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Supreme Court of Guam, Clerk of Court

IN THE SUPREME COURT OF GUAM

ALBERT J. BALAJADIA and WILLIAM L. GAVRAS,
Plaintiff-Appellants,

v.

GOVERNMENT OF GUAM,
Defendant-Appellee.

Supreme Court Case No.: CVA16-004
Superior Court Case No.: CV0183-15

OPINION

Cite as: 2017 Guam 1

Appeal from the Superior Court of Guam
Argued and submitted on October 19, 2016
Hagåtña, Guam

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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.[1]

CARBULLIDO, J.:

[1] Plaintiff-Appellants Albert J. Balajadia and William Gavras (collectively, "Appellants") appeal from a final judgment of the trial court granting summary judgment in favor of Defendant-Appellee Government of Guam in an action Appellants filed to determine the parties' rights to disputed funds Balajadia recovered in a personal injury settlement. The Government argued before the trial court that it had a right of subrogation, and should collect from the funds recovered from the third-party tortfeasor, because it had earlier paid Balajadia's medical expenses pursuant to Guam's Worker's Compensation statute. Gavras, Balajadia's attorney, argued that the Government could not exercise such a right because Balajadia was not made whole by the settlement funds. Gavras also argued that, regardless of allotment between the Government and his client, he should receive a contingency fee on the entire recovery pursuant to his client agreement. On appeal, Appellants argue that the trial court erred in deciding a declaration Gavras filed before that court (the "Declaration") was insufficient to defeat the Government's motion for summary judgment as to both issues.

[2] For the reasons detailed herein, we affirm the trial court's grant of summary judgment with respect to the issue of whether Balajadia was made whole, reverse the trial court's grant of summary judgment on the issues of whether a contingency fee agreement existed between Balajadia and Gavras and whether Gavras is entitled to collect such a fee on the contested amount, and remand for further proceedings not inconsistent with this opinion.

[1] The signatures in this opinion reflect the titles of the Justices at the time this matter was considered and determined.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] Balajadia filed a claim with the Workers' Compensation Commission ("WCC") seeking compensation from the Government for injuries sustained in an automobile accident while working for the Guam Police Department ("GPD"). Balajadia settled his claim with the Government by accepting payment of $11,647.13 as compensation for medical expenses.

[4] Balajadia also initiated a personal injury action in the trial court by filing a complaint against the driver of the other automobile involved in the accident that gave rise to his injuries. Balajadia settled the personal injury action for $25,000.00. Of the settlement funds, the amount in excess of Balajadia's medical expenses was distributed between Balajadia and his attorney, Gavras, pursuant to a prearranged contingency fee agreement.

[5] Appellants Balajadia and Gavras filed a Complaint for Interpleader to determine ownership over the remaining $11,647.13. The Government answered by asserting its alleged right to the funds under 22 GCA § 9134 (Compensation for Injuries Where Third Persons are Liable). The Government framed this assertion of its rights as a "counterclaim" against Appellants. Record on Appeal ("RA"), tab 9 at 2-3 (Answer & Countercl., Apr. 23, 2015).

[6] The Government then moved for summary judgment, arguing that 22 GCA § 9134 creates a statutory right of subrogation entitling it to reimbursement for medical expenses paid on Balajadia's behalf. The Government also argued that because the right of subrogation is created by statute, it prevails over equitable, non-statutory principles such as the made whole doctrine—under which the right to subrogation is contingent on the injured party first fully recovering for his injury.

[7] Appellants opposed, arguing that the Government improperly framed its answer as a counterclaim, that the statutory codification of the right of subrogation does not, in itself,

abrogate the common law made whole doctrine, and, in the alternative, that Gavras is entitled to his contingent fee based on the total settlement amount of $25,000.00. Appellants also filed the Declaration in support of its opposition motion. The Declaration stated that Gavras and Balajadia entered into a contingency agreement, filed a personal injury action, and settled that action for the tortfeasor's insurance policy limit of $25,000.00. The Declaration also stated:

> 6. Had we gone to trial, we would have asked the jury to return a verdict of well in excess of $25,000 and it is reasonable to assume the jury would have.
>
> 7. It is highly unusual for a defense attorney to permit his client's deposition to be taken during litigation and permit questions concerning the assets, income, and liabilities of the deponent to be asked. In my experience this is only agreed to when there exists a reasonable likelihood of a verdict in excess of the policy limits and the defense attorney wants the plaintiff's attorney to satisfy himself that there is no utility in going to trial to attempt to achieve a verdict in excess of the policy.

