IN THE SUPREME COURT OF GUAM

GUAM MEMORIAL HOSPITAL AUTHORITY,
Petitioner,

v.

SUPERIOR COURT OF GUAM,
Respondent,

v.

COMMITTEE ON HEALTH & HUMAN SERVICES,
31st GUAM LEGISLATURE,
Real Party in Interest-Respondent

Supreme Court Case No. WRM12-001
Superior Court Case No. SP0059-12

OPINION

Cite as: 2012 Guam 17

Appeal from the Superior Court of Guam
Argued and submitted August 29, 2012
Hagåtña, Guam

Appearing for Petitioner:
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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

CARBULLIDO, C.J.:

[1] The Committee on Health & Human Services of the 31st Guam Legislature ("Committee") issued a legislative subpoena to the Interim Administrator of the Guam Memorial Hospital Authority ("GMHA"). The subpoena required the Interim Administrator to appear at a legislative committee hearing and to bring particular documents with him by a specified deadline. Prior to that deadline, GMHA filed in the trial court an application for an *ex parte* order to quash the legislative subpoena. That same day, the matter was dismissed *sua sponte* by the trial court for lack of subject matter jurisdiction. The Committee then issued an amended subpoena that limited the scope of the initial subpoena to the production of information it believed to be nonconfidential. Three days later, GMHA filed a writ of mandamus, asking this court to order the trial court to exercise its jurisdiction to hear GMHA's application for an *ex parte* order to quash the legislative subpoena. During the elapsed time following the writ filing, GMHA fully complied with the amended legislative subpoena. As a result, the amended subpoena was vacated and there are no longer any outstanding legislative subpoenas directed to GMHA. For the following reasons, we hold that a writ of mandamus shall not issue and deny GMHA's petition.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] On or around February 2, 2012, Senator Dennis G. Rodriguez, Jr., Chairman of the Committee was alerted that GMHA and its Board of Trustees tried to overturn a GMHA Medical Peer Review action regarding a physician, Dr. George Macris, for the purpose of avoiding

litigation with Macris in the future. The concern of potential future litigation stemmed from the fact that Dr. Macris had his GMHA privileges revoked after the Medical Peer Review process revealed its findings and determinations. On March 30, 2012, Attorney General of Guam, Leonardo A. Rapadas received a written request from Chairman Rodriguez for a copy of the settlement agreement, release, and covenant not to sue between GMHA and Dr. Macris. Chairman Rodriguez did not receive a response to the request until July 10, 2012.

[3] On April 17, 2012, Chairman Rodriguez made a Sunshine Act request to the Governor. The Governor's legal counsel responded via e-mail on April 23, 2012, but did not provide the requested document or seek an extension of time to comply. The Committee issued a subpoena duces tecum to the Interim Administrator of GMHA on April 24, 2012. The subpoena ordered the Administrator to appear at a legislative committee hearing and bring certain documents with him by 6:30 P.M. on April 30, 2012. The documents required for production included the following: all settlement agreements and releases that GMHA entered into in the previous twenty-four months relating to an appeal for a peer review; all documents "being entered into and/or already entered into" involving the reinstatement of medical privileges for Dr. Macris, whose privileges were revoked within the past twenty-four-month period; all communications within the previous twenty-four months between GMHA and the National Practitioners Data Bank ("NPDB"); and records of proceedings of executive sessions of the GMHA Board of Trustees within the previous twenty-four months. Excerpts of Record ("ER") at 1-2 (Legislative Subpoena, Apr. 24, 2012).

[4] GMHA then sought to quash the subpoena in the trial court on April 27, 2012. On the evening of April 27, 2012, the Committee amended its subpoena to limit the production to

information it believed to be nonconfidential. In its application to quash, GMHA argued that the subpoena required it to violate federal and Guam law, that it was overbroad and oppressive, and that it was not protected by the Speech or Debate Clause of the United States Constitution. The trial court dismissed, *sua sponte*, the application to quash the original subpoena. On the same day as the dismissal, GMHA filed a motion to reconsider that decision. That motion was never heard. *See* Pet'r's Br. at 5 (Jul. 3, 2012). On April 30, 2012, GMHA also petitioned for a writ of mandamus in this court, seeking to have this court compel the trial court to exercise jurisdiction.

