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SUPREME COURT
OF GUAM

# IN THE SUPREME COURT OF GUAM

**ZURICH INSURANCE (GUAM), INC.,**
Plaintiff-Appellee,

**vs.**

**VIVIAN J. SANTOS,**
Defendant-Appellant.

Supreme Court Case No.: CVA06-004
Superior Court Case No.: CV0924-01

## OPINION

**Cite as: 2007 Guam 23**

Appeal from the Superior Court of Guam
Submitted on February 14, 2007
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, JR., Associate Justice; J. BRADLEY KLEMM, Justice *Pro Tempore.*

**CARBULLIDO, C.J.**:

**[1]** Defendant-Appellant Vivian J. Santos appeals a post-judgment order of the Superior Court requiring her to conduct a job search for the purpose of making payments on a judgment secured against her by Zurich Insurance (Guam), Inc. Santos argues that the lower court did not have the legal authority to order her to look for a job. We agree that the Superior Court is without authority to order a job search and thus vacate its post-judgment order.

**I.**

**[2]** Zurich Insurance (Guam), Inc. secured a money judgment against Vivian Santos after a bench trial, the details of which are not before this court. The trial court entered an order in favor of Zurich in the principal sum of $4,492.47, and $310.00 in costs, totaling $4,802.47. Final judgment was entered against Santos.

**[3]** Two years later, Zurich filed a Declaration stating that Santos had made no payments on the judgment. On the same document was an "Order" prepared by Zurich's counsel but signed by a Deputy Clerk of the Superior Court ordering Santos to appear at a hearing "to answer under oath concerning her property." Appellant's Excerpts of Record ("ER"), p. 4. At the hearing, Zurich's counsel requested that the Superior Court order Santos to conduct a job search. ER, pp. 5-6. The lower court consequently stated that "Defendant Vivian J. Santos is ordered to begin a job search. . . . [and] is to attempt to find and enter gainful employment . . . to aid in collection of the outstanding judgment in this matter." Record on Appeal ("RA"), tab 72 (Order of Apr. 3, 2006).

**[4]** In the trial court's order, lawyers for both sides agreed that "the issues raised by defense counsel are suitable for final resolution by the Supreme Court of Guam," thus the court stayed the order on the condition that Santos file an appeal within 30 days. Santos timely filed an appeal.

[5] Zurich filed a "Non-Opposition" to the Santos' Brief, stating that "[u]pon review of the authorities in Appellant's Brief, Appellee Zurich Insurance (Guam), Inc. (Zurich) files this Statement of Non-Opposition, and consents to the resolution of the matter by the Supreme Court, as it deems proper." Statement of Non-Opposition of Plaintiff-Appellee Zurich, p. 1 (Sept. 8, 2006).

**II.**

[6] Before proceeding to the merits of the case, this court must determine whether it has jurisdiction over this appeal. Santos contends that the trial court's order for a job search is appealable under 7 GCA § 25102, which provides: "An appeal in a civil action or proceeding may be taken from the Superior Court in the following cases: . . . (b) From an order made after a judgment made appealable by subdivision (a)."[1] Santos maintains that the issue of the trial judge's order that she as judgment-debtor "begin a job search" fits within section 25102 (b) and is therefore appealable.

[7] Section 25102 (originally enacted as 936.1 of the Guam Code of Civil Procedure in Guam Public Law 12-85) is based on and was derived from California's Code of Civil Procedure § 904.1(a)(2), which has substantially identical language as Guam's 25102(b).[2] Therefore, we look to California cases to aid in our interpretation of the same language. California case law is persuasive when there is no compelling reason to deviate from California's interpretation. *People v. Hall*, 2004 Guam 12 ¶ 18.

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[1] Title 7 GCA § 25102 (a) states, "(a) From a judgment, except (1) an interlocutory judgment other than as provided in subdivisions (h), (i) and (j); [and] (2) a judgment of contempt which is made final and conclusive by § 34106 of this Title (Contempts).

