

IN THE SUPREME COURT OF GUAM

SHANNON MANO,
Plaintiff-Appellant,

v.

JOSEPH RYAN MANO,
Defendant-Appellee.

Supreme Court Case No.: CVA04-007
Superior Court Case No.: DM1110-03

OPINION

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Appeal from the Superior Court of Guam
Argued and submitted on October 13, 2004
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; FRANCES M. TYDINGCO-GATEWOOD, and ROBERT J. TORRES JR., Associate Justices.

TYDINGCO-GATEWOOD, J.:

[1] Plaintiff-Appellant Shannon Mano (“Shannon”)¹ appeals from a Superior Court of Guam order which relinquished jurisdiction over this case for the custody and support of a minor child, Kyuss Mano, to the State of Washington after a request from the Commissioner of the Superior Court of Washington. Shannon argues that the trial court did not discuss the merits of its decision on whether or not to exercise jurisdiction and thus improperly relinquished jurisdiction. Defendant-Appellee Joseph Ryan Mano (“Joseph”) argues that the trial court’s relinquishment of jurisdiction was proper.

[2] Relying on our decision in *Quitugua v. Flores*, 2004 Guam 19, we hold that the trial court did not analyze the merits of whether or not to exercise jurisdiction, and thus, improperly relinquished jurisdiction over this case. We remand the case to the trial court to determine its powers to exercise or decline jurisdiction based on the merits.

I.

[3] Shannon and Joseph are married with two minor children: a daughter, Athena Mano, and a son, Kyuss Mano. Two dissolution of marriage actions were filed but subsequently dismissed in Washington. The parties separated in July 2002, and later Joseph filed the third and current petition for dissolution of marriage in Washington. During these proceedings, the Washington court awarded temporary custody of their daughter to Joseph.

[4] While both parties resided in Washington and while the current dissolution of marriage action was pending, the parties conceived the minor child that is the subject of this action. Shannon

¹ We refer to the parties by their first names rather than Husband or Wife, Defendant-Appellee, or Plaintiff-Appellant for ease of reference, to assist the reader and because such is the preferred practice in family law cases. See *Courtright v. Courtright*, CVA03-028, Order, p. 1, note 1 (Feb. 12, 2004).

subsequently left Washington and moved to Guam, where she gave birth to Kyuss on March 4, 2003. Since his birth, Kyuss has always resided on Guam with Shannon, who has been his sole caretaker. Since the date Kyuss was conceived, Joseph has continued to reside in Washington.

[5] On October 13, 2003, Joseph filed a motion for custody of Kyuss in the Superior Court of Washington, Case No. 02-3-00338-1, In re: Parentage of Kyuss Meshack Mano, Child. A hearing was scheduled to take place in Centralia, Washington, on November 21, 2003. Joseph also requested and the Superior Court of Washington granted temporary orders that Kyuss be returned to Washington.

[6] On November 20, 2003, Shannon filed a complaint in the Guam Superior Court (“Guam court”) for exclusive custody and control of Kyuss. At an ex parte hearing that same day, Shannon requested an order pendente lite for sole custody of Kyuss until otherwise ordered by the court. At this time, Shannon submitted a memorandum of law urging the Guam court to exercise its jurisdiction over the custody of Kyuss citing the Uniform Child Custody Jurisdiction Act, the Parental Kidnapping Prevention Act of 1980 codified as 28 U.S.C. § 1738A, and a Washington State case. The Guam court granted the request and “assert[ed] jurisdiction in this matter and order[ed] the child be placed in the temporary legal and physical custody of the mother.” Transcript (“TR”), Part I, p. 9 (Ex Parte Application, Nov. 20, 2003).

[7] Commissioner Tracy L. Mitchell of the Superior Court of Washington asked the Guam court to relinquish its jurisdiction regarding Kyuss’ custody to the Washington court.² The Washington court had already granted a temporary order of custody to Joseph, pursuant to Joseph’s October 13, 2003 motion. At a hearing on January 13, 2004, the Guam court informed Shannon of the Washington court’s request to relinquish jurisdiction. Shannon indicated her opposition to the request. The Guam court then ordered both parties to submit a memorandum of points and authorities addressing the issue as to which court, Guam or Washington, has jurisdiction over the

² In her order, the trial judge states that the Commissioner asked the Guam court to relinquish jurisdiction, but it is unclear from the record on appeal how this request was transmitted.

custody of Kyuss.³ The memoranda were due 14 days prior to the telephonic conference hearing on March 9, 2004. Joseph e-mailed his memorandum to the Guam court on March 4, 2004, but Shannon's attorney did not submit a memorandum.⁴

[8] On March 9, 2004, the Guam court conducted a telephonic hearing, at which Commissioner Mitchell, Joseph, and Joseph's attorney were present. Shannon was also present, but Shannon's attorney was not.⁵ At the telephonic hearing, the Guam court relinquished jurisdiction to the Washington court without any discussion of the merits.

[9] The Guam court then entered the order relinquishing jurisdiction on March 10, 2004. Shannon appealed. On March 12, 2004, Shannon filed an emergency motion for stay pending appeal from the order, and the stay was issued by this Court.

