can properly exercise jurisdiction over a matter, even though the separate document requirement of GRCP 58(a) is not met, where

it is clear the disposition was final and the parties waived the requirements of Rule 58(a). The requirements for finality and waiver are met in this case, and we have jurisdiction to resolve the appeal.

B. The Superior Court Did Not Err in Construing a Motion Filed Pursuant to 8 GCA § 35.45 as a Complaint

[29] The parties disagree whether an order or a judgment was the proper means of disposing of the matter before the Superior Court. More fundamentally then, they disagree about whether the Superior Court properly construed the document, which purported to be a motion, as a civil complaint. If Dr. Joseph is right that his filing was a motion, it is trivial that the court should have entered an order to dispose of it. *See* Guam R. Civ. P. 7(b)(1) ("An application to the court for an order shall be by motion . . . ."). If, on the other hand, the Superior Court was right to construe Dr. Joseph's motion as a complaint, then the case was one "tried upon the facts without a jury" and judgment was required. Guam R. Civ. P. 52; *see also* 7 GCA § 30102 ("A judgment in a special proceeding is the final determination of the rights of the parties therein.").

[30] Dr. Joseph marshals several related arguments about the form of the document filed, its captions and contents, and also argues that the court's failure to issue a summons indicates it was adjudicating a motion. *See* Appellant's Br. at 11-13 (July 20, 2016). DPHSS responds that a motion requires a pre-existing cause of action initiated by a pleading. Appellee's Br. at 10-12 (Aug. 19, 2016); *see also* Guam R. Civ. P. 7(a). It also argues that the label of a document filed with the court is not dispositive. Appellee's Br. at 10-13. It contends that the trial court did not abuse its discretion by construing the self-described motion as a complaint, which requires only a statement of the grounds for the court's jurisdiction, a short statement showing the pleader is

entitled to relief, and a demand for judgment for the relief sought. *Id.*; *see also* Guam R. Civ. P. 8. Finally, DPHSS argues that a responding party can waive the lack of personal jurisdiction, and that DPHSS did so here. Appellee's Br. at 16-17.

[31] Dr. Joseph retorts that it is not true that all motions require an underlying pleading. He cites for this proposition 7 GCA § 43A403(a). Appellant's Br. at 15. That provision reads in part, "Any party to a mediation settlement agreement as described in §§ 43A301(c) and 43A302(b) above, may enforce that mediation settlement agreement at the Superior Court of Guam by filing a motion for summary judgment without filing a complaint . . . ." 7 GCA § 43A403(a) (2005). Although Dr. Joseph wants the court to decide that because the Legislature provided this procedure in 7 GCA § 43A403(a) the court can more easily find that no complaint was necessary to initiate the instant proceeding, the opposite inference is more ready. If the Legislature had wanted to depart so markedly from regular procedure in 8 GCA § 35.45, the court expects it would speak as clearly as it did in 7 GCA § 43A403(a).

[32] Although Dr. Joseph asserts that 8 GCA § 35.45(a) explicitly allows relief by motion, Appellant's Br. at 13, DPHSS responds that 8 GCA § 35.45(a) is inapplicable because there was no pending criminal case in which to file the motion, Appellee's Br. at 18. Dr. Joseph rejoins with persuasive authority that indicates 8 GCA § 35.45(a) can be used civilly and that, when doing so, it is a standalone motion. Appellant's Reply Br. at 8-9 (Aug. 29, 2016) (citing *Ensoniq Corp. v. Superior Court (Dattoro)*, 77 Cal. Rptr. 2d 507, 508 (Ct. App. 1998); *Ramsden v. United States*, 2 F.3d 322, 324 (9th Cir. 1993); *In re Return of Seized Property*, 270 F.R.D. 576, 578 (S.D. Cal. 2010); *In re Seizure of Various Business & Personal Property*, No. MC-07-0003-

MWL, 2007 WL 1574114 (E.D. Wash. May 29, 2007)). The federal cases contend with motions filed under Federal Rule of Criminal Procedure 41(g).[2]

[33] It is true that all federal circuits allow use of Rule 41(g) in the absence of pending criminal proceedings, but we are convinced after reviewing persuasive case law that the trial court did not err in construing the motion as a *complaint* initiating a civil action. Many federal cases stand for the proposition that these motions may be construed as a "civil *complaint* governed by the . . . Rules of Civil Procedure" when filed in a criminal docket after proceedings are complete or where criminal proceedings are not contemplated. *United States v. Ritchie*, 342 F.3d 903, 905-07 (9th Cir. 2003) (emphasis added) (collecting cases) (treating Rule 41(e) motion filed absent pending criminal proceeding as civil complaint and noting uniform support for doing so).[3]

[2] This rule used to be Federal Rule of Criminal Procedure 41(e). *See, e.g.*, *United States v. Howell*, 425 F.3d 971, 976 n.3 (11th Cir. 2005) ("Fed. R. Crim. P. 41(e), has been changed to 41(g).").

