IN THE SUPREME COURT OF GUAM

ROBERT H. RINEHART
Plaintiff-Appellant

vs.

MARY S. RINEHART
Defendant-Appellee

Supreme Court Case No. CVA98-020
Superior Court Case No. DM0761-97

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OPINION

Appeal from the Superior Court of Guam.
Argued and submitted on May 10, 1999
Hagåtña, Guam

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BEFORE: BENJAMIN J. F. CRUZ, Chief Justice, PETER C. SIGUENZA, Associate Justice, and JOHN A. MANGLONA, Designated Justice.

CRUZ, C.J.:

[1] On June 27, 1998, the trial court declared a final judgment of divorce between Robert and Mary Rinehart. Plaintiff-Appellant/Cross-Appellee Robert H. Rinehart, hereinafter "Robert," appeals the trial court's decision to allow telephonic testimony during the bench trial. Robert also appeals the trial court's order that he repay the community for one-half of the money expended for repayment of his student loan and the trial court's order that an account, which his wife placed in both their names, be deemed her separate property. On cross appeal, Mary S. Rinehart, hereinafter "Mary," appeals the trial court's decision to allow this judgment to be paid without interest. Based upon the following discussion, the trial court's decision is affirmed in part, reversed in part, and remanded in part consistent with this opinion.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] Robert and Mary were married on February 6, 1988. Their first and only child was born on April 29, 1991. In July 1996, the family moved to Guam where Robert was stationed. During their stay in Guam, the couple argued repeatedly over an extramarital affair Mary confessed to having in the past.

[3] In late June 1997, Mary flew from Guam to Connecticut with the couple's daughter.[1] In August, Mary informed Robert that she would not return to Guam. On August 29, 1997, Robert filed for divorce in Guam. Robert served his wife by publication. Mary retained local counsel and filed an answer and counterclaim exactly one month later.

[1]Mary stated at the trial court that she believes she left Guam on June 29, 1997, but that she is uncertain. Transcript, vol. II, pt. 1, p. 10 (Continued Bench Trial, Feb. 10, 1998).

[4] Prior to trial, Mary's counsel advised the court that Mary would not return to Guam for the proceedings. The court ruled that Mary could participate and testify via telephone, an allowance to which Robert's counsel firmly objected. Transcript, vol. I, p. 18 (Bench Trial, Feb. 6, 1998). In its findings of fact and conclusions of law, the trial court granted Robert's request for a divorce based upon "Mary's infliction of extreme and grievous mental suffering." *Rinehart v. Rinehart*, DM 0761-97 (Super. Ct. Guam Mar. 11, 1998). The trial court made a number of rulings on community assets, custody and visitation matters, retirement funds, and child support.

[5] Robert takes issue with the trial court's decision that his student loan is a separate debt and its order that he must reimburse Mary $7, 268 for one-half of the amount that the community paid on the loan. Robert also expresses concern that the trial court found the Farmer's & Mechanic's Bank deposit, an account that Mary put in both of their names once they were wed, to be Mary's separate property. Mary argues that the trial court failed to include an account in its findings of fact and conclusions of law and that she should be given half the value of the account, plus interest.

[6] On May 26, 1998, Robert filed a motion to reconsider the ruling on the admissibility of the telephonic testimony as well as the monetary judgment. The lower court rejected both Robert's and Mary's claims on June 27, 1998. Robert filed this appeal and Mary subsequently filed a timely cross-appeal.

II. ANALYSIS AND APPLICATION OF LAW

[7] This court has jurisdiction over this appeal pursuant to Title 7 GCA §§ 3107(a) and 3108(a), (1994). We review the trial court's decision on the telephonic testimony for abuse of discretion. *See*

Bonamarte v. Bonamarte, 866 P.2d 1132, 1133 (Mont. 1994). We review the trial court's decision on the student loan for an abuse of discretion. *See Bliss v. Bliss*, 898 P.2d 1081, 1083 (Idaho 1995). The controversies regarding the Farmer's and Mechanic's Bank Account and interest on the judgment are questions of law that will be reviewed *de novo*. *Camacho v. Camacho*, 1997 Guam 5, ¶ 24.

A. Telephonic Testimony

[8] Title 6 GCA § 7301, (1994) provides that "[t]he testimony of a witness may be taken by affidavit, by deposition or by oral examination." Mary argues that telephonic testimony should be considered a type of oral examination and that she therefore complied with this rule. She argues that the facts in this case and the gray areas within the existing laws would allow for telephonic testimony. Robert argues that the courts should interpret this rule strictly. Based upon analyses of legal rules and case law, this court holds that the trial court abused its discretion by allowing Mary to testify telephonically.

