

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

MARIANAS EYE INSTITUTE,
Plaintiff-Appellee,

v.

PITNESS MOSES,
Defendant-Appellant.

SUPREME COURT NO. 2009-SCC-0049-CIV
SUPERIOR COURT NO. 09-0147-A

Cite as: 2011 MP 1

Decided February 22, 2011

Jane Mack, Saipan, Northern Mariana Islands for Defendant-Appellant
Michael A. White, Saipan, Northern Mariana Islands for Plaintiff-Appellee
BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; JOHN A.
MANGLONA, Associate Justice.

CASTRO, J.:

¶ 1 Appellant Pitness Moses (“Moses”) appeals from an order in aid of judgment requiring him to utilize his best efforts to find employment. Moses argues that the order violates the Commonwealth’s post-judgment enforcement statutes, the United States Constitution, and lacks factual support or a rational basis. Moses additionally contends that the order never should have issued because the parties stipulated that he does not possess any income or non-exempt assets to satisfy the judgment. Appellee Marianas Eye Institute (“Marianas Eye”) counters that the job search requirement in the order neither violates our statutory scheme nor the U.S. Constitution, and that while Moses may not currently possess enough income or assets to satisfy the judgment, requiring him to work is the only way for him to eventually pay the debt. We hold that orders in aid of judgment issued pursuant to 4 CMC §§ 4205 and 4206 cannot contain a requirement that forces a judgment debtor to conduct a job search. Therefore, we REVERSE the order in aid of judgment, and REMAND this matter to the trial court for further proceedings consistent with this opinion.

I

¶ 2 The facts of this case are not in dispute. Moses is a thirty-three year old citizen of the Federated States of Micronesia (“FSM”). He is in good health, able to work, and has a high school diploma. Several years ago, Moses came to Saipan and obtained employment in the garment industry. In 2003, Moses lost his job of six years when his employer, a garment manufacturer, declared bankruptcy and shut down. Since that time, Moses has been unemployed despite his efforts to find a new job at various businesses, including hotels, retail stores, and restaurants. Moses and his unemployed live-in partner have five young children. Since Moses is a citizen of the FSM, he is not eligible to receive public assistance, but his U.S. citizen children receive food stamps and a housing and utility allowance. This public assistance places Moses’s household at less than twenty percent of the federal poverty level. Moses has no other source of income or non-exempt assets.

¶ 3 Marianas Eye engages in the eye care business on Saipan. In 2006, on two separate occasions, Marianas Eye provided eye care to Moses for which Moses incurred a total debt of \$315.33.¹ When Moses failed to pay the debt, Marianas Eye filed a small claims action against him, and after a hearing, the small claims court entered a judgment in favor of Marianas Eye. Marianas Eye subsequently sought an order in aid of judgment, and the small claims court ordered Moses, who was unemployed at the time and was without income or assets to pay the judgment, to “utilize his best efforts to obtain gainful employment.” Appellant’s Excerpts of Record (“ER”) at 2. The small claims court required Moses to

¹ The debt has since risen to \$463.29, comprised of the following sums: the original \$315.33 debt to Marianas Eye, pre-judgment interest of \$12.69, attorney’s fees of \$100, and court costs of \$35. The debt is also accruing post-judgment interest at the statutory rate of 9% a year.

register with the Division of Employment Services and make at least ten separate applications for employment. The order required Moses to provide documentary evidence of these efforts at a later hearing.

¶ 4 Moses subsequently sought a new trial in the trial court challenging the small claims court's order in aid of judgment.² The parties stipulated to the above-mentioned facts. The trial court entered judgment and granted Marianas Eye an order in aid of judgment. The trial court's order generally affirmed the small claims court's order. Specifically, the trial court ordered Moses to "utilize [his] best efforts to obtain gainful employment" by "following up on all outstanding employment applications and making at least ten separate new applications for employment." Appellant's ER at 29. Moses now appeals the trial court's order in aid of judgment. This Court has jurisdiction over this appeal pursuant to 1 CMC § 3102(a).