See RA, tab 2 (Decl. William Gavras Supp. Opp'n Mot. Summ. J., Sept. 22, 2015).

[8] The trial court granted the Government's motion for summary judgment, finding that Appellants failed to present evidence that showed a genuine issue of material fact that Balajadia was not made whole by the settlement of $25,000.00. RA, tab 21 at 6 (Dec. & Order, Jan. 15, 2016) ("[B]ecause Plaintiffs fail to present any evidence in response to [the Government's] summary judgment motion to support that Balajadia was in fact not made whole, and that he would thus be factually eligible to invoke the 'made whole' doctrine, this Court cannot reach the legal question . . . ."). Judgment was entered, and Appellants timely appealed.

II. JURISDICTION

[9] This court has jurisdiction over an appeal from a final judgment of the trial court. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 114-327 (2016)); 7 GCA §§ 3107, 3108(a) (2005).

III. STANDARD OF REVIEW

[10] "We review the grant of a motion for summary judgment *de novo*." *Moylan v. Citizens Sec. Bank*, 2015 Guam 36 ¶ 22 (quoting *Damian v. Damian*, 2015 Guam 12 ¶ 20).

[11] "The interpretation of a statute is a legal question subject to *de novo* review." *Data Mgmt. Res., LLC v. Office of Pub. Accountability*, 2013 Guam 27 ¶ 17 (quoting *Guerrero v. Santo Thomas*, 2010 Guam 11 ¶ 8).

IV. ANALYSIS

[12] The parties dispute whether the Declaration provided sufficient evidence to create a genuine issue of material fact as to whether Balajadia was made whole by his settlement recovery. *See, e.g.*, Appellants' Br. at 10-13 (Apr. 29, 2016) (arguing Declaration provided sufficient evidence to create genuine issue of material fact as to whether Balajadia was made whole); Appellee's Br. at 5 (June 28, 2016) (arguing Declaration contained "excessive speculation"); Appellants' Reply Br. at 5 (Aug. 11, 2016) (arguing Government waived objection to admissibility of Declaration statements).

[13] These arguments beg the more important legal question of whether the "made whole doctrine" applies in Guam when the worker's compensation scheme is silent on whether the insured must first be made whole but expressly grants a statutory right of subrogation to the insurer. Regarding this question, the Government argues that Appellants have "no legal basis" to limit its statutory right of subrogation. Appellee's Br. at 9. Specifically, the Government argues that because the Guam worker's compensation scheme is statutory and no statute incorporates the made whole doctrine, the doctrine is inapplicable as a matter of Guam law. *Id.* at 10-11. Appellants reply that the statutory codification of the right of subrogation does not, in itself, abrogate the common law made whole doctrine. Appellants' Reply Br. at 8-14. Specifically,

they argue the worker's compensation scheme "should be interpreted liberally in favor of the worker" and that equitable limitations should not be dismissed where the statutes at issue do not expressly prohibit them. *Id.* at 9, 12.

[14] We first look to the language of the statute. *Sumitomo Constr., Co. v. Gov't of Guam*, 2001 Guam 23 ¶ 17 (citing *Pangelinan v. Gutierrez*, 2000 Guam 11 ¶ 23). "Absent clear legislative intent to the contrary, the plain meaning prevails." *Id.* (citing *Aaron v. Sec. & Exch. Comm'n*, 446 U.S. 680, 699-700 (1980)). Title 22 GCA § 9134 states, in pertinent part:

> When an injury for which compensation is payable under this Title shall have been sustained under circumstances creating in some person other than the employer a legal liability to pay damages in respect thereto, the injured employee may claim compensation under this Title and, at his option, may also obtain damages from a proceed at law against the other person in order to recover damages. If compensation is claimed and awarded under this Title, *an employer or his insurance carrier, having paid the compensation or having become liable therefor, shall be subrogated to the rights of the injured employee up to the amount paid by the employer or his insurance carrier to the employee and shall be entitled to recover against such third person up to said amounts . . . .*

22 GCA § 9134 (2005) (emphasis added).

[15] As part of a comprehensive statutory scheme regulating worker's compensation, 22 GCA § 9134 provides that an insurer "shall be subrogated to the rights of the injured employee up to the amount paid" and "shall be entitled to recover against such third person up to said amounts." *Id.* It is undisputed that this language creates a right of subrogation in the Government over Balajadia's claim against a third party to recover the cost of medical expenses. When interpreting 22 GCA § 9134, we assume that the "legislature has considered the equities and has balanced the competing interests." *Martinez v. Ashland Oil, Inc.*, 390 N.W.2d 72, 74 (Wis. Ct. App. 1986). The Legislature has chosen not to include language that would prioritize a worker's right to be made whole over the employer/insurer's defined right to subrogation. Though we note that subrogation as a concept generally "rests upon principles of equity," *Petta v. ABC Ins.*

Co., 692 N.W.2d 639, 648 & n.15 (Wis. 2005), we are unwilling to engraft an equitable doctrine onto the comprehensive worker's compensation scheme when the legislature did not see fit to do so. *See Martinez*, 390 N.W.2d at 74.