[5] Meanwhile, on April 30, 2012, the Governor, through his counsel, replied to Chairman Rodriguez's April 17, 2012 Sunshine Act request. Also on this day, in response to the amended subpoena, GMHA's Interim Administrator, Rey Vega, "satisfactorily responded to all but one of the provisions of the subpoena at the April 30, 2012 oversight hearing." Resp't's Br. at 14 (July 19, 2012). Vega appeared at a legislative oversight hearing on April 30, 2012, and he stated he wished to comply with the amended subpoena. No objections were made at that time. On May 3, 2012, Chairman Rodriguez informed Vega that his response was insufficient regarding item 6 of the subpoena because it did not contain minutes from the Board of Trustee executive session meeting discussing the settlement agreement, release, and covenant not to sue. On May 11, 2012, the requested session minutes were submitted to the Committee, which satisfied the last outstanding request. Lastly, on May 14, 2012, Chairman Rodriguez notified Vega in writing that Vega had submitted the documents requested pursuant to item 6, which placed him in compliance, and that the subpoena was vacated. Currently, there are no outstanding legislative subpoenas regarding this matter.

II. JURISDICTION

[6] The Supreme Court of Guam has original jurisdiction over writs of mandamus pursuant to 48 U.S.C.A. 1424-1(a)(1), (3) (Westlaw through Pub. L. 112-195 (2012)) and 7 GCA § 3107(b) (2005). *See Duenas v. Guam Election Comm'n*, 2008 Guam 1 ¶ 11.

III. STANDARD OF REVIEW

[7] The trial court's determination of lack of jurisdiction is reviewed *de novo*. *Sananap v. Cyfred, Ltd.*, 2008 Guam 10 ¶ 7. Conclusions of law by the trial judge are reviewed *de novo*. *Duenas v. George & Matilda Kallingal, P.C.*, 2012 Guam 4 ¶ 7.

IV. ANALYSIS

[8] The leading issue is whether petitioner GMHA has standing in this case. When a party lacks standing, this court is without subject matter jurisdiction to hear a claim. *Benavente v. Taitano*, 2006 Guam 15 ¶ 14 (citing *Guam Imaging Consultants, Inc. v. Guam Mem'l Hosp. Auth.*, 2004 Guam 15 ¶ 17). Standing is a "threshold jurisdictional matter," and as such, this issue can be raised "at any stage of the proceedings, including for the first time on appeal." *Taitano v. Lujan*, 2005 Guam 26 ¶ 15 (citations omitted). Moreover, an appellate court may raise issues of standing *sua sponte*. *See People v. Tennessen*, 2011 Guam 2 ¶ 12, quoting *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 230–31 (1990) ("Although neither side raises the issue here, we are required to address the issue even if the courts below have not passed on it, and even if the parties fail to raise the issue before us.") (emphasis omitted).

[9] Similar to state courts, this court is not bound by the standing requirements applicable to federal courts of limited jurisdiction under Article III of the United States Constitution. *Benavente*, 2006 Guam 15 ¶ 16 (citing *Gutierrez v. Pangelinan*, 276 F.3d 539, 544 (9th Cir.

2002)). We have nonetheless adopted traditional standing requirements. *See, e.g., id.* at ¶ 17 ("...while we recognize that Guam courts are not bound by Article III standing requirements, we do not reject such principles"). In addition, deriving guidance from our state court counterparts, we have held that standing may be based upon common-law standing as governed by Article III, or upon statutory standing as governed by Guam statutory law. *Id.* at ¶ 18.

A. Common-Law Standing

[10] Common-law constitutional standing requires proof of three elements. First, a party must show it has suffered an "injury in fact." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180 (2000) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). Second, a party must show causation, in that the injury can be fairly traced to the challenged action taken by the defendant. *Id.* Third, and finally, a party must show redressability, meaning it is likely and beyond mere speculation that a favorable decision will remedy the injury sustained. *Id.* at 181. The injured party bears the burden of proof with respect to these three elements. *See, e.g., Renne v. Geary*, 501 U.S. 312, 316 (1991) ("It is the responsibility of the complainant clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers.") (citation omitted).

[11] We address each of these three elements in turn and find no common-law standing.

1. Injury in Fact

[12] The first element of common-law standing is injury in fact. An injury in fact must be concrete, particularized, and actual or imminent; it cannot be purely conjectural or hypothetical. *Laidlaw*, 528 U.S. at 180. *See also O'Shea v. Littleton*, 414 U.S. 488, 495-96 (1974) ("Past

exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects.").

