IN THE SUPREME COURT OF GUAM

MARYANN S. LUJAN
Plaintiff

vs.

DAVID J. LUJAN, P.D. HEMLANI, and ZHONG YE, INC.,
Defendants

P.D. HEMLANI,
Cross-claimant/Appellant

vs.

DAVID J. LUJAN,
Cross-defendant/Appellee

OPINION

Filed: June 16, 2000

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Supreme Court Case No. CVA99-014
Superior Court Case No. CV0543-89

Appeal from the Superior Court of Guam
Argued and submitted on November 3, 1999
Hagåtña, Guam

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BEFORE: BENJAMIN J. F. CRUZ, Chief Justice, JOHN A. MANGLONA, and STEVEN S. UNPINGCO, Designated Justices

CRUZ, C.J.:

[1] The trial court granted David J. Lujan's Motion for a New Trial upon a finding that *pro tempore* Judge Marty Taylor was not qualified to preside at the trial in this matter. P.D. Hemlani appealed. At issue, are conflicting statutes on the appointment of *pro tempore* judges. Judge Taylor was appointed pursuant to Guam Public Law 21-03. At the time of this appointment, a potentially conflicting statute, Guam Public Law 21-126, was also in effect. The trial court found that P.L. 21-03 was impliedly repealed by P.L. 21-126, and that under the latter statute Judge Marty Taylor did not meet the qualifications of a *pro tempore* judge. Upon review of this matter, we find no implied repeal of P.L. 21-03 by P.L. 21-126, and that Judge Taylor's appointment pursuant to P.L. 21-03 was valid. However, we also find that, subsequent to Judge Taylor's appointment, 7 GCA § 6108 (1993) went into effect and repealed both of the aforementioned public laws. We hold that pursuant to section 6108 Judge Taylor did not meet the requirements of a *pro tempore* judge and was therefore not qualified to preside in this matter. We hereby affirm the trial court's decision on other grounds.

PROCEDURAL AND FACTUAL BACKGROUND

[2] This case arose out of a conveyance of community real property without the consent of a spouse. David J. Lujan (hereinafter "Lujan") was married to Mary Ann Lujan (hereinafter "Mary Ann"). During the marriage, the couple acquired two (2) lots of real property as community property. While still married,

Lujan executed a contract to sell these lots to Hemlani. Thereafter, P.D. Hemlani (hereinafter "Hemlani") executed his own contract to sell one of the lots at issue to Zhong Ye, Inc., a Guam corporation. Lujan subsequently executed a quitclaim deed conveying the lots to Hemlani. Mary Ann became aware of the transfer of property and, on May 18, 1989, filed her Complaint to Cancel Instrument and to Quiet Title [to] Community Real Property against both Lujan and Hemlani. Mary Ann amended her complaint to include Zhong Ye Inc. as a defendant. Lujan failed to answer the complaint and Mary Ann took judgment by default against him. Hemlani, however, answered the complaint and filed a cross-claim against Lujan. Summary judgments were entered in favor of Mary Ann. Thereafter, all the Superior Court of Guam judges recused themselves from presiding over the dispute between Hemlani and Lujan. On May 11, 1994, the Presiding Judge of the Superior Court, pursuant to section 4 of chapter IV of Guam Public Law 21-03 (hereinafter "P.L. 21-03"), appointed Judge Marty Taylor to sit as *pro tempore* judge. Judge Taylor was then a member of the judiciary of the Commonwealth of the Northern Mariana Islands (hereinafter "CNMI").

[3] On May 31, 1996, Lujan filed a Motion to Disqualify Judge and Remand Action to the Superior Court for Reassignment (hereinafter "Motion to Disqualify and Remand for Reassignment"). This motion was argued on June 5, 1996 before another Superior Court judge who denied the motion upon a finding that the Supreme Court had not assumed jurisdiction at the time of Judge Taylor's appointment as *pro tempore* judge.

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[4] The matter proceeded to trial on June 5 and 6, 1996 before Judge Taylor. On April 9, 1997, Judge Taylor issued Findings of Facts and Conclusions of Law. Judgment in favor of Hemlani was rendered on May 16, 1997, and entered on the docket on June 2, 1997. Judgment on the remaining issue involving Zhong Ye, Inc. was entered on January 26, 1999 which made the judgment against Lujan a final judgment.