[2] The source for the current 7 GCA § 25102 is stated in the Compiler's note as the Guam Code of Civil Procedure § 936.1, enacted by the Guam Legislature in Public Law 12-85. Guam's Code of Civil Procedure § 936.1 originally mirrored a modified version of California's section 904.1 of that time; Guam's section 25102 stated: "(b) From an order made after a judgment made appealable by subdivision (a)," and the California Code of Civil Procedure section 904.1 (b) stated, as of 1993: "(2) From an order made after a judgment made appealable by paragraph (1)." *See Lakin*, 863 P.2d at 183. We do not address other differences between Guam's section 25102 and California's section 904.1 that developed in 1974 and subsequent to 1974.

**[8]** The case of *Lakin v. Watkins Associated Industries*, 863 P.2d 179 (Cal. 1993), interpreted California's Code of Civil Procedure § 904.1(b). *Lakin* states that not every post-judgment order is appealable pursuant to § 904.1. *Id.* at 183. *Lakin* sets forth the two requirements for a post-judgment order to be appealable. First, the issue raised by the appeal from the order must be different from those arising from an appeal from the judgment. *Id.* The reason for this general rule is explained in the case of *P R Burke Corp. v. Victor Valley Waste Water Reclamation Auth.*, 120 Cal. Rptr. 2d 98 (Ct. App. 2002): "The reason for this general rule is that to allow the appeal from [an order raising the same issues as those raised by the judgment] would have the effect of allowing two appeals from the same ruling and might in some cases permit circumvention of the time limitations for appealing from the judgment." *Id.* at 102 (quoting *Rooney v. Vermont Inv. Corp.*, 515 P.2d 297, 302 (Cal. 1973)). Thus, "[t]he issues raised by the appeal from the order must be different from those arising from an appeal from the judgment." *Id.* (quoting *Lakin*, 863 P.2d at 183).

**[9]** The second requirement is that the order must either affect the judgment or relate to it by enforcing it or staying its execution. *Lakin,* 863 P.2d at 183. A judgment in aid of execution can qualify as an appealable order under section 904.1. *Shelton v. Rancho Mortgage & Investment Corp.*, 115 Cal. Rptr. 2d 82, 86-87 (Ct. App. 2002).

**[10]** Thus, *Lakin* instructs that post-judgment orders that are not appealable if they are either: "(1) orders that, although following an earlier judgment, are more accurately understood as being preliminary to a later judgment, at which time they will become ripe for appeal, and (2) orders [that] pertain[] to the preparation of a record for use in a future appeal." *Roden v. AmerisourceBergen Corp.*, 29 Cal. Rptr. 3d 810, 814 (Ct. App. 2005) (citation and quotation marks omitted). We must examine the nature of the order that Santos appealed.

**[11]** In this case, the issue raised by the postjudgment appeal is different from those arising from the judgment. An examination of the record below reveals that the judgment reflected Santos'

liability to Zurich, and the post-judgment appeal is the authority of the court to order a job search to pay the judgment. The first judgment against Santos was not appealed. *See* Record on Appeal ("RA"), Docket Sheet. Whether Santos gets a job two years after trial is irrelevant to how she became a judgment-debtor in the first instance. The order in this case fits the first test of an appealable post-judgment order under *Lakin.*

**[12]** We next examine whether the order appealed affects the judgment or relates to it by enforcing it or staying its execution. This is answered in the affirmative, since the order appealed from is by its terms an order to create assets to pay the final judgment. The order is not preliminary to later proceedings; Santos' liability to Zurich has already been established and is not subject to any review in this appeal. Moreover, the job-search order does not pertain to the preparation of a record for future use in an appeal. The post-judgment order in the present case relates to the final judgment. Therefore, the order fits into the definition of an appealable order as interpreted by California case law interpreting a substantially similar statute. Therefore, this court has jurisdiction over this appeal.

## III.

**[13]** The issue presented on appeal requires the court to interpret the scope of Guam's post-judgment execution statutes under Title 7 of the Guam Code Annotated. This is an interpretation of law to be reviewed *de novo. Carlson v. Guam Tel. Auth.*, 2002 Guam 15 ¶ 16.