[3] *See also United States v. Giraldo*, 45 F.3d 509, 511 (1st Cir. 1995) ("Where criminal proceedings against the movant have already been completed, a district court should treat a rule 41(e) motion as a civil complaint."); *Lavin v. United States*, 299 F.3d 123, 127 (2d Cir. 2002) ("After a criminal proceeding has ended, a district court should construe a motion requesting return of property under Rule 41(e) as initiating a civil action in equity."); *United States v. McGlory*, 202 F.3d 664, 670 (3d Cir. 2000) (endorsing the view that in the absence of pending criminal proceedings "a district court should treat a [R]ule 41(e) motion as a civil complaint"); *United States v. Garcia*, 65 F.3d 17, 18 n.2 (4th Cir. 1995) ("We agree with those circuits that have held that a motion for return of property, at least where no criminal proceedings are pending, is a civil action against the United States."); *Bailey v. United States*, 508 F.3d 736, 738, 740 (5th Cir. 2007) (explaining that the district court had construed the Rule 41(e) motion as a civil complaint and then endorsing application of a civil statute of limitations for the return of property); *United States v. Shaaban*, 602 F.3d 877, 878-79 (7th Cir. 2010) ("The district court failed to recognize that the civil action was already underway" with the filing of a Rule 41(g) motion, "and also failed to appreciate that Shaaban could be ordered to pay the civil fees and would be subject to the Prison Litigation Reform Act without making him jump through the hoop of filing another case."); *Thompson v. Covington*, 47 F.3d 974, 975 (8th Cir. 1995) ("Post-conviction filings for the return of property seized in connection with a criminal case are treated as civil equitable actions . . . ."); *United States v. Madden*, 95 F.3d 38, 40 (10th Cir. 1996) ("[W]e and a number of our sister circuits have held that if there are no criminal proceedings pending against the defendant, and the defendant files a Fed. R. Crim. P. 41(e) motion for return of property seized in a prior nonjudicial forfeiture proceeding or as part of some other nonjudicial proceeding or occurrence, the district court should construe the motion as an independent civil action based on equitable principles." (emphases omitted)); *Howell*, 425 F.3d at 974 ("When an owner invokes Rule 41(g) after the close of all criminal proceedings, the court treats the motion for return of property as a civil action in equity.").

[34] The Supreme Court of Appeals of West Virginia recently decided the procedure to be used to seek return of property before any criminal proceedings have been initiated. That court wrote:

> [W]e now expressly hold that, when a party against whom no criminal charges have been brought seeks the return of seized property, such person should file, in the circuit court of the county in which the property was seized, a complaint seeking the return of such property under West Virginia Rule of Criminal Procedure 41(e). The circuit court shall treat the *complaint* as a civil proceeding.

Pristine Pre-Owned Auto, Inc. v. Courrier, 783 S.E.2d 585, 592 (W. Va. 2016) (emphasis added). It also carefully "note[d] that Rule 41(e) refers to a 'motion' being filed," but stated that "when no criminal charge is pending, relief under Rule 41(e) should be sought by filing a complaint." *Id.* at 592 n.6.

[35] The language of Rule 41(g) differs from that of 8 GCA § 35.45(a) in that the former provides relief for "[a] person aggrieved by an unlawful search and seizure of property *or by the deprivation of property*," Fed. R. Crim. P. 41(g) (emphasis added), while the latter applies on its face only to "[a] person aggrieved by an unlawful search and seizure," 8 GCA § 35.45(a). Amendments in 1989 altered the language of the federal rule, accounting for this difference in language. Fed. R. Crim. P. 41 advisory committee's note to 1989 amendment. But the notes for those amendments state that although the rule previously did not "explicitly recognize" the right of a property owner to challenge government possession of property unless the search itself was unlawful, courts had already—pre-amendment—recognized that right under Rule 41. *Id.* (citing *United States v. Wilson*, 540 F.2d 1100 (D.C. Cir. 1976)). Even still, this ability to recover property that is legally seized exists only for property "which is not needed, or is no longer needed, as evidence." *Wilson*, 540 F.2d at 1101.