[9] In addressing this contention, we see fit to follow the maxim *expressio unius est exclusio alterius*. This rule of statutory construction means that if an option is expressed in a law, all other options not expressed were intentionally excluded. *See generally* SUTHERLAND STAT. CONST. § 47.23 (5th ed. 1992). Courts have been warned to use this maxim prudently. *Abdullah v. American Airlines, Inc.*, 181 F.3d 363, 372 (3rd Cir. 1999) ("it should be taken with a grain of salt – or even better, with a grain of common sense"); *Bowers v. Town of Smithberg*, 173 F.3d 423, 1999 WL 51878 at **3 (4th Cir. 1999) (mentioning that it should be "only used with caution"). The phrase is meant to act as an interpretive rule, rather than act as a deliberate law. *Id.* (describing the phrase as "merely an auxiliary rule of statutory construction"); *Rooks v. Dep't. of Health and Human Services*, 35 Fed. Cl. 1, 8 (1996) (describing the

phrase as having weight, but not being dispositive). This maxim has not been codified into any Guam law. Nevertheless, this court believes that the maxim applies given the larger context in which telephonic testimony was excluded from Guam's testimonial laws.

[10] Federal Rule of Civil Procedure 43(a) concludes, "The court may, for good cause shown in compelling circumstances and upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from a different location." In addition, the notes to FRCP 43(a) provide that, "[c]ontemporaneous transmission of testimony from a different location is permitted only on showing good cause in compelling circumstances." FED. R. CIV. P. 43(a) Advisory Committee Notes.

[11] On the contrary, Guam's Rule 43(a) only states, "In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by the laws of Guam." Additionally, other Guam laws allow for telephonic testimony. *See, e.g.*, Title 5 GCA 34143(d), (1996) (allowing the use of telephonic testimony during child support holding hearings).

[12] Despite modern tendencies to rely upon the Latin phrase sparingly, courts have continued using the idea to the present. *Leatherman v. Tarrant County Narcotics, Intelligence, and Coordination Unit*, 507 U.S. 163, 168, 113 S. Ct. 1160, 1163 (1993); *Sullivan v. Hudson*, 490 U.S. 877, 891, 109 S. Ct. 2248, 2257-58 (1988); *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 188, 98 S. Ct. 2279, 2289 (1978). In a U.S. Supreme Court case which noted the critique of the rule, the Court still applied the rule. *Pauley v. Beth Energy Mines, Inc.*, 501 U.S. 680, 719, 112 S. Ct. 2524, 2546 (1991). The Court warned that the maxim should not be applied when evidence demonstrates otherwise; but it applied the phrase nevertheless because it could find no contradictory evidence. *Id.* After taking all contentions into our analysis, we maintain that the maxim is useful to our examination of Guam's testimonial laws. Because

Guam lawmakers modeled the island's procedural rules after the federal example, the fact that they did not replicate the federal rule's permissive stance with regard to telephonic testimony signifies that our legislators intended to reject this method. The fact that some Guam laws provide for telephonic testimony implies that Guam lawmakers would have included it in the testimonial rules if they truly desired it. *See In re Lares*, 188 F.3d 1166, 1169 (9th Cir. 1999) (applying the maxim to a law in which Idaho legislatures included only three possibilities for homestead immunity). Any exception to this holding would come from the "exceptional circumstances" holding in case law, *infra*.

[13] The *expressio* rule applies to other ideas in Mary's argument. Mary notes that Guam's evidentiary rules regarding testimony were based upon California's original rules which were written before Alexander Graham Bell's invention of the telephone. Therefore, she implies that the omission of the telephone in this law represents nothing more that an historical flaw. We cannot accept this interesting argument. Because the telephone has acted as such a major tool in the decades since its invention, we have no doubt that lawmakers would have amended this law decades ago if they truly desired to include the telephone as an acceptable method for testimony.

[14] Robert argues that telephonic testimony in this legal proceeding was improper and prejudicial to his case because Mary could not be shown any documents or exhibits, that the court could not assess her demeanor, and that his counsel was not allowed to properly cross-examine her. Transcript, vol. I, p. 18 (Bench Trial, Feb. 6, 1998). In other courts, parties have argued that an individual providing testimony over the telephone cannot be sworn in properly and may be getting coached by a third person unknown to those actually in court. *See* Michael J. Weber, Annotation, *Permissibility of Testimony by Telephone in State Trial*, 85 A.L.R. 4th 476 (1991).

