

IN THE SUPREME COURT OF GUAM

CHERYL LYNN GRAY

Petitioner

vs.

SUPERIOR COURT OF GUAM

Respondent

vs.

LIEUTENANT EDWARD J. GRAY

Real Party in Interest

Supreme Court Case No. WRP99-003

Superior Court Case No. DM0006-98

OPINION

Filed: November 17, 1999

Cite as: 1999 Guam 26

Appeal from the Superior Court of Guam

Submitted on August 31, 1999

Hagåtña, Guam

Appearing for Petitioner:
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Appearing for Plaintiff-Real Party in Interest:
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BEFORE: BENJAMIN J. F. CRUZ, Chief Justice, RICHARD H. BENSON and JOHN A. MANGLONA, Designated Justices.

CRUZ, C.J. :

[1] Cheryl Lynn Gray, pursuant to Rule 24 of the Guam Rules of Appellate Procedure (1996), applies for a Writ of Prohibition directing the Superior Court of Guam to dismiss divorce proceedings pending in *Edward Joseph Gray v. Cheryl Lynn Gray*, DM0006-98, (Super. Ct. Guam January 5, 1998) on grounds of lack of subject matter jurisdiction. Upon review of the matter, we conclude that the Petitioner is precluded from obtaining the relief she seeks. Accordingly, the Petitioner's Writ of Prohibition is denied.

FACTUAL AND PROCEDURAL BACKGROUND

[2] On or about January 2, 1996, Petitioner, the former Cheryl Lynn Bunting ("Ms. Gray"), married the real party in interest, Edward Joseph Gray in Arlington, Virginia. At the time, Mr. Gray, a Lieutenant, ("Lt. Gray"), was active in the United States Navy and resided on Guam. On or about April 25, 1996, Ms. Gray relocated to Guam with her two children from a previous marriage. It was Ms. Gray's intention to remain on Guam for the remainder of Lt. Gray's military assignment. On or about August 31, 1997, Ms. Gray gave birth to the couple's only child, a daughter, Kyra Elizabeth Gray.

[3] Shortly after joining her husband on Guam, the couple began to experience marital discord. Eventually, on or about January 5, 1998, Lt. Gray filed a complaint for divorce. On or about May 1, 1998, the Superior Court of Guam rendered an Interlocutory and Final Judgment of Divorce, the latter was subsequently vacated by this court on June 25, 1998. Pursuant to the interlocutory judgment, which remains in effect, Ms. Gray received \$1,500.00 in stipulated spousal support, custody of Kyra Elizabeth Gray, a child support order and her share of the community property.

[4] In the midst of the divorce proceedings, Ariana Bunting, Ms. Gray's daughter from a previous marriage, removed \$10,000.00 via traveler's checks from the Navy Federal Credit Union.

On or about March 6, 1998, Lt. Gray obtained an *Ex Parte* Temporary Restraining Order freezing all funds on deposit in Ariana's bank account. With respect to the Temporary Restraining Order, on or about March 10, 1998, Ms. Gray was ordered to redeposit the \$10,000.00 Ariana held, into the Superior Court of Guam trust account by March 20, 1998. On March 20, 1998, Ariana's traveler's checks were deposited in compliance with the court's order. These monies are still maintained in the Superior Court of Guam trust account.

[5] On or about November 9, 1998, Ms. Gray made several motions for relief to the trial court. Her motions included, *inter alia*, a motion for an Order to Set Aside & Vacate Interlocutory Judgment on the basis of mistake and fraud and a motion for an Order to Dismiss for lack of jurisdiction. The trial court denied all of her motions on November 25, 1998.

[6] After the divorce proceedings, Ms. Gray was unable to live in military housing and as a result she returned to Michigan with her children. On or about March 5, 1999, Ms. Gray filed an action in the United States District Court, Eastern District of Michigan, Southern District, on behalf of her minor daughter, Ariana Bunting. Ms. Gray named the Superior Court of Guam trial judge ("trial court judge") as defendant in the suit. Ms. Gray prayed for damages associated with various alleged deprivations of the minor's constitutional rights in conjunction with her property (\$10,000.00) which was being held by the Superior Court of Guam.

