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

PACIFIC FINANCIAL CORPORATION,
Plaintiff-Appellee,

v.

LAWRENCE C. MUNA,
Defendant-Appellant.

SUPREME COURT NO. 05-0009-GA
SUPERIOR COURT NO. 02-0092

Cite as: 2008 MP 21

Decided December 19, 2008

Michael A. White, Saipan, Northern Mariana Islands, for Plaintiff-Appellee.
Jane Mack, Micronesian Legal Services Corp., Marianas Office, for Defendant-Appellant.

BEFORE: ALEXANDRO C. CASTRO, Associate Justice; JOHN A. MANGLONA, Associate Justice; JOSE S. DELA CRUZ, Justice Pro Tem

MANGLONA, J.:

¶ 1 Defendant Lawrence C. Muna appeals the trial court's order holding him in contempt for failure to comply with an order to make monthly payments on a consumer debt, arguing the trial court should have advised him of his right to counsel. We hold that an alleged civil contemnor facing a loss of liberty has a right to counsel at a contempt hearing unless that right is explicitly waived. Because the trial court failed to advise Muna of his right to counsel, we VACATE the trial court's contempt order and REMAND the case for proceedings consistent with this opinion.

I

¶ 2 Pacific Financial Corporation ("PFC") filed a complaint with the trial court in February 2002 alleging that Muna was delinquent in paying the $8,176 in consumer debt he owed PFC. Muna failed to respond to the complaint, and the trial court entered a default judgment against him. The trial court ordered Muna to satisfy the judgment at the rate of $60 per month. Muna, however, failed to make any payments on the judgment for twelve months. Consequently, in March 2005, the trial court ordered him to show cause why he should not be held in contempt for failure to comply with its order.

¶ 3 Muna appeared at the contempt hearing without an attorney. Muna testified that he did not make any payments on the judgment because he was unemployed when the trial court entered the default judgment against him, and that he remained unemployed for the following nine months. He indicated that he began working only three months prior to the contempt hearing, he earned $3.50 per hour, and his bi-weekly net pay was $248. Muna also indicated that he provided financial support for his unemployed girlfriend and their four minor children, but that he was not responsible for rent or car payments.

¶ 4 Based on Muna's statements at the contempt hearing, the trial court determined that he had the ability to comply with its order and that he willfully failed to do so. The trial court therefore found Muna in contempt of court and sentenced him to ten days in jail. It suspended the ten-day jail sentence on the condition that Muna pay $30 per month until the judgment was satisfied.

II

¶ 5 On appeal, Muna argues that due process of law entitles all litigants to representation of counsel when they are facing a possible loss of liberty. He contends that the trial court erred in failing to either advise him of his right to counsel or appoint counsel prior to finding him in contempt and entering the suspended jail sentence. Whether the trial court is required to notify an

alleged civil contemnor of his right to counsel pursuant to the Due Process Clauses of the United States and Commonwealth Constitutions[1] is reviewed de novo. *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 3.[2]

¶ 6 Commonwealth law provides that when judgment debtors violate an order in aid of judgment, they may be incarcerated until they comply with the order or serve out their sentence. The Commonwealth Code states:

> If any debtor fails without good cause to comply with any order in aid of judgment made under this chapter, the debtor may be adjudged in contempt as a civil matter, after notice to show cause why the debtor should not be so adjudged and an opportunity to be heard thereon, and upon such adjudication shall be committed to jail until the debtor complies with the order or is released by the court or serves a period fixed by the court of not more than six months in jail, whichever happens first.

7 CMC § 4208. The statute does not indicate whether judgment debtors are entitled to counsel in a contempt proceeding. It is clear, however, that a judgment debtor's failure to comply with a court order subjects the debtor to a possible loss of liberty.

