IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

STANLEY T. MCGINNIS TORRES,
Plaintiff-Appellee,

v.

BENIGNO R. FITIAL,
Defendant-Appellant.

SUPREME COURT NO. 07-0013-GA
SUPERIOR COURT NO. 06-0129

Cite as: 2008 MP 15

Decided August 7, 2008

R. Anthony Welch, Assistant Attorney General, Saipan, Northern Mariana Islands, for Defendant-Appellant.
Stanley T. McGinnis Torres, Pro Se, Saipan, Northern Mariana Islands.

BEFORE: MIGUEL S. DEMAPAN, Chief Justice; JOHN A. MANGLONA, Associate Justice; TIMOTHY H. BELLAS, Justice Pro Tem

DEMAPAN, C.J.:

¶ 1 Governor Benigno R. Fitial ("Fitial") appeals the trial court's order entering a settlement between himself and Representative Stanley T. McGinnis Torres ("Torres") to resolve a dispute over funds taken from individual Commonwealth legislators after Fitial's declaration of a state of emergency. We hold that the trial court erred in entering a settlement order because there is insufficient evidence that both Fitial and Torres agreed to the settlement. We also hold that the trial court lacked jurisdiction to order a subsequent rescission of the settlement via a relief order after an appeal was filed. Accordingly, we VACATE both orders of the trial court and REMAND this matter to the trial court for further proceedings.

I

¶ 2 On January 27, 2006, Fitial declared a state of emergency in the Commonwealth as a result of the Commonwealth Utilities Corporation's ("CUC") pending inability to provide utility service. In the declaration, Fitial noted that CUC was only purchasing enough fuel to sustain operations for three days at a time and had no reserve in the event fuel was not delivered or another emergency transpired. Fitial determined that the situation amounted to emergency circumstances, and, based upon his interpretation of NMI Const. art III, § 10 and 3 CMC § 5101, *et seq.*, invoked his authority as governor to take necessary measures to avert a shutdown of power. Among the items Fitial outlined in the declaration of emergency was his claim of authority to reprogram necessary funds to provide CUC with resources to sustain operations. After issuing the declaration, Fitial reprogrammed funds to CUC from a number of government entities, including the Commonwealth legislature. Part of the funds diverted by Fitial was taken from Torres's individual legislative account.

¶ 3 Torres filed suit in the trial court claiming that Fitial's reprogramming authority did not permit him to take funds from the legislative branch to resolve the problems at CUC. Accordingly, Torres sought an order by the trial court that funds Fitial took from individual legislators for CUC be returned, that those specific acts of reprogramming be deemed illegal as applied to individual legislators, and that Fitial's declaration of emergency be declared void. Torres further asked the trial court to order that Fitial not fill vacant positions in the Commonwealth government unless the positions are essential and funds are available, and that the governor is empowered to reprogram all funds available to public corporations. In addition, Torres sought an order that funds taken from individual legislators' accounts as a result of budget cuts authorized by the Planning and Budgeting Act of 1983 to cover projected revenue shortfalls

be restored in the event that the projected shortfalls were later covered by actual revenue collections.

¶ 4 During the course of proceedings in the trial court, Torres and Fitial entered into settlement negotiations. Fitial states that the two parties informed the trial court that a settlement was being proposed that would adjust the budget of the Commonwealth legislature as a whole; this settlement did not involve any money actually changing hands or any adjustment to the individual budget of Torres. Ultimately, the parties informed the trial court that they had reached an agreement. Torres submitted a proposed settlement to the trial court. This document contained his signature, but not Fitial's. On March 27, 2007, without informing Fitial, the trial court issued an order approving a settlement (the "settlement order"), which returned $33,872.00 to Torres's individual legislative account.

¶ 5 Fitial states that he became aware of the settlement order days later when his counsel read about it in the newspaper. Following this discovery, Fitial's counsel proceeded to review the court file and alleges that the proposed settlement order was never filed with the trial court or the Superior Court Clerk of Court. He additionally states that the settlement order did not reflect any agreement between the parties and that Fitial explicitly rejected the terms in the agreement. Fitial appealed on May 3, 2007 and requested that this Court vacate the settlement order.

¶ 6 While preparing his reply brief, Fitial's counsel discovered that the trial court issued a second order (the "relief order") on May 14, 2007 granting relief from its settlement order. The relief order was based on Com. R. Civ. P. 60(a), which allows the trial court to correct clerical mistakes after issuing a final order. Fitial states that he never received notice of the relief order.

II

¶ 7 Fitial argues that he never agreed to the proposed settlement order and that it does not accurately reflect any agreement between himself and Torres. Torres argues that Fitial agreed to the settlement's terms and that the trial court acted within the scope of its authority to enter the settlement order because Fitial purposefully delayed its implementation. The issue before this Court is whether or not the settlement order is supported by sufficient evidence. Questions involving sufficiency of the evidence are legal issues reviewed de novo in the Commonwealth.[1] *United Enters., Inc. v. King*, 4 NMI 304, 306 (1995) (citing *In re Estate of Deleon Castro*, 4 NMI 102, 105 (1994)). When considering sufficiency of the evidence questions, "we determine if 'the evidence, when viewed in a light most favorable to the prevailing party, is sufficient to support the conclusion of the fact-finder.'" *Id.* (quoting *Manglona v. Kaipat*, 3 NMI 322, 329 (1992)).