[7] Thereafter, Ms. Gray sought the recusal of the trial court judge in the domestic case before the Superior Court of Guam citing possible questions of impartiality and bias. Before the motion to disqualify was heard, on or about April 28, 1999, Ms. Gray received a Speed Memo from the Clerk of Court, Superior Court of Guam. The memo stated that the trial court judge had, in fact, recused herself from the domestic case. To Ms. Gray's knowledge, the case was not reassigned to another Superior Court Judge.

[8] Meanwhile, on or about May 21, 1999, the federal cause of action against the trial court judge, was dismissed with prejudice. Lt. Gray's counsel stated that since the federal case against the trial court judge had been dismissed, there was no reason for her to be disqualified from hearing the domestic matter. Thus, on or about June 21, 1999, Lt. Gray filed a notice, scheduling a hearing

before the trial court for August 23, 1999, to hear all remaining motions filed.

[9] On or about June 28, 1999, Ms. Gray filed a Complaint for Divorce in the Second District, Davis County, State of Utah. On July 9, 1999, the Honorable Rodney S. Page, of the Second District Court, informed Ms. Gray, by letter that the papers filed by her failed to evidence that the documents had been personally served on Lt. Gray. Therefore, it was the court's recommendation that she either properly execute service of process by personally serving Lt. Gray or proceed with the matter in the State of Michigan.¹

[10] On July 12, 1999, Ms. Gray filed a Writ of Prohibition in this court. On or about July 17, 1999, Ms. Gray received a letter dated July 12, 1999 from Attorney William Pesch informing her that Respondent, the Superior Court of Guam had appointed him *Guardian Ad Litem*. Mr. Pesch requested information from Ms. Gray regarding her minor daughter, Kyra Elizabeth Gray, so that he could file a report with the Superior Court regarding a Change of Custody Motion filed by Lt. Gray.

[11] In response to Mr. Pesch's letter, Ms. Gray filed an Emergency Stay on July 26, 1999 to this court. On August 11, 1999, this court granted Ms. Gray the stay and allowed for all parties concerned to file responses regarding the pending Writ of Prohibition filed by Ms. Gray. Based upon the submitted briefs, the court now renders its decision regarding the Petitioner's Writ of Prohibition.

ANALYSIS

[12] This court has jurisdiction over original proceedings for prohibition pursuant to 7 GCA §3107(b) (1994). A writ of prohibition "arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person." 7 GCA § 31301 (1993). A writ of prohibition may be issued only "where there is not a plain, speedy, and adequate remedy in the ordinary course of law." 7 GCA § 31302 (1993). The issuance of a writ of prohibition is in the

¹Although the court's letter indicated that had personal service been properly made she could have proceeded in Utah or instead file in Michigan, Ms. Gray neglected to inform the court that she had a pending divorce proceeding in another jurisdiction (Guam).

discretion of this Court (7 GCA § 31401), and is a "drastic remedy to be used in extraordinary situations" (*Topasna v. Superior Court of Guam*, 1996 Guam 5 ¶ 5 (citations omitted)).

[13] This petition was based upon Petitioner's assertion that the lower court lacked subject matter jurisdiction. While "[t]he question of subject matter jurisdiction may be raised by any party, or by motion of the court, at any time, including on appeal" (*Gushi Brothers Co. V. Bank of Guam*, 28 F.3d 1535,1538 (9th Cir. 1994)), Petitioner must first show that she is without a plain, speedy and adequate remedy to justify consideration of the merits of her petition.

[14] The record indicates that Petitioner previously filed a motion to dismiss for lack of jurisdiction which was denied by the lower court. The issue of jurisdiction, therefore, may be raised on appeal and thus Petitioner has an adequate remedy at law. Additionally, a review of the petition shows that Petitioner merely asserted that she has no plain, speedy or adequate remedy available by direct appeal under Guam law. Petitioner failed to explain or justify this assertion and failed to show extraordinary circumstances. Petitioner has failed to show that a remedy as drastic as writ of prohibition is necessary in this case.

CONCLUSION

This petition for a writ of prohibition is **DENIED** and the emergency stay ordered by this Court on August 11, 1999 is hereby **DISCHARGED**.

RICHARD H. BENSON
Designated Justice

JOHN A. MANGLONA
Designated Justice

BENJAMIN J.F. CRUZ
Chief Justice