¶ 7 This Court has had few occasions to address the meaning and scope of 7 CMC § 4208, as well as whether a civil contemnor is entitled to counsel when facing a loss of liberty. The only relevant Commonwealth case addressing an alleged civil contemnor's right to counsel is *Paulis v. Superior Court*, 2004 MP 10. In *Paulis*, an unemployed debtor failed to make payments on a debt after the trial court entered a monetary judgment against her. *Id.* ¶¶ 4-5. The trial court ordered the debtor to show cause why she should not be held in contempt for violating the terms of the order in aid of judgment. *Id.* ¶ 5. The debtor appeared at the contempt hearing without representation of counsel, and testified that she was unable to make payments on her debt due to her indigency. *Id.* ¶ 8. The trial court found the debtor in contempt, ordered her to pay $25 a month in satisfaction of the judgment, and sentenced her to three days in jail, all of which was suspended on condition that she make her $25 monthly payments. *Id.* ¶ 9. The debtor subsequently made only one payment in satisfaction of the debt. *Id.* ¶ 10. As a result, the trial court held a contempt hearing and ordered the debtor to serve three days in jail. *Id.*

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[1] In the present case, we do not find the United States Constitution's Due Process Clause incompatible with the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, 48 U.S.C. § 1801 note. Thus, we interpret the Commonwealth Constitution's Due Process Clause as in line with the United States Constitution's Due Process Clause. *In re Petition of Pangelinan*, 2008 MP 12 ¶ 82.

[2] Muna appeals two additional issues. First, he argues that the trial court erred in finding him guilty of contempt. Second, he argues that the trial court violated both Commonwealth and federal law in ordering him to pay the judgment. Because we find that the trial court violated Muna's due process rights in failing to advise him of his right to counsel, we need not address Muna's additional arguments.

¶ 8 Less than two years later, the debtor again appeared before the trial court for a contempt hearing, and was again not represented by counsel. *Id.* ¶ 11. The trial court found the debtor guilty of contempt and sentenced her to five days in jail, suspending the execution of the sentence on condition that she make $25 monthly payments to satisfy the judgment. *Id.* ¶¶ 12-13.

¶ 9 The debtor filed a writ of prohibition with this Court, arguing that the trial court violated her constitutional rights when it sentenced her to a determinate jail sentence without a purge clause for civil contempt. In denying the debtor's petition for a writ of prohibition, the *Paulis* Court stated: "It is true that [the United States Supreme Court] states that if a jail sentence for contempt is determinate, the sentence is criminal in nature and cannot be imposed without the proper *constitutional rights*, such as the *right to be represented by counsel*, being afforded to the defendant." *Id.* ¶ 31 (emphasis added). After briefly discussing the trial court's finding of contempt, the *Paulis* Court stated that the debtor "could have avoided the jail sentence entirely by complying with the order in aid of judgment by paying $25 per month." *Id.* ¶ 33. The Court held that "her contempt was civil in nature and *did not require the constitutional safeguards* she now demands." *Id.* (emphasis added).

¶ 10 In denying the debtor's petition for a writ of prohibition, the *Paulis* Court made a distinction between civil contempt and criminal contempt, suggesting that fewer constitutional safeguards attach to civil contempt proceedings than to criminal contempt proceedings. *Id.* ¶¶ 31-33. In making such a distinction, the *Paulis* Court seemed to imply that civil contemnors are not entitled to counsel when facing a loss of liberty.

¶ 11 The *Paulis* case, however, is distinguishable from the present case in several respects. As a preliminary matter, the debtor in *Paulis* was not appealing a trial court order, as in the present case, but was petitioning this Court for a writ of prohibition. Writs of prohibition are "drastic remed[ies]," which are only granted in extraordinary circumstances. *Feliciano v. Superior Court*, 1999 MP 3 ¶ 28 (stating that an extraordinary remedy such as a writ of prohibition should only be granted under "exceptional circumstances amounting to a judicial usurpation of power") (internal quotations omitted). In approaching writs of prohibition, we do not simply review whether the trial court erred in reaching a particular conclusion. *Id.* ¶ 23. Rather, we instead look to whether the trial court was "so far afield" as to justify bypassing the normal appellate process. *Id.* The *Paulis* Court did not deny the debtor's petition for a writ of prohibition on constitutional grounds. Rather, the petition was denied because it did not satisfy the standards by which writs are granted. *Id.* ¶¶ 22, 37. Therefore, the legal framework guiding our analysis in *Paulis* was significantly different from the legal framework by which we operate in the present case.