[15] Robert would like this court to follow a Montana case with facts similar to those currently before the court. In *Bonamarte*, a husband appealed a lower court's decision to allow his divorcing wife to testify by telephone. *Bonamarte*, 866 P.2d at 1133. The wife, a past domestic abuse victim, requested that she testify over the telephone from New Jersey because she feared her husband, she could not afford to travel to Montana, and she could not afford to pay for their son's childcare in her absence. *Id.* at 1134. She argued that telephonic testimony was harmless error at most. *Id.* Although the court understood her reasoning, it nevertheless held that the husband's right to confront and cross-examine the witness had been violated. *Id.* The court reasoned that the wife, concerned about her safety and financial situation, could have been deposed or videotaped her testimony as appropriate alternatives to a live court appearance. *Id.* at 1136. While the court recognized that "special or exigent circumstances" may allow for such testimony, it acknowledged that this means of witnessing was not to be used in general. *Id.*

[16] We believe that all the conclusions in *Bonamarte* apply to this case. While Robert makes no claim that Mary was being coached on the other side of the phone or that the person testifying was not Mary, his right to confront the witness was reduced by Mary's physical absence in court. Mary maintains that a deposition or a videotaped testimony would have just as many credibility flaws as a simultaneous telephonic testimony. Though we concur that no testimonial method lacks flaws, we are required to uphold laws as the legislature wrote and intended them. The *Bonamarte* court sympathized with the appellee, but still ruled that it must uphold the law as it is written. *Id.* at 1135. Similarly, we sympathize with Mary, but our feelings should not alter the boundaries of the law.

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[17] The *Bonamarte* court did not bar all telephonic testimonies. Instead, it stipulated that they should be allowed only in "special or exigent circumstances." *Id.* at 1136. In addition, this precedent noted that a testimonial method agreed upon by both parties and the court would be permissible.[2] *Id.* at 1135; *see In Interest of Gust*, 345 N.W.2d 42, 45 (N.D. 1984), *later proceeding* 392 N.W.2d 824 (N.D. 1986) (disallowing a mental health expert to testify telephonically in a psychiatric commitment matter unless all parties agree to the method). Typically, other courts that have allowed this type of witnessing did so because of dire safety or legal matters. *See, e.g.*, *Boggess v. State*, 783 P.2d 1173 (Alaska Ct. App. 1989) (allowing a minor to testify telephonically in a case involving sexual abuse of a minor); *Gregg v. Gregg*, 776 P.2d 1041, 1042 (allowing telephonic testimony due to a party's late receipt of summons). In criminal cases, telephonic testimonies are prohibited under the Sixth Amendment right to confront witnesses. *See Coy v. Iowa*, 487 U.S. 1012, 108 S. Ct. 2798 (1988). The tensions between Mary and Robert do not reach the point where this unique legal exception should be granted. If the Montana court would not allow telephonic testimony to an abused wife, we cannot find Mary's unfortunate situation to be more extraordinary.

[18] In her brief, Mary warns that reversing the trial court's decision may create a slippery slope in which on-island spouses could tamper with the legal rights of off-island spouses. This concern is especially

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[2]The case at hand does not cause this court to specifically address a situation where the parties stipulate to the use of telephonic testimony. Furthermore, no analysis of exigent circumstances was done due to the fact that the parties did not question the parameters of such an exception. Therefore, the court will not discuss any possible exception to the general rule disallowing the admissibility of telephonic testimony at this time.

important given the number and transience of military families on this island.[3] The facts operating in Mary's and Robert's divorce as well as Guam's distance from the continental United States demonstrate why island legislators may want to amend the law to allow for telephonic testimony. Nevertheless, this method is not included at this time and the court does not have the power to proceed as it if were.

B. Student Loan.

[19] We next address the issue of whether the court erred in reimbursing the community for the amount paid on Robert's prenuptial student loan. In *Bliss v. Bliss*, 898 P.2d 1081, 1084 (Idaho 1995), the court found that reimbursement to the community was improper absent proof of enhancement to the separate property. There, the husband incurred a prenuptial debt and used $13,000 in community funds to pay off this separate debt. *Id.* at 1082. The magistrate at the initial proceeding found that the husband's separate estate was enhanced by community funds through the elimination of this separate debt. *Id.* at 1084. Consequently, the magistrate determined that the community was entitled to reimbursement. *Id.* at 1083. The Supreme Court of Idaho reversed. *Id.* at 1086. It held that although the husband's net value may have been enhanced, the community funds did not enhance the value of identifiable property. *Id.* at 1081.