[5] On February 5, 1999, Lujan filed a Motion for a New Trial (GRCP 59(a)); or, in the Alternative, for Relief from Judgment (GRCP 60(b)) (hereinafter "Motion for a New Trial) which was heard by the same Superior Court judge who heard Lujan's prior Motion to Disqualify and Remand for Reassignment. In the Motion for a New Trial, and pertinent to this appeal, Lujan asserted that the judgment was null and void because Judge Taylor was not qualified to serve as a *pro tempore* judge of the Superior Court of Guam under the laws in force at the time of his appointment and at the time of the trial. Specifically, Lujan contended that section 6 of Guam Public Law 21-126 (hereinafter "P.L. 21-126"), which was in effect at the time of Judge Taylor's appointment, had superseded P.L. 21-03. On April 22, 1999, the trial court reversed its earlier ruling and found that P.L. 21-126 impliedly repealed P.L. 21-03 and that Judge Taylor was not qualified to serve as a *pro tempore* judge under the requirements of P.L. 21-126. The trial court set aside Judge Taylor's decision and granted Lujan's Motion for a New Trial.

[6] On May 12, 1999, Hemlani appealed the lower court's decision to grant the Motion for a New Trial. In response, Lujan filed a cross-appeal in the matter on May 26, 1999. On June 9, 1999, following the general rule that an order granting a new trial is interlocutory and not immediately appealable, this court found that the parties had not satisfactorily demonstrated the grounds for an exception to the

aforementioned rule and we dismissed both the appeal and cross-appeal for lack of jurisdiction. On June 11, 1999, Hemlani filed a Motion for Reconsideration of the Supreme Court's dismissal. On June 21, 1999, we granted Hemlani's motion after determining that Hemlani had met the requirements of Title 7 GCA § 3108(b) (1994) for the appeal of an interlocutory matter.

DISCUSSION

[7] This court has jurisdiction over this appeal of an order for new trial pursuant to Title 7 GCA § 25102(d) (1993). Further, we find that the qualification of a *pro tempore* judge is an issue of general importance, the resolution of which will materially advance the termination of litigation. Thus, we have jurisdiction pursuant to 7 GCA § 3108 (b)(1) and (3).

[8] An appeal from an order granting a motion for a new trial, shall be reviewed for abuse of discretion. *Adams v. Duenas,* 1998 Guam 15, ¶ 16. "A trial judge abuses his [or] her discretion only when the decision is based on an erroneous conclusion of law or where the record contains no evidence on which the judge could have rationally based the decision." *Midsea Industrial, Inc. v. HK Engineering, LTD.,* 1998 Guam 14, ¶ 4 (citation omitted).

[9] The trial court's decision to grant a new trial was based on its determination that P.L. 21-126 repealed P.L. 21-03 and was the controlling statute when Judge Taylor was appointed judge *pro tempore* of the Superior Court on May 11, 1994. Further, the trial court found that under P.L. 21-126, Judge Taylor did not meet the requirements of a *pro tempore* judge, that his appointment was invalid, that his judgments in this case were void, and that a new trial was necessary. In reaching this decision, the trial

court acknowledged our decision in *Topasna v. Superior Court of Guam*, in which we held that Title 7 GCA § 6108 (1993) repealed both P.L. 21-03 and P.L. 21-126 when section 6108 became effective on April 21, 1996. *Topasna v. Superior Court of Guam* 1996 Guam 5, ¶¶ 13 and 14 . However, the trial court found that section 6108 had no effect on Judge Taylor's appointment because the section was not in effect on the date of the appointment and that the proper and legal appointment of a *pro tempore* judge is not rendered invalid by passage of a new law changing the requirements for a *pro tempore* judge. By making this finding, the trial court based its decision upon an erroneous conclusion of law.

[10] The trial court concluded that the provisions of P.L. 21-126 replaced P.L. 21-03 and that the irreconcilable conflict between the two statutes indicated a repeal by implication. The relevant section of P.L. 21-126 provides:

> **Assignment and appointment of temporary judges**. If the proper dispatch of the business of the Superior Court so requires, the Presiding Judge of the Superior Court may appoint one (1) or more judges **pro tempore** from among active attorney members of the Guam Bar Association in good standing to serve for designated temporary periods in the court under the following conditions: (i) Such judges shall only be appointed on a case-by-case basis as needed to try cases for which full-time judges are not available; and (ii) such judges shall meet all the academic and other qualifications of full-time judges. The Judicial Council shall establish a schedule of fees to be paid such judges **pro tempore** for their services, and the Superior Court is authorized to expend from its current budget the funds necessary to enable the court to utilize such services of such judges **pro tempore**.