¶ 12 More importantly, however, *Paulis* did not directly confront the issue of an alleged contemnor's right to counsel when facing a loss of liberty in a contempt proceeding. Instead, the *Paulis* Court addressed whether a jail sentence pursuant to 7 CMC § 4208 contains a purge clause. *Id.* ¶ 31-33. The Court determined it was not clear error to sentence a debtor to a determinate jail sentence under Section 4208 because the debtor's confinement could have been avoided had she complied with the trial court's order. *Id.* ¶ 32-33. Thus, the Court interpreted Section 4208 as containing a purge clause, in that debtors may spring themselves from jail upon compliance with a court order. *Id.* ¶ 32. In the context of this discussion, the *Paulis* Court inserted a single sentence stating that the full array of due process rights do not attach to civil contempt proceedings. *Id*. Considering the context of this proposition, we do not interpret *Paulis* as denying an alleged contemnor the right to counsel in a civil contempt proceeding. Rather, we reiterate that the right to counsel was not at issue in *Paulis*. Thus, the Court's implicit, sentence-long aside regarding the right to counsel in a civil contempt proceeding is, at most, non-binding dicta. Nonetheless, even if the right to counsel had been at issue in *Paulis*, we do not find any explicit language depriving an alleged contemnor that right in a contempt proceeding. *Paulis* simply states that civil contempt proceedings do not trigger the full panoply of due process rights.

¶ 13 The Fourteenth Amendment's Due Process Clause of the United States Constitution provides, in relevant part, that "no state shall . . . deprive any person of . . . liberty . . . without due process of law . . . ."[3] U.S. Const. amend. XIV, § 1. A citizen's interest in personal liberty is perhaps "the most fundamental interest protected by the Constitution of the United States." *McBride v. McBride*, 334 N.C. 124, 130 (1993); *see also Butts v. Commonwealth*, 145 Va. 800, 806 (1926) (stating that personal liberty is a fundamental right). Consequently, when one's liberty is at stake, the United States Supreme Court holds that the need for the assistance of counsel is beyond question in criminal proceedings. *See Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972) ("[N]o person may be imprisoned for any offense . . . unless he was represented by counsel [because] 'the prospect of imprisonment for however short a time will seldom be viewed by the accused as a trivial or "petty" matter and may well result in quite serious repercussions affecting his career and reputation.'") (quoting *Baldwin v. New York*, 399 U.S. 66, 73 (1970)). The basis for this requirement has long been established. In 1932, the United States Supreme Court stated:

> Even the intelligent and educated layman has small and sometimes no skill in the science of law . . . . He lacks both the skill and knowledge adequately to prepare

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[3] The Due Process Clause of the United States Constitution is applicable to the Commonwealth through Section 501(a) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, 48 U.S.C. § 1801 note.

> his defense, even though he have [sic] a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.

Powell v. Alabama, 287 U.S. 45, 68-69 (1932); *see also Scott v. Illinois*, 440 U.S. 367, 370 (1978) ("The guiding hand of counsel [is] so necessary where one's liberty is in jeopardy."); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) ("Without doubt, [the Fourteenth Amendment] denotes . . . freedom from bodily restraint.").

¶ 14 More recently, the United States Supreme Court reiterated the rationale for providing counsel to those who face imprisonment in *Alabama v. Shelton*, 535 U.S. 654 (2002). Notably, the Court determined that a fundamental goal of the right to counsel is to ensure that adjudications are sufficiently reliable to permit incarceration, warning that "a defendant [deprived of trial counsel] faces incarceration on a conviction that has never been subject to 'the crucible of meaningful adversarial testing.'" *Id.* (quoting *United States v. Cronic*, 466 U.S. 648, 656 (1984)).