[36] On another record, this court may further harmonize the remedy in 8 GCA § 35.45 with the need to respect the administrative process by restricting section 35.45's use or scope in certain circumstances. In allowing a civil suit in equity for the return of property seized pursuant to an *administrative* rather than criminal search warrant, special care is required to ensure that any action does not duplicate, replace, or disturb any intended administrative process and its accompanying strictures.[4] Had DPHSS issued a final administrative determination regarding these substances from which Dr. Joseph appealed,[5] there would be little question that the presumptions apply. But DPHSS has not argued that Dr. Joseph's suit was improper on the basis that administrative remedies were not exhausted; it has not articulated that Dr. Joseph could or should have availed himself of such a process or what the proper process would have been. Where the Government is able to articulate an administrative process for return of improperly seized property, due process is not implicated to the same degree and 8 GCA § 35.45 may not offer the appropriate remedy.[6]

[37] The Superior Court did not abuse its discretion by construing the document Dr. Joseph filed as a complaint initiating a civil action and, thus, did not err by entering judgment.

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[4] This is, of course, only where the administrative process is not accompanied by a criminal process, to which 8 GCA § 35.45 has clear application.

[5] Title 9 GCA § 67.506 (2005) states that "[f]inal determinations, findings and conclusions of DPHSS under this Act are subject to review under the Administrative Adjudication Law."

[6] It is true, as DPHSS argues, that "no property right shall exist" in substances seized under the act. Appellee's Br. at 27 (citing 9 GCA § 67.502.1(a)(1) (2005)). However, property seized under the Act is still subject "to the orders and decrees of the [c]ourt," 9 GCA § 67.502.1(c), and a mere declaration that whatever is seized under the act is not subject to due process would be to turn the analysis on its head. If a substance is properly seized under the Act as contraband and no exceptions exist for its legal possession, then no right exists in it. *Cf. Helton v. Hunt*, 330 F.3d 242, 247 (4th Cir. 2003) ("Some contraband is 'intrinsically illegal in character.'" (quoting *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693, 699-700 (1965))). If, however, a liquid substance seized under the Act turns out to be, for instance, perfume, or the substance is scheduled but subject to legal possession by the owner, then the mere taking under the Act is insufficient to relieve the government of their obligations regarding deprivation of property.

C. The Superior Court Improperly Allocated the Burdens in the Proceeding

[38] Dr. Joseph asserts that the Superior Court erred by using 9 GCA §§ 67.505.1 and 67.505.2[7] to improperly shift the burden of proof. He argues that 9 GCA §§ 67.505.1 and 67.505.2 do not apply because the proceeding was not one "under [the Guam Uniform Controlled Substances] Act," to which 9 GCA §§ 67.505.1 and 67.505.2 apply by their very terms. Appellant's Br. at 22-23.

[39] DPHSS argues that Dr. Joseph waived this argument by not raising it before the Superior Court. Appellee's Br. at 22-23. Because the issue concerns the proper burden in a novel proceeding in this jurisdiction and because it is purely one of law, we exercise our discretion to consider the issue. *See Mack v. Davis*, 2013 Guam 13 ¶ 42.

[40] DPHSS argues that "the Act was the very statutory ground that the underlying search and seizure at issue was based on," and that "[t]he Act was the applicable governing law in the trial court proceeding." Appellee's Br. at 22. It argues that the Act is applicable because it defines what a veterinarian is and sets out the requirements for a CSR. *Id.* at 21.

[41] We hold that this was not a proceeding *under* the Guam Uniform Controlled Substances Act, but was instead a civil action in equity initiated under 8 GCA § 35.45. *See* Part IV.B., above.

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[7] Those provisions both contain language reading:

> It shall not be necessary for the government to negate any exemption or exception in this Act in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under this Act. The burden of proof of any such exemption or exception shall be upon the person claiming its benefit.

9 GCA §§ 67.505.1(a), .2(a)(1) (2005).

[42] Other jurisdictions have developed the proper standard for application in a civil equitable proceeding initiated under provisions similar to 8 GCA § 35.45, and this standard should be applied in Guam.

> When a motion[8] for return of property is made before an indictment is filed (but a criminal investigation is pending), the movant bears the burden of proving both that the seizure was illegal and that he or she is entitled to lawful possession of the property. . . .
>
> However, when the property in question is no longer needed for evidentiary purposes, either because trial is complete, the defendant has pleaded guilty, or . . . the government has abandoned its investigation, the burden of proof changes. The person from whom the property is seized is presumed to have a right to its return, and the government has the burden of demonstrating that it has a legitimate reason to retain the property.

United States v. Martinson, 809 F.2d 1364, 1369 (9th Cir. 1987) (footnotes and citations omitted).