Guam Pub. L. 21-126:6 (July 28, 1992) (emphasis in original). The relevant section of P.L. 21-03 provides:

> The Presiding Judge of the Superior Court of Guam may assign justices of the High Court of the Trust Territory of the Pacific Islands or judges or justices of courts of record of the Commonwealth of the Northern Mariana Islands in good standing, or a justice or district court judge of the Ninth Circuit Court of Appeals, including a judge of the District Court of Guam or the District Court of the Mariana Islands who is appointed by the President,

> or a judge or justice from any jurisdiction which extends such privilege to Guam judges, with the consent of the judge or justice so assigned and of the chief judge of Guam whenever such an assignment is necessary for the proper dispatch of the business of the court. Such judges and justices shall have all the powers of a judge of the Superior Court of Guam, consistent with the terms of assignment by the Presiding Judge.

Guam Pub. L. 21-03:IV:4 (April 17, 1991).

[11] Our analysis of whether the latter statute repealed the earlier statute, begins with the rule for statutory repeals by implication. "While repeals by implication are disfavored, such repeal may be found when a later statute, covers the whole situation of an earlier one and is clearly intended as a substitute." *Topasna,* 1996 Guam 5 at ¶ 13 (citations omitted). Turning to specific provisions of the above-mentioned statutes, P.L. 21-03 authorizes the Presiding Judge to appoint judges from other jurisdictions, including the CNMI, as temporary judges of the Superior Court. Public Law 21-126 does not expressly exclude the appointment of extra-territorial jurists but expands the authority of the Presiding Judge to appoint temporary judges from the active attorney membership of the Guam Bar Association. The trial court points to the additional requirements and mandatory language present in P.L. 21-126 which are absent in P.L. 21-03 (*e.g.* that appointments are to be on a case-by-case basis, and that temporary judges are to meet the qualifications of full-time judges) to find that the later statute encompassed the earlier. However, because repeals by implication are disfavored, these differences are simply not sufficient to justify the trial court's conclusion.

[12] Our decision in *Topasna*, that 7 GCA § 6108 impliedly repealed both P.L. 21-03 and P.L. 21-126, is distinguishable. Most telling is that section 6108 entirely divested the Presiding Judge's authority to appoint temporary judges and addressed the appointment of temporary judges by the Chief Justice.

Topasna, 1996 Guam 5 at ¶ 13 . Because the Presiding Judge's authority to appoint temporary judges was entirely divested, P.L. 21-03 and P.L. 21-126 were necessarily repealed. This certainly was not the effect of P.L. 21-126 on P.L. 21-03. We conclude that P. L. 21-126 did not cover the "whole situation" of the appointment of temporary judges provided by P.L. 21-03 and did not impliedly repeal it. We hold, therefore, that the trial court's conclusion of law was erroneous and that the Presiding Judge's appointment of Judge Taylor pursuant to P.L. 21-03 was appropriate at the time of the appointment.

[13] In his Motion for a New Trial, Lujan argued that section 6108 became effective on April 21, 1996 and after this date, only the Chief Justice could appoint *pro tempore* judges. Lujan argued that Judge Taylor was not appointed by the Chief Justice after April 21, 1996, that Judge Taylor was, therefore, without authority or jurisdiction to hear this case, and that any verdict rendered by Judge Taylor was void. In response, the trial court found that it did not need to address the issue as it had already held that P.L. 21-126 repealed P.L. 21-03 and Judge Taylor was not qualified. However, the trial court went on to state that had Judge Taylor's appointment been proper the appointment would not be rendered invalid due to passage of a new law or due to a change in requirements for *pro tempore* judges and that section 6108 would bear no effect. This conclusion is clearly erroneous.