¶ 15 The principle underlying the right to counsel in criminal cases applies with equal force where one's liberty is in jeopardy in a civil case. *See In re Gault*, 387 U.S. 1, 36-37, 41 (1967) (finding court-appointed counsel "essential" in a civil delinquency proceeding that "may result in commitment to an institution in which the juvenile's freedom is curtailed"); *Walker v. McLain*, 768 F.2d 1181, 1183 (10th Cir. 1985) (holding that because "jail is just as bleak" for the civil litigant, due process requires the right to appointed counsel); *Ridgway v. Baker*, 720 F.2d 1409, 1413 (5th Cir. 1983) ("The right to counsel turns on whether deprivation of liberty may result from a proceeding, not upon its characterization as 'criminal' or 'civil.'"); *McNabb v. Osmundson*, 315 N.W.2d 9, 11 (Iowa 1982) ("The jail doors clang with the same finality behind an indigent who is held in contempt and incarcerated . . . as they do behind an indigent who is incarcerated for a violation of a criminal statute."); *State ex rel. Graves v. Daugherty*, 266 S.E.2d 142, 144 (W. Va. 1980) ("We eschew the rubric of 'criminal' versus 'civil' in determining what process is fair.").

¶ 16 In *Lassiter v. Dept. of Social Services*, the United States Supreme Court addressed whether an indigent civil litigant has a due process right to court-appointed counsel where the loss of parental rights was at stake. 452 U.S. 18 (1981). The Court made clear that resolution of the issue did not turn on whether the "proceedings may be styled 'civil' and not 'criminal.'" *Id.* at 25. Rather, it noted that "it is a litigant's interest in personal freedom, and not simply the special Sixth and Fourteenth Amendments' right to counsel in criminal cases, which triggers the right to appointed counsel . . . ." *Id.* The Court cited *In re Gault*, 387 U.S. at 36-37, as authority for its conclusion, noting that "the pre-eminent generalization that emerges from [the United

States Supreme] Court's precedents on an indigent's right to appointed counsel is that such a right has been recognized to exist only where the litigant may lose his physical liberty if he loses the litigation." *Lassiter*, 452 U.S. at 25. In *In re Gault*, which established the core principle of the *Lassiter* holding, court-appointed counsel was found to be "essential" in a civil delinquency proceeding because it carried "with it the awesome prospect of incarceration in a state institution." 387 U.S. at 36-37. The proceeding's technical classification as "non-criminal" was of no consequence. *Id*. at 27. Thus, in both *Lassiter* and *Gault*, the right to counsel was triggered by a litigant's risk of actual incarceration.

¶ 17 Although civil litigants facing actual imprisonment are not entitled to the full panoply of due process rights, they are entitled to counsel. *See Sanders v. Shephard*, 185 Ill. App. 3d 719, 729-30 (1989) (holding that due process does not protect a civil contemnor from the burden-shifting rule or double jeopardy violations, but that it does entitle a civil contemnor to counsel based on *Lassiter* and "virtually every decision" considering the issue). The right to counsel is recognized as unique among the assortment of due process rights. *See Bowerman v. MacDonald*, 431 Mich. 1, 13 (1988) (noting that the right to counsel is a "particular and clearly demarcated right" separate from the full panoply of due process rights); *Custis v. United States*, 511 U.S. 485, 496 (1994) ("Failure to appoint counsel for an indigent defendant [is] a unique constitutional defect.") (citing *United States v. Tucker*, 404 U.S. 443 (1972)). The *Custis* Court stated that there is a "historical basis . . . for treating the right to have counsel appointed as unique, perhaps because of [the Supreme Court's] oftstated view that 'the right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel.'" 511 U.S. at 494-95 (quoting *Powell*, 287 U.S. at 68-69). As noted in *Walker v. McLain*, the guiding hand of counsel is essential to ensure that a civil litigant is not wrongfully imprisoned based on an erroneous finding of contempt.