D. The Superior Court Erred in Withholding the Substances on the Existing Record and Present Rationales, but Further Proceedings not Inconsistent with this Opinion are Necessary to Determine Each Drug's Status

[43] The record does not reveal that all of the substances were subject to import-export restrictions under the Act. Dr. Joseph asks this court to read 9 GCA § 67.601(a) and (b) together to determine that the statute does not require a license to import non-narcotic drugs in schedules III, IV, and V if those drugs are imported for medical or legitimate uses. *See* Appellant's Br. at 23-26. Title 9 GCA § 67.601(a) reads:

> Except for a person registered pursuant to § 67.606 of this Act or exempted pursuant to § 67.604 or § 67.605 of this Act, it shall be unlawful and punishable as a felony of the first degree to import into Guam any controlled

[8] Although *Martinson* references a motion rather than a complaint, we resolved in Part IV.B., above, that where no criminal docket exists, the proper vehicle for relief is a complaint.

> substance listed in Schedule I or II of this Act *or any narcotic drug listed in Schedules III, IV or V of this Act . . . .*

9 GCA § 67.601(a) (emphasis added). Title 9 GCA § 67.601(b)(1) reads:

> (b) It shall be unlawful and punishable as a felony of the third degree to import into Guam from any place outside thereof any non-narcotic controlled substance listed in Schedules III, IV or V of this Act, *unless such non-narcotic controlled substance:*
>
> (1) *is imported for medical, scientific or other legitimate uses . . . .*

9 GCA § 67.601(b)(1) (2005) (emphases added). DPHSS fails to respond to this interpretation, and the court accepts Dr. Joseph's argument.

[44] We also reject DPHSS's argument that all drugs brought into Guam—even from the United States—are imported within the meaning of federal law. Title 21 C.F.R. § 1301.11(a) reads in relevant part: "Every person who manufactures, distributes, dispenses, imports, or exports any controlled substance or who proposes to engage in the manufacture, distribution, dispensing, importation or exportation of any controlled substance shall obtain a registration unless exempted by law or pursuant to §§ 1301.22 through 1301.26." 21 C.F.R. § 1301.11(a) (Westlaw current through Oct. 19, 2017). For purposes of this regulation,

> [i]mport means, with respect to any article, any bringing in or introduction of such article *into the customs territory of the United States* from any place outside thereof (but within the United States), or into the *United States from any place outside thereof* (whether or not such bringing in or introduction constitutes an importation within the meaning of the tariff laws of the United States).

21 C.F.R. § 1300.01(b) (emphases added). As to the meaning of "United States," the regulation provides:

> United States, when used in a geographic sense, means all places and waters, continental or insular, subject to the jurisdiction of the United States, which, in addition to the customs territory of the United States, include but are not

> limited to the U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

Id. Guam is not within the customs territory of the United States. *United States v. Cabaccang*, 332 F.3d 622, 625 n.5 (9th Cir. 2003) (en banc). Read together, these federal regulations consider it importation to bring an article from Guam into the customs territory of the United States, but it is not importation to bring an article from the United States to Guam since Guam is included within the geographic definition of the United States. It is, however, importation under the provision to bring an article to Guam from outside the United States.

[45] Dr. Joseph claims there are no other valid reasons to withhold the seized substances, while DPHSS contends there are additional reasons justifying retention of the substances. DPHSS points out that Rosanna Rabago of DPHSS testified to many violations of federal and territorial law. This is true, although much of the testimony is freewheeling, inexact, and without legal or factual support. Transcripts ("Tr".) at 61-63 (Evidentiary Hr'g, Feb. 20, 2015) ("many of those controlled substance drugs"; "some of those non-controlled substance drugs"; "a lot of them came from foreign countries"; "Some of the -- the drugs that were in violation of the labelling . . . .").

[46] The trial court abused its discretion by not considering the law and evidence as it applied to each drug individually, as the current record does not support an inference that all of the substances suffer from similar defects—even within DPHSS's purported categories—enabling the court to treat them together.

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V. CONCLUSION

[47] The Superior Court did not abuse its discretion by construing a motion filed pursuant to 8 GCA § 35.45 as a complaint and, thus, did not err by issuing a judgment in this case. However, the court erred when it applied 9 GCA §§ 67.505.1 and 67.505.2. On remand, the court should determine whether there is the possibility of an ongoing investigation in this case and, if so, require Dr. Joseph to show that the seizure was illegal and that he is entitled to lawful possession of each substance. If there is no ongoing investigation and DPHSS wishes to continue to withhold the substances, then it must demonstrate that it has a legitimate reason to retain them. In any event, unless the court determines there is an ongoing investigation and that the search was lawful, the court must make more particular findings as to the withheld substances. Accordingly, we **VACATE** the Superior Court judgment and **REMAND** for further proceedings not inconsistent with this opinion.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
KATHERINE A. MARAMAN
Associate Justice

/s/
ROBERT J. TORRES
Chief Justice