[14] In *Topasna*, we held that 7 GCA § 6108 repealed by implication both P.L. 21-03 and P.L. 21-126. *Topasna,* 1996 Guam 5, ¶ 13. Section 6108 went into effect on the date the first Chief Justice of the Supreme Court assumed office, April 21, 1996. *Id.* at ¶ 14. As of April 21, 1996, the Chief Justice assumed administrative supervision over the entire judicial branch of the government of Guam, including the responsibility to appoint *pro tempore* judges for the Superior Court. *Id.* at ¶¶ 11-14. Thus, the

requirements for a *pro tempore* judge were set by 7 GCA § 6108(a)[1] which provided:

> When there is no Judge qualified or available to hear a cause or action or hearing in the Superior Court, the Presiding Judge shall request the Chief Justice to appoint a Judge **pro tempore** to hear the action. Such Judge **pro tempore** shall meet the same qualifications as a regularly appointed Judge of the Superior Court.

Therefore, the proper procedure after April 21, 1996 for the appointment of Judge Taylor as a *pro tempore* judge of the Superior Court should have been for the Presiding Judge to request the Chief Justice to make the appointment.[2] We find that on or after April 21, 1996, Judge Taylor was not appointed *pro tempore* judge by the Chief Justice and that any actions taken by Judge Taylor after this date in this case are void and without effect. *See e.g. Toby v. Superior Court of Los Angeles*, 47 P.2d 338 (Cal. Dist. Ct. App. 1935) (holding a temporary judge's acts are void when such judge is without statutory authority to preside). On this basis, we hold that a new trial is necessary and affirm the trial court's decision to grant a new trial.

[15] We note Hemlani's argument that Lujan waived any objection to Judge Taylor presiding over this case. Hemlani argues that our holding in *Topasna,* that the disqualification of a judge is a jurisdictional defect which cannot be waived, should not apply in civil cases. *Topasna,* 1996 Guam 5 at ¶ 6. In

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[1] We note that after the appointment of Judge Taylor, Guam Public Law 24-139 amended 7 GCA § 6108 and restored the Presiding Judge with the power to appoint *pro tempore* judges. We further note that subsequent to its enactment, P.L. 24-139 was determined to be void by pocket-veto. *Pangelinan v. Gutierrez*, 2000 Guam 11. However, all references herein to 7 GCA § 6108 are to the statute as it existed on June 5, 1996, the date of the trial court's ruling on Lujan's Motion to Disqualify Judge and Remand for Reassignment.

[2] We note that Judge Taylor would not have qualified for appointment because he did not meet the qualifications of a regular judge of the Superior Court as per section 6108(a). Under this section, the qualifications of a judge are set forth in Title 7 GCA § 3109(c) (1994), which requires that a judge of the Superior Court must be a bona fide resident of Guam for five years and have actively practiced law in Guam for seven years. While it is possible for a judge of the CNMI to serve as a judge of the Superior Court, the CNMI judge must first be appointed designated justice of the Guam Supreme Court by the Governor pursuant to Title 7 GCA § 3103(b) (1994) and then be directed by the Chief Justice to sit as designated judge of the Superior Court pursuant to section 3103(g).

Topasna, the underlying matter concerned the qualifications of an appointed *pro tempore* judge to preside over a criminal matter. *Id.* at ¶¶ 1 and 2. Here, the underlying matter is civil in nature. Hemlani states that the *Topasna* decision rested on the Texas case of *Lee v. Texas,* 555 S.W. 2d 121 (Tex. Crim. App. 1977). Hemlani contends that *Lee* was modified by the Texas Supreme Court in *Buckholts Independent School District v. Glaser*, 632 S.W.2d 146 (Tex. 1982). Specifically, Hemlani states that *Buckholts* stands for the proposition that a judge's disqualification is jurisdictional only if founded on constitutional grounds. Hemlani's reliance on *Buckholts* is misplaced. In *Buckholts*, a trial judge failed to recuse himself from a challenge to a school bond election and the court found that this failure was not fundamental error. *Id.* at 148. The court explained that the statute requiring the judge to recuse himself because he resided in the county of the contested election also contained a provision requiring the presiding judge to assign a judge to hear the motion to recuse. *Id.* The court further stated that the mention of motions to recuse in the statute showed that the legislature did not intend a disqualification that would make all actions void. *Id.* The court found that the correct procedure was for the appellants to file a motion to recuse and that their failure to do so amounted to a waiver of any error by the trial judge. *Id.* Thus, the requirement of filing of a motion to recuse meant that the disqualification of the judge in *Buckholt*s was not a jurisdictional question and Hemlani's interpretation of *Buckholts* is wrong. The issue in Hemlani's appeal is dissimilar and *Buckholt* is inapplicable. In this appeal, the ultimate question is whether the appointment of Judge Taylor was valid. This question is jurisdictional and under *Topasna* can be raised at any time. Therefore, Hemlani's argument that Lujan somehow waived any objection to Judge Taylor's qualification is meritless. Lujan previously raised the issue in his Motion to Disqualify. The issue was preserved and raised again in

the post-trial motion.