> If petitioner is truly indigent, his liberty interest is no more conditional than if he were serving a criminal sentence; he does not have the keys to the prison door if he cannot afford the price. The fact that he should not have been jailed if he is truly indigent only highlights the need for counsel, for the assistance of a lawyer would have greatly aided him in establishing his indigency and ensuring that he was not improperly incarcerated.

768 F.2d at 1184. Consequently, the right to counsel often applies in situations where other due process rights do not.[4]

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[4] For example, the United States Supreme Court held in *Custis* that a defendant may collaterally attack a sentence enhanced by a prior hearing where the right to counsel was violated at that hearing, but the defendant cannot do so where other due process rights are at issue. *Id*. at 495. Because the right to counsel is a unique constitutional right, which is "necessary to insure fundamental human rights of life and

¶ 18 Nearly all courts addressing whether civil litigants are entitled to counsel when facing a loss of liberty have adopted the reasoning of the United States Supreme Court in *Lassiter* and *In re Gault*, concluding that an indigent's due process right to appointed counsel is catalyzed by the fundamental interest in physical liberty, and not by the civil or criminal nature of the proceeding. The seven United States Courts of Appeal that have considered the issue unanimously conclude that due process requires the appointment of counsel for indigent civil contemnors facing actual imprisonment. *See Walker*, 768 F.2d at 1183; *Sevier v. Turner*, 742 F.2d 262, 267 (6th Cir. 1984); *Ridgway*, 720 F.2d at 1413; *United States v. Bobart Travel Agency*, 699 F.2d 618, 620 (2d Cir. 1982); *United States v. Anderson*, 553 F.2d 1154, 1155-56 (8th Cir. 1977) (per curiam); *In re Kilgo*, 484 F.2d 1215, 1221 (4th Cir. 1973); *United States v. Sun Kung Kang*, 468 F.2d 1368 (9th Cir. 1972).

¶ 19 Likewise, the vast majority of state courts considering the question follow the *Lassiter* rationale and hold that when an indigent civil litigant faces a deprivation of physical liberty, the right to counsel at trial and on appeal is absolute unless waived. *See, e.g.*, *Wisconsin v. Pultz*, 556 N.W.2d 708, 713 (Wis. 1996) (noting that *Lassiter* held that an indigent litigant has a right to appointed counsel when a loss on the merits would deprive the litigant of personal liberty); *McBride*, 431 S.E.2d at 17 (stating that under *Lassiter*, indigent litigants have the right to appointed counsel when a loss on the merits would deprive litigant of a loss of liberty); *North Dakota v. Gruchalla*, 467 N.W.2d 451, 453 (N.D. 1991) (noting that *Lassiter* recognized "that indigent defendants have a right to have counsel appointed at government expense when their physical liberty is in jeopardy"). In fact, only the state of Florida has declined to adopt the Supreme Court's rationale in *Lassiter* and *In re Gault* concluded that civil contemnors facing imprisonment do not have a due process right to counsel. *See Andrews v. Walton*, 428 So. 2d 663, 665-66 (Fla. 1983).

¶ 20 Indeed, PFC concedes that Muna should have been provided counsel in the present case once the trial court elected to impose its suspended jail sentence. Plaintiff-Appellee Br. at 4. However, in future cases, PFC argues that this Court should employ a case-by-case balancing test

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liberty," *Powell*, 287 U.S. at 68-69, particularly "where one's liberty is in jeopardy," *Scott*, 440 U.S. at 370, the United States Supreme Court holds that the due process right to counsel applies to all litigants facing actual imprisonment. Indeed, in *Shelton*, the Supreme Court held "that a suspended sentence that may end up in the actual deprivation of a person's liberty may not be imposed unless the defendant was accorded the guiding hand of counsel in the prosecution for the crime charged." 535 U.S. at 658. The Court continued by stating that "[i]t is thus the controlling rule that absent a knowing and intelligent waiver, no person may be imprisoned for any offense unless he was represented by counsel at his trial." *Id*. To support this proposition, the Court cited a number of cases, including *Lassiter*. We do not believe the Court's reliance on *Lassiter* to support its proposition was a careless aside. Rather, we find that *Lassiter* supports the idea that litigants have the right to counsel in any proceeding, criminal or civil, that subjects them to a deprivation of their physical liberty.