[20] We find that the same reasoning should apply to the Rinehart divorce. Absent proof of the enhancement to Robert's separate property, there should be no reimbursement to the community. *See id.* at 1083. In the instant case, there was no evidence in the record of such an enhancement. Therefore, any

[3] About one-tenth of this island's population consists of military personnel and their dependents. In 1996, Guam had a little over 150,000 inhabitants. Of that number, 6,900 were active-duty military personnel. These officers and soldiers had approximately 6,800 dependents. GUAM DEPARTMENT OF COMMERCE, GUAM ANNUAL ECONOMIC REVIEW 1996-1997 A35 (1997).

reimbursement on these grounds would be improper. In addition, we note that the *Bliss* court recognized that "there may be egregious circumstances of unfair dealing which would result in reimbursement to the community, even if no separate asset was enhanced." *Id.* at 1083. Although Mary contends that there were in fact instances of unfair dealing, she makes no claim that these unfair dealings involve Robert's paying off his educational debt.

[21] Based on the foregoing, the lower court erred in its decision to reimburse the community in the amount of $7, 268 as one-half of the amount paid by the community.

C. FMB Account

[22] When Mary and Robert were wed, Mary put her Farmer's & Marketing Bank Account, hereinafter "FMB account," in both of their names. The trial court ruled that this account remains Mary's separate property. *Rinehart*, DM 0761-97 (Super. Ct. Guam March 11, 1998). In his motion to appeal, Robert challenged this decision. The court denied his challenge. In this current appeal, Robert raises the issue of his dissatisfaction with the trial court's decision on the FMB account. However, he failed to make an argument on the account in this brief. While Mary makes an argument as to why the decision should be affirmed, she also suggests that the matter should be considered waived.

[23] In several cases, we have held that if a party mentions a matter but then fails to make a complete legal argument on the issue, then we will refuse to analyze the matter. *See Seafood Grotto v. Leonardi*, 1999 Guam 30, ¶ 13; *People v. Quinata*, 1999 Guam 6, ¶¶ 22-27. Therefore, we affirm the lower court's decision on the FMB account because Robert did not adequately present it as an issue before this court.

D. Interest on the Judgment

[24] By way of Mary's cross appeal, we now address the issue of whether, as a matter of law, the trial court had the power or discretion to allow Robert to pay sums set forth in the judgment without interest.

[25] Title 18 GCA § 47106, (1992) sets forth the rate of interest to be paid on judgments. In its entirety, it provides:

> § 47106. Legal Rate of Interest.
>
> **The rate of interest upon** the loan or forbearance of any money, goods or things in action, or on accounts after demand or **judgment rendered in any court of the territory, shall be six percent (6%) per annum** but it shall be competent for the parties to any loan or forbearance of any money, goods or things in action to contract in writing for a rate of interest not exceeding the rates of interest specified in Title 14 of this Code.

18 GCA § 47106 (emphases added).

[26] The lower court ordered that:

> [i]n full settlement of the community division, Robert will pay over to Mary the sum of $10,893. At Robert's option he may structure payment as follows: a) no less than $893 to be paid immediately; b) the balance to be paid in consecutive monthly installments of not less than $250 until paid in full. **No interest shall accrue if payments are timely made**.

Rinehart, DM 0761-97 (Super. Ct. Guam March 11, 1998) (emphasis added).

[27] Based upon a plain reading of the relevant unambiguous statute the trial court decision to allow installment payments without interest was in error.

III. CONCLUSION

[28] In conclusion, the trial court abused its discretion in allowing Mary to testify over the telephone. We find that the lower court's decision to reimburse the community in the amount of $7, 268 as one-half

of the amount paid by the community was in error. We deem the holding on the FMB account affirmed for lack of an argument to the contrary. Additionally, based upon a plain reading of the relevant unambiguous statute, the trial court's decision to allow installment payments without interest was also in error. In accordance with these determinations, the lower court's decision is **AFFIRMED IN PART, REVERSED IN PART,** and **REMANDED IN PART** for proceedings consistent with this opinion.

PETER C. SIGUENZA
Associate Justice

JOHN A. MANGLONA
Designated Justice

BENJAMIN J. F. CRUZ
Chief Justice