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[1] In his brief, Fitial incorrectly states that sufficiency of the evidence is a question of fact to be reviewed under the clearly erroneous standard.

¶ 8 In addition, Fitial argues that Com. R. Civ. P. 60(a) does not allow for substantive corrections to a previously issued order, and that, even if it did, the trial court must seek leave of this Court to amend an order after an appeal has been filed.[2] This is an issue of law subject to de novo review. *Isla Fin. Servs. v. Sablan*, 2001 MP 21 ¶ 2.

Settlement Order

¶ 9 Settlement is heavily favored by the courts, and we note that the trial court possesses an "inherent power to summarily enforce settlement agreements entered into by parties litigant in a pending case." *Cia Anon Venezolana De Navegacion v. Harris*, 374 F.2d 33, 36 (5th Cir. 1967). However, for a settlement to be enforced, it must actually have been agreed to by both parties. Upon review of the record, this Court cannot find any evidence that Fitial agreed to the settlement order. While this Court does not completely discount the possibility that such a settlement was, in fact, reached, the trial court's decision to order a settlement was based solely upon a document drafted by Torres. The trial court failed to give Fitial an opportunity to state whether he agreed to the specific terms in the settlement. If, as Torres alleges, Fitial was purposefully delaying signing the settlement agreement, the appropriate remedy for the trial court would have been to order Fitial's counsel to appear and explain the delay. Fitial never signed the stipulation and proposed settlement order and was never informed that it was being issued by the trial court. Furthermore, the trial court apparently realized the insufficiency of evidence supporting the settlement order, because it later attempted to rescind it. Accordingly, we find that there was not sufficient evidence for the trial court to issue the settlement order. As such, we vacate the settlement order.

Relief Order and Rule 60 of the Commonwealth Rules of Civil Procedure

¶ 10 We also address the decision of the trial court to issue the relief order. This order, issued after the settlement order was appealed, rescinded the settlement order. The relief order did so under Com. R. Civ. P. 60(a), which reads as follows:

> (a) CLERICAL MISTAKES. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

Com R. Civ. P. 60(a).

¶ 11 Com. R. Civ. P. 60(a) is intended to correct clerical errors, not "errors of substantive judgment." *Jones v. Anderson-Tully Co.*, 722 F.2d 211, 212 (5th Cir. 1984). The rule should not be applied in situations where rulings "w[ere] deliberately done but later discovered to be

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[2] Fitial raised this issue in his reply brief and Torres did not address it.

wrong." *In re Craddock*, 149 F.3d 1249, 1254 n.4 (10th Cir. 1998). The decision to order a settlement that awards money to a specific party without sufficient grounds, such as the settlement order, is clearly not a clerical error. The trial court should have instead relied on Com. R. Civ. P. 60(b), which permits relief for "any . . . reason justifying relief from the judgment." Com. R. Civ. P. 60(b). Furthermore, not only did the trial court replace the settlement order with the relief order through the wrong rule, but Com. R. Civ. P. 60(a) prohibits the trial court from altering its orders or decision after an appeal is filed unless this Court first grants permission for the trial court to do so. Com. R. Civ. P. 60(a). This Court has imposed a similar requirement for the use of Com. R. Civ. P. 60(b) after the filing of an appeal by requiring a remand by this Court before the trial court can act. *Lizama v. Kintz*, 2002 MP 18 ¶¶ 6-7. We never granted permission or remanded this matter to the trial court. As we previously held, "it is usually the situation that once a case has been appealed, the trial court's work is finished until instructed to act by the appellate court." *Id.* ¶ 5. In this case, absent permission from this Court, the trial court had no jurisdiction to issue the relief order. Moreover, the trial court issued the relief order under the incorrect rule of civil procedure and without proper jurisdiction, since it lacked permission from this Court, as both Com. R. Civ. P. 60(a) or Com. R. Civ. P. 60(b) require. Accordingly, we also vacate the relief order.

III

¶ 12 For the foregoing reasons, we hold that the trial court's decision to issue the settlement order was not supported by sufficient evidence. The trial court also lacked the authority to amend the settlement order through Com. R. Civ. P. 60(a) because Com. R. Civ. 60(a) only allows for the correction of clerical errors. In addition, the settlement order had already been appealed and no leave was granted by this Court for the trial court to amend it. Accordingly, the settlement order and the relief order are both VACATED and this matter is REMANDED to the trial court for further proceedings.[3]

Concurred:
Manglona, J., Bellas, J.P.T.

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[3] In order to conserve the resources of the parties, the Commonwealth courts favor settlement, as it is generally one of the most efficient means available to the parties to resolve disputes even after they come before the courts, and would be an ideal solution to the situation that has arisen in this case. Therefore, this Court urges Torres and Fitial to resume settlement negotiations. Based on the oral argument, this Court finds that this case is particularly susceptible to settlement. The Court is advised that the funds to be restored were from a prior fiscal year and any agreement would be purely an act of ministerial accounting. Regardless of whether the parties avail themselves of this settlement option, if funds taken directly from an individual legislative account need to be restored, then they should logically be restored directly to that specific individual account.