## IV.

**[14]** There are two statutes which address post-judgment proceedings concerning debtors and their assets. Title 7 GCA § 23201, entitled "Debtor Required to Answer concerning his Property," states:

> When an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, issued to the marshal, is returned unsatisfied in whole or in part[,] the judgment creditor, at any time after such return is made, is entitled to an order from a judge of the court requiring such judgment [debtor] to appear and answer concerning his property before such judge, or a referee appointed by him, at a time and place specified in the order.

7 GCA § 23201 (2005). Title 7 GCA § 23202, entitled, "Proceedings in Aid of Execution;

Examination; Arrest of Debtor; Undertaking or Imprisonment," states:

> After the issuing of an execution against property, and upon proof, by affidavit of a party or otherwise, to the satisfaction of a judge of the court, that any judgment debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment, such judge may, by an order, require the judgment debtor to appear, at a specified time and place, before such judge, or a referee appointed by him, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the Director of Public Safety to arrest the debtor and bring him before such judge. Upon being brought before the judge, he may be ordered to enter to an undertaking, with sufficient sureties, that he will attend from time to time before the judge or referee, as may be directed during the pendency of proceedings and until the final determination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking he may be committed to prison.[3]

7 GCA § 23202 (2005). The issue is whether there is language in either of these statutes sufficient to grant the trial court authority to order the defendant to conduct a job search. Santos concedes that under Guam's child support laws, there is specific statutory authority for a court to order a job search when an obligor owes back support. Santos refers to 5 GCA § 34105, entitled "Action," which states:

> Therefore, whether or not the minor children have been or are recipients of public assistance, the Department acting in the best interests of the children and the Island of Guam, may bring an action in its own name . . .
> (9) to obtain orders requiring the obligor owing back support to pay in accordance with a plan approved by the court or child support enforcement agency, and to seek court ordered job searches as necessary for unemployed or underemployed absent parents; provided, that if an obligor is under an approved payment plan but not

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[3] Six states in addition to Guam have language that, in some form or another, permits the commitment to prison of debtors who do not comply with post-judgment orders in aid of execution of money judgments: Idaho (Idaho Code Ann. § 11-502 (West, Westlaw through 2007 First Reg. Sess. of 59th Legis.)), Montana (Mont. Code Ann. § 25-14-102 (West, Westlaw through end of 2007 Reg. Sess. and May 2007 Special Sess.)), Nevada (Nev. Rev. Stat. Ann. § 21.280 (West, Westlaw through 2005 73rd Reg. Sess. and 22nd Special Sess.)), North Carolina (N.C. Gen. Stat. Ann. § 1-355 (West, Westlaw through S.L. 2007-552 (End) of the 2007 Reg. and Extra Sess.)), South Carolina (S.C. Code. Ann. § 15-39-320 (West, Westlaw through end of 2007 Reg. Sess.)), and South Dakota (S.D. Codified Laws § 15-20-5 (West, Westlaw through 2007 Reg. Sess.)). We have not found, and the parties do not direct us to, cases in these states involving an order requiring a judgment debtor to undergo a job search.

> working and not incapacitated, the obligor shall be ordered to participate in a job search.

5 GCA § 34105 (2005). Santos argues, however, that sections 23201 and 23202 addressing post-judgment orders do not give specific statutory authorization to order a job search in the same way that Guam's the section 34105 child support recovery statute grants such authority. Therefore, Santos argues that the trial court could not order an act that was not expressly allowed by sections 23201 and 23202.