II

¶ 5 Moses argues that the job search provision contained in the order in aid of judgment exceeds the scope of 7 CMC §§ 4205³ and 4206,⁴ and that the correct reading of those sections only allows for the seizure of income and non-exempt assets that a debtor already possesses. He argues that nothing in the statutes can be interpreted to allow the court to force a debtor to increase his or her assets or income through employment to pay a judgment debt. Moses also contends that the requirement violates the Thirteenth and Fourteenth Amendments to the United States Constitution, that there is neither a rational basis nor factual support for the order, and that the order never should have issued because he has no

² In *Chen's Corp. v. Hambros*, 2007 MP 4 ¶ 1, this Court held that a judgment debtor cannot appeal a small claims judgment directly to the Supreme Court. Instead the debtor must first make a preliminary appeal to the trial court. Only then can the debtor appeal the trial court's judgment to the Supreme Court.

³ 7 CMC § 4205. Orders in Aid of Judgment; Application:

At any time after a finding of the payment of money by one party to another, and before any judgment based thereon has been satisfied in full, either party may apply to the court for an order in aid of judgment. Thereupon the court, after notice to the opposite party, shall hold a hearing on the question of the debtor's ability to pay and determine the fastest manner in which the debtor can reasonably pay a judgment based on the finding. In making this determination the court shall allow the debtor to retain such property and such portion of his or her income as may be necessary to provide the reasonable living requirements of the debtor and any dependents, including fulfillment of any obligations the debtor may have to any clan, lineage, or other similar group, in return for which obligations the debtor or dependents, receive any necessary part of the food, goods, shelter or services required for their living.

⁴ 7 CMC § 4206. Orders in Aid of Judgment; Hearings:

(a) At the hearing provided by 7 CMC § 4205, the debtor may be examined orally before the court, or the court may refer the examination to a master to take evidence and report his or her findings. In either case any evidence properly bearing on the question may be introduced by either party or by the court or master, in the same manner as at the trial of a civil action. Upon having heard the evidence or having received the report of the master, the court shall make such order in aid of judgment as is just for the payment of any judgment based on the finding.

(b) This 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, or for any other method of payment which the court deems just.

ability to pay. Moses maintains that the trial court cannot issue an order in aid of judgment if a debtor does not have the ability to pay the debt. Marianas Eye counters that the clause in 7 CMC § 4205 that states that the trial court shall “determine the fastest manner in which the debtor can reasonably pay a judgment,” in conjunction with 7 CMC § 4206(b)’s provision stating that an order in aid of judgment can attempt to satisfy the judgment with “any other method of payment which the court deems just,” combined with the trial courts inherent power issue “all other writs and orders necessary and appropriate to the full exercise of its jurisdiction” pursuant to 1 CMC § 3202, allows the trial court to order a debtor to conduct a job search in order to obtain work and pay off a debt. Marianas Eye also disputes Moses’ constitutional arguments on the grounds that a requirement that a debtor look for work is not akin to slavery or indentured servitude. We will first determine whether 7 CMC §§ 4205 and 4206 permit the trial court to order a judgment debtor to conduct a job search for the purposes of satisfying a judgment debt. This Court reviews questions of statutory construction de novo. *Rebuenog v. Aldan*, 2010 MP 1 ¶ 15; *In re “S.S.”*, 3 NMI 177, 179 (1992).