II.

[10] We have jurisdiction to hear appeals of a final order of the Superior Court.⁶ Title 7 GCA §§ 3107(b) and 3108(b) (2004); 48 U.S.C. § 1424-1(a)(2). *See also People v. Perez*, 2004 Guam 4, ¶¶ 3-4 (exercising jurisdiction over an appeal from a final order which granted dismissal of a criminal case).

³ Again, the trial judge states in her order that she communicated to the parties both the Washington court's request to relinquish jurisdiction as well as the order to submit a memorandum, but this was not in the record on appeal.

⁴ Neither a request nor a grant for e-filing as an acceptable medium for filing a motion was included as part of the record on appeal.

⁵ Shannon's attorney had mistakenly believed the hearing was set for the next day. He also wrongly assumed that the memorandum of law he had filed in November for the ex parte hearing was sufficient.

⁶ We recognize that *Merchant v. Nanyo Realty, Inc.*, 1997 Guam 16, ¶ 3 stated that final orders are appealable pursuant to section 3107(b), but noted that "[sections] 3108(a) and (b) additionally require, between them, either a final judgment or the satisfaction of criteria justifying interlocutory consideration." *See also A.B. Won Pat Guam Int'l Airport Auth. v. Moylan*, 2004 Guam 1, ¶ 9 (stating that "to appeal an order which has the effect of disposing of the case, the order must be reduced to a 'final judgment,' or must be an order which is subject to immediate appellate review 'as provided by law,' or in accordance with this court's discretionary jurisdiction over interlocutory appeals.)

Although no final judgment has been entered, Section 3108(b) provides that we may exercise our jurisdiction when doing so would "[c]larify issues of general importance in the administration of justice." Title 7 GCA § 3108 (b)(3)(2004). In the case at bar, the determination of which court, Guam or Washington, has proper jurisdiction, is "of general importance to the administration of justice" and thus, we may exercise our discretion and assert jurisdiction.

III.

[11] We will review the trial court's order for an abuse of discretion. *Quitugua*, 2004 Guam 19, ¶12. "A trial court abuses its discretion when its 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." *Id.* at ¶12 (quoting *Town House Dep't Stores, Inc., v. Hi Sup Ahn*, 2003 Guam 6, ¶27.)

[12] Shannon argues that the trial court improperly relinquished jurisdiction because it did not consider the merits of whether or not to exercise jurisdiction. Joseph argues that the Guam court's decision to relinquish jurisdiction was based on sound reasoning and a review of the facts and the law and not to sanction Shannon for her attorney's failure to appear at the hearing or file a written opposition. Joseph cites to the Guam court's Order Relinquishing Jurisdiction wherein the Guam court acknowledges the documents received from the Washington court, that court's extensive hearings regarding custody of the parties' other children and the Washington court's order with respect to Kyuss' custody.

[13] Pursuant to Local Rule 5B of the Rules of Superior Court, when a non-moving party fails to file a written opposition fourteen days before the hearing, this has the same effect, absent good cause, as filing a notice of non-opposition.

[14] In *Quitugua*, 2004 Guam 19 at ¶ 24, the respondent failed to respond to a motion to dismiss and the trial court treated his failure to file a written opposition as required by Rule 5B as a motion unopposed and granted the motion to dismiss. Our ruling in *Quitugua* establishes how courts should treat a party's failure to file an opposition:

[We] emphasize that the failure to file a written opposition to a motion, the filing of a notice of non-opposition to a motion, or the disregard of untimely filed papers, *does not require [the] court to automatically grant the motion and is not dispositive of the motion itself. The court has a duty to analyze the merits of the motion before rendering its decision* (emphasis added).

Id. at ¶ 28.

[15] Shannon failed to file a written opposition to the motion dealing with whether jurisdiction of the case should be relinquished to Washington or remain with Guam. At the March 9, 2004 telephonic hearing, the Guam court stated: “Based on the Counsel’s failure to file any memorandum and failure to appear, then I would at this time order that the case be heard in the Superior Court of Washington and relinquish jurisdiction.” Tr., Part II, pp. 2-3 (Hearing re: Jurisdiction, Mar. 9, 2004). Nothing else was stated by the Guam court. There was no discussion of the Uniform Child Custody Jurisdiction Act, the Parental Kidnapping Prevention Act of 1980, Guam law or Washington State law and how these laws might impact on whether jurisdiction properly lies with Guam or Washington. In addition, there was no discussion of whether Shannon’s failure to file the opposition constituted “good cause” as referred to in Rule 5B.

[16] While the Guam court references the Washington documents, its hearings and custody order, the Guam court’s relinquishment of its jurisdiction was not based on any discussion of the merits of Joseph’s motion and was inapposite to what the Guam court had previously found in its *ex parte* order dated November 20, 2003 wherein the Guam court asserted its jurisdiction.

[17] In light of these facts and in accordance with our *Quitugua* decision, the Guam court abused its discretion in failing to analyze the merits of a motion before rendering its decision. Therefore, we **REMAND** the matter to the Guam court to analyze the merits of its powers to reexamine jurisdiction.