

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

BANK OF GUAM,
Plaintiff-Appellee,

v.

JOHN S. RUBEN and MONA S. RUBEN,
Defendants,

MONA S. RUBEN,
Defendant-Appellant.

SUPREME COURT NO. CV-05-0005-GA
SUPERIOR COURT NO. 93-1114

DENIAL OF PETITION FOR REHEARING

Cite as: 2009 MP 7

Decided July 6, 2009

Michael A. White, Saipan, Northern Mariana Islands, for Plaintiff-Appellee
Jane Mack, Micronesia Legal Services Corp., Marianas Office, for Defendant-Appellant
BEFORE: TIMOTHY H. BELLAS, Justice Pro Tem; JESUS C. BORJA, Justice Pro Tem; EDWARD
MANIBUSAN, Justice Pro Tem

BORJA, J.P.T.:

¶ 1 Petitioner Mona S. Ruben (“Ruben”) requests a rehearing of this Court’s decision in *Bank of Guam v. Ruben*, 2008 MP 22. Ruben petitions for a rehearing on the grounds that this Court erred by: (1) deciding moot issues in her appeal; (2) failing to use the plain meaning of the phrase “method of payment” found in the Commonwealth’s order-in-aid of judgment statute at 7 CMC § 4206(b); and (3) inadequately addressing her argument that the trial court’s decision violated her Thirteenth Amendment rights. We hold that our opinion properly addressed these issues. We therefore DENY the petition for rehearing.

I

¶ 2 The facts of this case are contained in *Bank of Guam* ¶¶ 2-4 and we need only briefly recite them here. In 1994, a judgment was entered jointly and severally against Ruben and her husband John S. Ruben following repossession of their car by the Bank of Guam (“BOG”). The trial court ordered Ruben to pay \$50 per month towards the judgment. When she failed to do so, BOG moved to place her in contempt. The trial court heard the matter in November 2004. Ruben appeared without counsel and the trial court found her in contempt and sentenced her to ten days in jail. The jail time was suspended on the condition that Ruben actively sought work. Ruben was ordered to register with employment agencies and file ten job applications. The trial court later found that she complied with the order, but still had not found a job. Ruben was then ordered to file ten more job applications, which she failed to do. The trial court again found Ruben in contempt, but did not impose a jail sentence.

¶ 3 On appeal, Ruben argued that: (1) she was entitled to counsel during civil contempt proceedings that threatened her loss of liberty; (2) the Thirteenth Amendment to the United States Constitution prevented her from being forced to work as a condition of her sentence being suspended; and (3) the trial court abused its discretion in ordering Ruben to work when her husband was already paying on the debt using marital property. *Id.* ¶ 1. In our opinion, we agreed that she was entitled to counsel during civil contempt proceedings where her liberty was at risk. *Id.* ¶¶ 1, 13, 21. However, we ruled against Ruben on the other two issues and remanded the case to the trial court. *Id.* ¶¶ 1, 18, 20-21. Ruben then filed the present petition.

II

¶ 4 A petition for rehearing may be filed when the Court ignores or incorrectly construes legal issues or factual matters when reaching its decision. *In re Estate of Deleon Guerrero*, 1 NMI 324, 326 (1990). A petitioner may not ordinarily repeat arguments used previously in an attempt to have a second chance to argue a case. *Id.* In addition, the Commonwealth Rules of Appellate Procedure require that a “petition shall state with particularity the points of law or fact

which in the opinion of the petitioner the Court has overlooked or misapprehended.” Com. R. App. P. 40.

¶ 5 In her petition, Ruben notes that, in our decision in *Bank of Guam*, we held that she was entitled to counsel. Ruben consequently argues that because the trial court’s imposition of jail time was rendered unenforceable since it was imposed without counsel, that her other two arguments were rendered moot and that we should not have addressed them. In support of this argument, Ruben cites *Pacific Financial Corp. v. Muna*, 2008 MP 21. In *Pacific Financial*, as in the present case, this Court held that an alleged contemnor facing a loss of liberty has a right to counsel at a contempt hearing. *Id.* ¶¶ 1, 21. However, after reaching this conclusion, the Court in *Pacific Financial* deemed all other arguments moot and did not review them. *Id.* ¶ 5 n.2.