A. Job Search Orders Under Paulis, Ruben I, and Ruben II

¶ 6 This Court has issued several opinions discussing whether these statutory provisions permit the trial court to order a judgment debtor to look for work. In *Paulis v. Superior Court*, 2004 MP 10, the Court reviewed a finding of contempt that stemmed from a debtor’s failure to comply with an order in aid of judgment. In that case, the trial court found the debtor in contempt, but it suspended the imposition of a jail sentence on the condition that she sought employment. While the Court recognized the constitutional questions surrounding the suspension of a jail sentence on the condition that the debtor look for work, it noted that the job search provision did not prevent the debtor from switching employers, and that the debtor “pointed to no explicit authority whereby the requirement to register with a governmental employment services agency constitute[d] involuntary servitude under the Thirteenth Amendment.” *Id.* ¶ 28. The Court also made passing reference to whether an order in aid of judgment could contain a job search provision, but it did not answer this question because “[i]t was the subsequent contempt order that the court gave Paulis a chance to avoid jail by seeking work, not the order in aid of judgment.” *Id.* ¶ 29. The opinion did not interpret 7 CMC §§ 4205 and 4206 to authorize orders in aid of judgment to contain job search requirements or to prevent such provisions. Thus, while *Paulis* explicitly refused to answer the statutory interpretation question, it hinted that such a requirement may be constitutionally permissible in a contempt context.

¶ 7 In *Bank of Guam v. Ruben*, 2008 MP 22 (“*Ruben I*”), the Court was presented with a situation where a debtor was held in contempt for failing to make monthly payments on a debt, but the jail sentence was suspended on the condition that the debtor seek employment. At the first review hearing, the debtor had complied with the job search provision, but at a second hearing the trial court found that she had not

continued to fill out employment applications. The debtor was then held in contempt, and while the court threatened her with a jail sentence, it again declined to impose one. The issue before the Court was whether the trial court denied the debtor her due process rights when it held her in contempt without the assistance of counsel. The Court held that contemnors who face a potential loss of liberty are entitled to counsel. *Id.* ¶ 13. After this holding, the Court went on to discuss the trial court’s order to seek and obtain employment.

¶ 8 The Court found that orders to seek employment pursuant to the Commonwealth’s post-judgment enforcement statutes were authorized by *Paulis*. *Id.* ¶ 14. *Paulis*, however, never stated that any provision of our post-judgment enforcement statutes, 7 CMC §§ 4201—4210, implicitly or explicitly authorize job search orders. *See Paulis*, 2004 MP 10 ¶ 29. Instead, *Paulis* found that such provisions contained in a contempt order were likely not a violation of the Thirteenth Amendment. The Court avoided answering the statutory question because the job search requirement was part of a contempt order and not part of an order in aid of judgment authorized by 7 CMC §§ 4205 and 4206. *Id.* ¶¶ 28-29. Thus, *Ruben I* cited *Paulis* for a legal holding that *Paulis* never made. *Ruben I* then went on to analyze whether job search orders violate the Thirteenth Amendment and concluded that such orders are constitutional. 2008 MP 22 ¶¶ 16, 18. The Court further noted that “Commonwealth law indicates that the trial court has the right to ‘make such order in aid of judgment as is just for the payment of any judgment,’” *Id.* ¶ 18 (citing 7 CMC § 4206), and went on to state that “to limit the trial court’s ability to enforce its own judgments would severely cripple its authority, and stymie creditors’ legitimate collection efforts.” *Id.* The Court concluded by holding that orders to seek employment are allowed by 7 CMC §§ 4205 and 4206 and do not violate the U.S. and Commonwealth Constitutions. *Id.*

¶ 9 The *Ruben I* debtor then filed a petition for rehearing, which the Court denied in a reasoned opinion. *Bank of Guam v. Ruben*, 2009 MP 7 (“*Ruben II*”). The debtor argued 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 [the debtor] alleges are narrowly constructed forms of direct debt payment. As such, [the debtor] 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 wrongly imposed.

Id. ¶ 7. *Ruben II* rejected this argument, and cited *Paulis*, 2004 MP 10 ¶ 29, for the proposition that the trial court could order a debtor to look for work under its inherent authority to enforce its judgments pursuant to 1 CMC § 3202. *Id.* Moreover, the Court affirmed its statutory and constitutional analysis finding that the job search provision was permissible. The Court reiterated that the “any other method of payment which the court deems just” clause from 7 CMC § 4206(b) authorized job search orders. *Id.* *Paulis*, however, does not stand for this proposition, and *Ruben II* mis-cites to the opinion. Nevertheless, *Ruben II* unequivocally stated that “because 7 CMC § 4206(b) permits the trial court to use any method of

payment, [the debtor’s] argument that an order to work should not be construed as a permissible payment method also fails.” *Id.* Both *Ruben I* and *II* cite to *Paulis* for a proposition that *Paulis* never made. Therefore, these holdings alone are insufficient to answer the question before us, and we will examine our post-judgment enforcement statutes and relevant precedent from other jurisdictions to determine whether the job search provision in the order in aid of judgment is permissible.