[16] The present controversy does not require this court to rule on whether the made whole doctrine applies on Guam generally in circumstances unrelated to worker's compensation. Instead, we address only the limited question of whether the employer/insurer's right to subrogation under 22 GCA § 9134 supersedes any possible equitable right an employee might otherwise have to be made whole. Answering this question in the affirmative, we now hold that the employer/insurer's right to subrogation under 22 GCA § 9134 supersedes the made whole doctrine, even if such a doctrine is assumed to be otherwise applicable on Guam. *See Danielson v. Larsen Co.*, 541 N.W.2d 507, 513 (Wis. Ct. App. 1995) ("[C]ommon law rules of subrogation do not apply to worker's compensation.").

[17] Taking the above into account, we need not rule on whether the Declaration contained sufficient facts to raise a general issue as to whether Balajadia was made whole because Appellants' arguments on this point are moot. We affirm the trial court's grant of summary judgment on the ground that opposition evidence provided on the issue of whether Balajadia was made whole cannot create a genuine issue of material fact because the made whole doctrine, even if assumed to apply in Guam generally, would not affect the statutory right of subrogation under 22 GCA § 9134.

[18] Appellants also assign error to the trial court's finding that Appellants failed to provide "any significant evidence of the existence of a contingency fee agreement or its contingency fee calculation." RA, tab 21 at 5 n.1 (Dec. & Order); Appellant's Br. at 14. Specifically, they argue the Declaration provided sufficient evidence of a contingency fee agreement between Balajadia

and Gavras that entitles Gavras to recovery of his fees "on the entire amount" of $25,000.00. Appellant's Br. at 14. The Government does not directly respond to this argument. *See* Appellee's Br. at 6-7 ("Defendant doubts that this finding had much bearing on the court's thinking.").

[19] As a mere footnote in its Decision and Order, we are of the opinion that the issue was not adequately addressed by the trial court and we therefore cannot determine whether the trial court's statements constitute a finding adequately supported by the record. The Declaration offered in opposition to the Government's summary judgment motion stated that Gavras "entered into a contingency contract with . . . Balajadia to represent him in a personal injury action against the tortfeasor." RA, tab 15 at 2 ¶ 4 (Decl. William Gavras Supp. Opp'n Mot. Summ. J.). Nevertheless, the trial court stated that Appellants "fail[ed] to offer any significant evidence of the existence of a contingency fee agreement or its contingency fee calculation." RA, tab 21 at 5 n.1 (Dec. & Order). The court also stated that "[w]hile Mr. Gavras' declaration mention[ed] the existence of such an agreement . . . , no evidence was provided of its terms or fee structure, nor was a copy of the agreement itself ever offered." *Id.* We note, however, that the Government did not challenge the form or substance of the Declaration[2] other than to argue generally that Balajadia offered "no evidence" to defeat its motion for summary judgment. RA, tab 17 at 1 (Reply Mem. re Summ. J., Sept. 25, 2015).

[20] The issues of whether a contingency fee agreement existed between Balajadia and Gavras, and whether Gavras is entitled to collect such a fee on the contested amount, are matters for the trial court to resolve in the first instance. We therefore remand on these issues.

[2] The Government failed to specifically object to statements or move to strike statements from the Declaration.

V. CONCLUSION

[21] Because the made whole doctrine does not affect the statutory right of subrogation under 22 GCA § 9134, we affirm the trial court's grant of the Government's motion for summary judgment with respect to the issue of whether Balajadia was made whole.

[22] Because the trial court did not adequately address whether a genuine issue of material fact existed with respect to the issues of whether a contingency fee existed between Balajadia and Gavras, and whether Gavras is entitled to collect such a fee on the contested amount, we reverse the trial court's grant of summary judgment on these issues.

[23] For the reasons set forth above, we **AFFIRM** in part, **REVERSE** in part, and **REMAND** for further proceedings not inconsistent with this opinion.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
KATHERINE A. MARAMAN
Associate Justice

/s/
ROBERT J. TORRES
Chief Justice