¶ 6 In determining whether these questions are moot, we first note that Ruben raised these issues herself and now seeks to have this Court refuse to address them after we have ruled against her on both points. Moreover, there are significant distinctions between this case and *Pacific Financial*. The order at issue in *Pacific Financial* was an order holding a defendant in contempt for failing to make payments on a consumer debt in accordance with a previous order. *Id.* ¶ 1. This finding of contempt resulted in the defendant receiving a suspended jail sentence with a significant risk of actual jail time being imposed.¹ The Court in *Pacific Financial* determined that the other claims raised – that the trial court erred in finding the defendant guilty of contempt and in ordering him to pay the judgment – were moot. 2008 MP 21 ¶ 5 n.2. In *Pacific Financial*, those issues were both integral to the contempt finding that placed the defendant’s liberty at stake. Thus, the finding of the *Pacific Financial* Court meant that a new contempt hearing was required and, by necessity, the existing contempt finding was therefore vacated. Unlike in *Pacific Financial*, the two matters raised by the appellant here are not issues that implicate the appellant’s liberty before the trial court based on the prior contempt hearing without the assistance of counsel. The trial court’s decision to order a defendant to seek employment does not by itself place him or her at risk of incarceration. Rather, the violation of such an order places a defendant at risk of the imposition of jail time for contempt. Similarly, the trial court’s holding that Ruben and her husband were jointly and severally liable on the debt did not directly place Ruben at risk of being sent to jail. Because these issues address the power of the trial court to impose these requirements on this or any defendant, the right to counsel does not affect whether the trial court exceeded its authority in mandating the defendant to seek employment or whether she was jointly

¹ As we noted in *Bank of Guam*, a suspended sentence still creates “the threat of incarceration.” 2008 MP 22 ¶ 8. This threat is tantamount to an actual loss of liberty and triggers the right to counsel. *See id.* (citing *Alabama v. Shelton*, 535 U.S. 654, 674 (2002)).

or severally liable on the debt. As such, Ruben’s limited right to counsel when her liberty was jeopardized during the contempt hearing did not moot these issues.

¶ 7 Next, Ruben argues that construing an order to work to be a payment method runs contrary to legal consensus and is inconsistent with the types of orders set forth in 7 CMC § 4206(b). An “order in aid of judgment may provide for the transfer of particular assets at a price determined by the court, or for the sale of particular assets and payment of the net proceeds to the creditor, or for payments, in specified installments on particular dates or at specified intervals.” 7 CMC § 4206(b). However, “any other method of payment which the court deems just” may also be used. *Id.* Ruben claims that the ability of the trial court to design other payment methods should be read together with the specific methods of payment listed, all of which Ruben alleges are narrowly constructed forms of direct debt payment. As such, Ruben argues that any non-listed method of payment should also be a narrowly constructed form of direct debt payment, and that, because the method of payment the trial court ordered is not a narrowly constructed form of direct debt payment, that it was wrongfully imposed. Ruben cites no legal basis for this proposition. However, in *Paulis v. Superior Court*, 2004 MP 10 ¶ 29, this Court determined that the trial court’s order that the defendant find work was a payment method authorized by the trial court’s inherent authority to enforce its judgments under 1 CMC § 3202.² *Paulis* is clear precedent that is directly on point on this issue, and we explicitly cited *Paulis* in our opinion. *Bank of Guam* ¶ 14. Because *Paulis* directly stands for this proposition and we correctly applied *Paulis* to reach our conclusion, and because 7 CMC § 4206(b) permits the trial court to use any method of payment, Ruben’s argument that an order to work should not be construed as a permissible payment method also fails.

¶ 8 Finally, Ruben argues that this Court failed to adequately address her Thirteenth Amendment concerns. In our opinion, we extensively addressed this issue and found no violation of the Thirteenth Amendment. *Bank of Guam* ¶¶ 14-18. We have reviewed this issue at length, evaluated relevant case law, and reached a thorough conclusion. As such, we also find no grounds to grant this portion of Ruben’s petition.

III

¶ 9 For the foregoing reasons, we hold that our opinion in *Bank of Guam v. Ruben*, 2008 MP 22, completely addressed the issues raised by Ruben on appeal. This Court did not ignore or incorrectly construe any legal issues or factual matters alleged by Ruben. Accordingly, we DENY the petition for rehearing.

² We note that Jane Mack, Ruben’s counsel, was also counsel in *Paulis*.

Concurring:
Bellas, J.P.T., Manibusan, J.P.T.