B. Revisiting Our Post-Judgment Statutory Scheme

¶ 10 In interpreting the instant order, we will focus our attention on three clauses from sections 4205 and 4206. First, 7 CMC § 4205 states that the court shall “hold a hearing on the question of the debtor’s ability to pay and determine the fastest manner in which the debtor can reasonably pay a judgment.” Second, 7 CMC § 4206(a) provides that “the court shall make such order in aid of judgment as is just for the payment of any judgment.” Finally, 7 CMC § 4206(b) lists several methods that the court can avail itself of in fashioning an order in aid of judgment, and the last clause provides that “any other method of payment which the court deems just” may form the basis of the order. Moses argues that these three clauses limit an order in aid of judgment to the seizure of income and non-exempt assets already in the debtor’s possession, and that any order that provides for the debtor increasing his or her income or assets to satisfy a judgment, *e.g.* a job search order, exceeds the scope of the statute. Marianas Eye disagrees and maintains that these clauses, together with the trial court’s general power to craft any order in the exercise of its jurisdiction, allows it to require a debtor to look for work for the purpose of paying a judgment. *See* 1 CMC § 3202.⁵

¶ 11 We give statutory language its plain meaning. *Villanueva v. Tinian Shipping & Transp., Inc.*, 2005 MP 12 ¶ 14. We also must read a statute “with an aim to effect the plain meaning of [its] object.” *Commonwealth v. Crisostomo*, 2005 MP 9 ¶ 39. (quotations omitted). Finally, since we are interpreting our post-judgment enforcement statutes generally, and two sections specifically, we read the statutes *in pari materia*. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 21 n.6⁶. Title 7 CMC § 4205 focuses on the debtor’s ability to *pay* and the fastest manner in which the debtor can *pay*. Title 7 CMC § 4206(a) discusses how an order in aid of judgment shall bring about the *payment* of a judgment. Likewise, section 4206(b), after enumerating several specific methods that an order in aid of judgment can use to satisfy the judgment, such as transferring or selling assets, states that any other just method of *payment* can be used

⁵ 1 CMC § 3202. Jurisdiction:

The Superior Court has original jurisdiction over all civil actions, in law and in equity, and over all criminal actions, and has the power to issue writs of mandamus, certiorari, prohibition, habeas corpus, and all other writs and orders necessary and appropriate to the full exercise of its jurisdiction.

⁶ “*In pari materia* is a rule of statutory construction whereby the meaning and application of a specific statute or portion of a statute is determined by looking to statutes which relate to the same person or thing and which have a purpose similar to that of the statute being construed.”

to ensure that the judgment is paid. Reading these provisions together indicates that payment is the operative word, and that 7 CMC § 4206(a)-(b) are the relevant provisions because they place an affirmative duty on the trial court to issue an order in aid of judgment, and enumerate several methods that the court can avail itself of in crafting the order. Since the statutes do not define pay, payment, or method of payment, and since orders to seek employment are not explicitly provided for, such orders are only statutorily permitted if a method or type of payment can include an order to seek work. Thus, we must define the plain meaning of payment to determine whether the statutes permit an order to include a requirement that a debtor use his or her best efforts to find a job.

¶ 12 Blacks Law Dictionary defines payment as:

1. Performance of an obligation, usu. by the delivery of money. Performance may occur by delivery and acceptance of things other than money, but there is a payment only if money or other valuable things are given and accepted in partial or full discharge of an obligation.
2. The money or other valuable thing so delivered in satisfaction of an obligation.