[16] We also note Hemlani's argument that Lujan's Motion for a New Trial should not have been heard by the trial court. Hemlani states that the applicable statute in challenging the qualifications of a judge is Title 7 GCA § 6107 (1993).[3] Hemlani claims that Lujan based his unsuccessful Motion to Disqualify and Remand for Reassignment on section 6107. Hemlani argues that Lujan, having lost this Motion to Disqualify and Remand for Reassignment, should have raised the issue of Judge Taylor's qualifications in an appeal and not in the Motion for a New Trial, which is the subject of the instant appeal.

[17] Hemlani's argument is without merit. Upon review of Lujan's Motion to Disqualify and Remand for Reassignment, we find that it was based on the argument that Judge Taylor was not legally appointed pursuant to 7 GCA § 6108 and 7 GCA § 3103 (b) and (g). The Motion to Disqualify was not based on the grounds for disqualification set forth in Title 7 GCA § 6105 (1993) (disqualification for conflicts of interest) and was, therefore, not based on 7 GCA § 6107. This motion was denied by the same trial court which held that sections 6108 and 3103 had not yet gone into effect because the Supreme Court had not assumed jurisdiction. The trial court's holding was in error. The Supreme Court's jurisdiction went into

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[3] Section 6107 provides:

> **Objection to competency; procedure.** Whenever a Justice or Judge who shall be disqualified under the provisions of this Chapter to sit or act as such in any action or proceeding pending before him or her neglects or fails to declare his or her disqualification in the manner provided by this Chapter, any party to such action or proceeding who has appeared therein may present to the court and file with the clerk a written statement objecting to the hearing of such matter or any trial of any issue of fact or law in such action or proceeding before such Justice or Judge, and setting forth the fact or facts constituting the ground of the disqualification of such Justice or Judge. . . .

7 GCA § 6107.

effect on April 21, 1996 which was prior to the hearing on the motion to Disqualify Judge and prior to the trial on the merits. Had the trial court properly found that the Supreme Court had assumed jurisdiction at that time, the trial court would have reached a different decision on this motion.

[18] Finally, we note that the order appointing Judge Taylor to this case specified that the appointment was to expire upon the final disposition of this case. This is contrary to the very reason for the appointment of a *pro tempore* judge and raises the possibility that a temporary judge could sit *ad infinitum* considering the uncertain duration certain trials could take. "An indefinitely appointed or continually reappointed judge pro tempore is a contradiction in terms." *Application of Eng*, 776 P.2d 1336, 1344 (Wash. 1989). Following this reasoning, the appointment of a *pro tempore* judge is to *temporarily* fill a vacancy on the bench created by the absence or disqualification of any existing judge. Presumably, when vacant bench positions are filled and a permanent full-time judge with no conflicts becomes available, the need for a temporary judge is obviated and the case should be reassigned to the new permanent judge. Guam public policy should be that *pro tempore* judge appointments are made when such assignments are necessary for the proper dispatch of the court's business. If such an assignment becomes unnecessary, the appointment should expire. Lujan's pretrial Motion to Disqualify and Remand for Reassignment was the proper motion to address and accomplish this policy.

CONCLUSION

[19] *Pro tempore* Judge Marty Taylor was properly appointed by the Presiding Judge pursuant to P.L. 21-03. However, when the Chief Justice of the Supreme Court assumed office on April 21, 1996, 7 GCA

§ 6108 went into effect and set the requirements for the appointment of *pro tempore* judges. Judge Taylor did not meet the requirements of section 6107, and after April 21, 1996, was no longer qualified to preside in this matter. The Decision and Order granting a new trial is hereby **AFFIRMED**.

JOHN A. MANGLONA
Designated Justice

STEVEN S. UNPINGCO
Designated Justice

BENJAMIN J. F. CRUZ
Chief Justice