**[15]** Santos relies on *Business Service Bureau, Inc. v. Martin*, 715 N.E.2d 764, 766 (Ill. App. Ct. 1999), in which an Illinois appellate court held that a statute on judgment-debt collection did not give a trial judge the right to make orders to create assets but rather, only the right to discover assets. The Illinois court analyzed section 2-1402 of the Illinois Code of Civil Procedure, which states that: "[a] judgment creditor . . . is entitled to prosecute supplementary proceedings for the purposes of examining the judgment debtor . . . to discover assets or income of the debtor . . . and of compelling the application of non-exempt assets or income discovered toward the non-payment of the amount due under the judgment." *Id.* at 766. It held that section 2-1402 did not allow the trial judge to enter orders to create assets, but did allow the entry of orders regarding discovering or discovered assets. *Id.* The Illinois court determined that "under the clear and unambiguous language of section 2-1402(a), no provision for creating or ordering the creation of assets exists." *Id.* It consequently concluded that the statute did "not authorize the job search order" and vacated the order. *Id.* at 767.

**[16]** Santos also relies on *Barber v. Jemery*, 288 A.2d 497 (R.I. 1972), in which the Rhode Island Supreme Court found that a trial court's order requiring a defendant to get a second job to pay his judgment debt exceeded the court's authority because, as in *Business Service*, there was no statutory language in the Rhode Island statutes, specifically R.I. Gen. Laws § 9-28-4 (1956 (1969 Reenactment)), to support the order. The Rhode Island court relied on *Hillside Metal Products v. Rowland*, 84 A.2d 534, 535 (R.I. 1951), where it noted that a debtor is permitted to exempt living

expenses from debt payments by statutory language, which provides that "the court shall first allow to the *debtor out of his income a reasonable sum for his own support*." *Hillside Metal*, 84 A.2d at 535 (emphasis in original). In *Barber,* the court found that the trial court had, "instead of complying with the legislative directives, assumed the obligation of finding a way to insure that the court's judgment would be paid," and found that this was in excess of the court's authority. *Barber*, 288 A.2d at 498. *Barber* supports Santos' argument because it supports the proposition that without statutory authority, a court cannot order the creation of assets.

**[17]** Like the Illinois statute discussed in *Business Service*, the two Guam statutes allowing the judgment creditor to take actions against the judgment debtor do not contain any language allowing a court to order the debtor to acquire more assets. Zurich has elected not to oppose this argument by filing a Non-Opposition to Santos' brief, wherein it "consent[ed] to the resolution of the matter by the Supreme Court, as it deems proper." Statement of Non-Opposition of Plaintiff-Appellee Zurich, p. 1 (Sept. 8, 2006).

**[18]** In workers' compensation cases, states have either statutory or regulatory express authority to order job searches, and there is a procedure for processing job searches. *See eg., State ex rel. Regal Ware, Inc. v. Indus. Comm.*, 821 N.E.2d 984, 985-987 (Ohio 2004); *Correa v. Waymouth Farms, Inc.*, 664 N.W.2d 324, 328-330 (Minn. 2003); *Coplin v. State, Dept. of Health and Rehabilitative Serv.*, 627 So. 2d 1282, 1285 (Fla. Dist. Ct. App. 1993). However, one court stated that the validity of a job search order depends on actual notice to the debtor of a job search requirement. *Kilbourne & Sons v. Kilbourne,* 677 So. 2d 855 (Fla. Dist. Ct. App. 1995) (stating that "claimant's work search responsibility is predicated upon actual notice of the requirement to perform the work search").

**[19]** Except where the procedure for a job search order is clearly set forth in a regulation or statute, we have not found cases, nor do the parties direct us to cases, approving an order to conduct a job search. Moreover, the language of sections 23201 and 23202 does not contain such authority.

The lower court's order requiring Santos to search for a job is not legally supported and thus is without authority.

## V.

The lower court's job search order is **REVERSED** and **VACATED**.

**J. BRADLEY KLEMM**

J. BRADLEY KLEMM
Justice *Pro Tempore*

**ROBERT J. TORRES, JR.**

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Associate Justice

**F. PHILIP CARBULLIDO**

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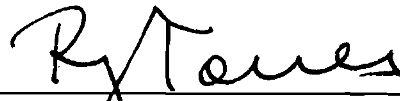
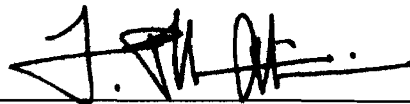


ROBERT J. TORRES, JR.
Associate Justice



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Chief Justice