to determine whether an alleged civil contemnor is entitled to court-appointed counsel. PFC's argument, however, is unsupported by case law. Furthermore, none of the foregoing federal courts employed a balancing test to determine whether a civil contemnor was entitled to court-appointed counsel. Rather, they followed the *Lassiter* rationale and established the right to counsel for a civil litigant on the sole ground that the civil litigant's fundamental liberty interest was at stake in contempt proceedings. Of the twenty-six state courts that have addressed the issue and held that a due process right to appointed counsel exists, only two have concluded that the trial court should apply a balancing test to determine the right on a case-by-case basis. *New Mexico v. Rael*, 642 P.2d 1009, 1103 (N.M. 1982); *Duval v. Duval*, 322 A.2d 1, 4 (N.H. 1974).

¶ 21 In light of our examination of the Due Process Clause of the United States and Commonwealth Constitutions, as well as our survey of the law in other United States jurisdictions, we hold that alleged contemnors facing a loss of liberty have the right to counsel unless that right is explicitly waived.[5] In the present case, Muna, as an alleged civil contemnor, was arrested on a bench warrant. He then entered the courtroom with an unqualified liberty interest, which was challenged the moment the contempt hearing began. Muna lost his liberty at the hearing and was sentenced to jail. Because Muna's liberty interest was clearly at risk and indeed lost as a result of the contempt hearing, we find that the trial court erred in failing to advise Muna of his right to counsel.

¶ 22 Hereafter, the trial court must advise alleged civil contemnors of their due process right to counsel when their liberty interest is threatened. For example, civil debtors' liberty interests are implicated when they violate court orders. When debtors fail to comply with court orders, they are often brought before the trial court for a contempt hearing on a bench warrant. If, during a contempt hearing, a debtor cannot demonstrate good cause as to why he or she did not comply with the court order, the trial court may sentence the debtor to jail. As such, prior to holding a contempt hearing, the trial court should advise an alleged contemnor that if he or she is found in contempt, the court may impose sanctions that may include incarceration. As a corollary, the trial court must also inform alleged contemnors that they are entitled to be represented by an attorney. If an alleged contemnor wishes to be represented by an attorney but is financially unable to pay for one, the trial court must advise that an attorney will be appointed at public expense.[6] In so

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[5] Court-appointed counsel is not necessarily required in every contempt hearing. In cases where the trial court forecloses imprisonment as a punishment prior to the contempt hearing, the right to counsel is not absolute. *See Sevier*, 742 F.2d at 267 (noting that *Lassiter* indicated the relevant question is whether the court elects to incarcerate).

[6] If the alleged contemnor states that he or she cannot afford counsel, a determination of indigency should be undertaken. To save time and expense, the trial court should, before continuing the case, ask

doing, the trial court should not rely on alleged contemnors to spontaneously reveal either their indigency or their familiarity with the due process right to counsel. Rather, the trial court should take the initiative to inform alleged contmenors of their right to counsel. The trial court must be satisfied that alleged contemnors understand these rights and must make the necessary findings based upon their answers and any other evidence the court receives. If an alleged contemnor wishes to obtain counsel, the trial court should allow him or her reasonable time to either retain counsel, or, if indigent, be provided appointed counsel before proceeding further on the contempt procedures.

IV

¶ 23 For the foregoing reasons, we hold that the trial court erred in failing to advise Muna of his right to counsel before proceeding with the contempt hearing, and issuing a suspended jail sentence. Accordingly, we VACATE the trial court's order and REMAND this case to the trial court for proceedings consistent with this opinion.

Concurring:
Castro, J., Dela Cruz, J.P.T.

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questions to determine whether the alleged contemnor is presumptively eligible for court-appointed counsel.