[13] GMHA contends that while it has substantially complied with the legislative subpoena, this court should nonetheless resolve the issue underlying the *ex parte* order to quash the subpoena because "the Hospital *may* be subject to such a subpoena again and relief *may* not be had before the time of compliance runs." Pet'r's Br. at 7 (July 3, 2012) (emphasis added). GMHA also tries to paint its injury in fact as the potential need for the Committee to return the materials sent in compliance with the subpoena. *See id.* at 11 ("*If*, on the merits, the Superior Court *were* to quash the subpoena, the Legislative Committee would need to disgorge wrongfully obtained material.") (emphasis added).

[14] It is important for us to determine the exact nature of the injury in fact complained of here, and to distinguish between the injury in fact claimed at the trial and appellate levels, respectively. The injury in fact outlined for the purpose of this mandamus proceeding is simply the denial of subject matter jurisdiction at the trial court level, and not the potential for future injury or the threat of legislative contempt proceedings. Specifically, GMHA suggests the injury in fact for our consideration is the absence of "the ability to request relief before a court which has jurisdiction but will not exercise it." *Id.* at 8.

[15] To entertain an argument that the trial court's denial of subject matter jurisdiction amounted to an injury in fact, we must address the merits of the trial court's decision to dismiss for lack of subject matter jurisdiction, but with the cautious eyes of writ review. In doing so, we note that no contempt proceedings were ever threatened by the Committee, and no subpoenas remain outstanding. It appears that because GMHA pled before the trial court an injury in fact

that was merely hypothetical and prospective in nature, the trial court declined to exercise subject matter jurisdiction over the matter.

[16] To that end, we cannot help GMHA achieve the goal of finding "relief before a court which has jurisdiction but will not exercise it," because we are unaware of a court available to do so at this stage in the litigation. *See* Pet'r's Br. at 8. Therefore, we hold GMHA has not met its burden to show an injury in fact in support of its writ petition, as it has not first met the burden of showing a particular and imminent injury in fact at the trial court level.

2. Causation

[17] The second element of common-law standing requires GMHA to show that the injury sustained can be fairly traced to action taken by the respondent. GMHA contends that "there was not enough time to fully litigate the matter" before it succumbed to and complied with the subpoena. Pet'r's Br. at 11.

[18] There are two respondents here, namely, the Superior Court of Guam, which is the trial court, and the Committee. First, in analyzing the conduct of the trial court, if the alleged injury is a denial of jurisdiction, the conduct of the trial court in dismissing the case for lack of jurisdiction clearly establishes causation. But if, on the other hand, we analyze the conduct of the Committee as the real party in interest, the tenacity of a causal chain proves weak, if not broken. This is because the injury sustained in this case, a denial of subject matter jurisdiction at the court below, is arguably self-inflicted. *See, e.g., Petro-Chem Processing, Inc. v. E.P.A.*, 866

F.2d 433, 438 (D.C. Cir. 1989) (noting self-inflicting injury completely of petitioner's own fault breaks the causal chain) (footnotes omitted).[1]

[19] Again, GMHA was not confronted with contempt proceedings, either legislative or judicial, when it chose to comply with the Committee's legislative subpoena. Were the facts of this case different, such that GMHA did not comply with the subpoena and instead chose noncompliance, the outcome could arguably differ. *See, e.g., United States v. Ryan*, 402 U.S.

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[1] We find the decision rendered by the Superior Court of Massachusetts in *Commonwealth of Massachusetts v. Philip Morris, Inc. et al.* to be instructive. *See Philip Morris*, No. 957378J, 1998 WL 1248003 (Mass. Super. July 30, 1998). Although presented in a somewhat different context, the reasoning in *Philip Morris* relative to voluntary compliance with a legislative subpoena is analogous to GMHA's compliance, which we find negates GMHA's injury requirement for standing. In *Philip Morris*, defendants opposed the Commonwealth's motion to "de-privilege" documents that were produced to the Chairman of the House Committee on Commerce, on the grounds that production was compelled and therefore the privilege attaching to the documents was not waived. *Id* at *1. The Chairman had requested these documents in a letter that urged production by a certain deadline and indicated that the Chairman would consider issuing a subpoena on the day following the deadline in the event of noncompliance. *Id.* After unsuccessful discussions with the Chairman and his staff, the defendants did not produce the requested documents, which were subsequently subpoenaed. *Id.* In a letter accompanying fulfillment of the subpoena, Philip Morris explained that it was informed of the Committee's inclination to overrule any assertion of privilege based on discussions with the Chairman's office, and that "[u]nder these circumstances, we have no choice but to comply with the subpoena." *Id.* at *2.

The court in *Philip Morris* held that defendants did not meet their burden to show that their compliance with the subpoena was in fact compelled and not voluntary. *Id.* at *12. Specifically, the court stated that "[i]n order to preserve any privilege, the subpoenaed witness must take all steps reasonably available to contest that subpoena, and only if those steps are unsuccessful will testimony or document production in compliance with the subpoena be treated as a compulsory disclosure." *Id.* at *6. The court also noted that the witness is not required to defy a court order and stand in contempt of court in order to preserve a claim of privilege, but that "all steps short of contempt must be exhausted" before disclosure is deemed compulsory. *Id.* The court cited to the Supreme Court's decision in *Eastland v. United States Servicemen's Fund* to support its analysis. *See Eastland,* 421 U.S. 491 (1974). In *Eastland*, the Court held that a witness served with a legislative subpoena cannot obtain a court ruling on privilege claims before standing in contempt, and, therefore, "the only legal steps necessary to protect a privilege while complying with a congressional subpoena are (1) to assert the privilege and (2) to obtain a ruling from the committee chair." *Philip Morris*, above at *2 (citation omitted). *See also Eastland,* 421 U.S. at 509-11 (holding Speech and Debate Clause written to prevent harm caused by judicial interference with valid legislative acts and to forbid invocation of judicial power to challenge the wisdom of Congress' use of its investigative authority). The court in *Philip Morris* held that the defendants had not obtained a ruling from the committee chair, noting that the "non-specific assertion of a conversation with an unidentified person" in the Chairman's office did not suffice. Failure to obtain such a ruling, the court reasoned, "meant they had not pressed their privilege claims to the actual brink of contempt." *Id.*

Similarly, GMHA could have sought a ruling from the Chair of the Committee, or otherwise made and carefully documented efforts to avoid having to produce the documents to the Committee. However, they chose to voluntarily comply with the subpoena.

530, 533-34 (1971) (holding full judicial review of claim available to litigant upon noncompliance with subpoena). In this sense, by choosing to comply with the subpoena, however, GMHA caused its own injury in fact and left the trial court with no choice but to dismiss the action for lack of subject matter jurisdiction. Accordingly, GMHA has not established causation.

3. Redressability

[20] The third and final element of common-law standing is redressability. To prove this element, GMHA must show that a favorable decision would serve to right the wrong it suffered. Here, GMHA implores us to find a court that has jurisdiction over its claim yet fails to exercise it. If we were to compel the trial court to hear this case, the trial court would adjudicate the standing issue in parallel fashion and dismiss the case in light of GMHA's failure to affirmatively meet its burden, as previously discussed. Thus, again, as we continue to search in vain for a means to provide the relief sought, we do not see how issuance of the requested writ would redress GMHA's alleged injury.

B. Statutory Standing

[21] As discussed above, a statute may confer standing upon a litigant where common-law standing would otherwise be lacking. When the legislature confers standing in this manner, litigants are excused from proving a "special injury," or injury in fact, ordinarily required for common-law standing. *See Benavente*, 2006 Guam 15 ¶ 19. However, GMHA advances no tenable basis for claiming statutory standing, and we find that none exists under these circumstances for GMHA to bring this writ.

V. CONCLUSION

[22] As the petitioner in this case, GMHA had the burden to show that it has standing to petition for a writ of mandamus. We hold that absent a cognizable injury in fact that is beyond mere conjecture, and without a tenable basis for statutory circumvention of the injury in fact requirement, GMHA lacks common-law standing and statutory standing, respectively.

[23] Because GMHA failed to meet its burden to establish standing, we dismiss this case with prejudice without deciding on other grounds whether a writ of mandamus shall issue.

[24] GMHA's petition for writ of mandamus is hereby **DENIED**.

Original Signed By: **Robert J. Torres**
ROBERT J. TORRES
Associate Justice

Original Signed By: **Katherine A. Maraman**
KATHERINE A. MARAMAN
Associate Justice

Original Signed By: **F. Philip Carbullido**
F. PHILIP CARBULLIDO
Chief Justice