Black's Law Dictionary 922 (7th ed. 2000). Thus, a payment is a performance, and it occurs usually by the delivery of money. It also occurs by the delivery and acceptance of some other valuable consideration. Moses using his best efforts to find work is not accepted by Marianas Eye in satisfaction of his debt; rather, he must fill out job applications and obtain employment for the purpose of accumulating sufficient income or assets to satisfy the debt in the future. Thus, Moses's performance is not a performance that extinguishes his debt. Under this definition, the job search requirement does not constitute a payment because what he is required to perform does not fully or partially satisfy the judgment.

¶ 13 In *Superpumper, Inc. v. Nerland Oil*, 303 F.3d 911, 920 (8th Cir. 2002), the court succinctly stated: “[t]o be considered a payment, either money or something of value must be given and accepted in partial or full discharge of an obligation.” (citation and quotation omitted). See *Votzmeyer v. Votzmeyer*, 964 S.W.2d 315, 321 (Tex. App. 1998) (“A payment is a delivery of money by the person from whom it is due to the person to whom it is owed.”) (citation and quotation omitted). In *Moses v. United States*, 28 F. Supp. 817 (S.D.N.Y. 1939), the issue was whether a sum of money given by an executor to a tax collector constituted a payment. The court, in giving a more expansive definition of payment, explained that:

Payment is made by the debtor's delivering to his creditor money, or some other valuable thing, for the purpose of extinguishing the debt, which is received by the creditor for the same purpose. Payment of money is delivery by the debtor to the creditor of the amount due. A payment does not occur unless the money passes from the debtor to the creditor for the purpose of extinguishing the debt and the creditor must receive it for the same purpose.

Id. at 818-19 (citations and quotations omitted). Similar to the above definitions, a payment occurs when there is a transfer of value in exchange for extinguishing a debt. The exchange must be a discreet event,

and the court's definition of payment does not encompass future actions undertaken for the purpose of increasing a debtor's income or assets. Thus, under *Moses*, a payment occurs when an exchange occurs. Considering the above definitions, we interpret the meaning of payment in our post-judgment enforcement statutes to mean an immediate exchange of money or value for the partial or complete discharge of a debt.

¶ 14 In applying this definition of payment to 7 CMC §§ 4205 and 4206(a)-(b), the hallmark consideration is whether an immediate exchange results in a partial or complete forgiveness of a debt. Requiring a debtor to look for work does not result in an immediate exchange, and thus, the requirement exceeds the scope of the statute. When reading section 4205, the trial court's order in aid of judgment must use the fastest allowable method if the debtor has the ability to pay. Providing that the debtor can pay the debt, 7 CMC § 4206(a) mandates that "the court shall make such order in aid of judgment as is just for the payment of any judgment." The use of the word "shall" creates a mandatory duty on the part of the trial court to issue a just order in aid of judgment that will result in a payment. *See Aquino v. Tinian Cockfighting Bd.*, 3 NMI 284, 292-93 (1992). This is the statute's operative clause as it places a duty on the trial court to issue the order, and it only restricts the scope of such orders to just forms of payment. Section 4206(b) then enumerates four types of orders in aid of judgment. The section states that orders in aid of judgment may provide for: (1) the transfer of an asset at a price determined by the court; (2) the sale of an asset with the proceeds going to the creditor; (3) periodic payments; or (4) any other just method of payment. 7 CMC § 4206(b). The use of the permissive "may" language from subsection (b) indicates that this is a non-exclusive list, and the fourth catch-all category bolsters this interpretation. *See N. Marianas Coll. v. Civil Serv. Comm'n*, 2007 MP 8 ¶ 9 (citing *In re Rofag*, 2 NMI 18, 26 n.6 (1991)). Nevertheless, such orders are still limited to just forms of payment pursuant to subsections (a) and (b). When reading section 4206(a) and (b) *in pari materia*, this interpretation makes further sense. *See Commonwealth v. Yao*, 2007 MP 12 ¶ 8 (holding that statutes must be read with common sense). Subsection (a) states that the order must be for a payment, the first three methods for satisfying a judgment pursuant to subsection (b) all result in a discreet exchange of value in return for satisfaction of a debt, and the final catch-all category from subsection (b) again explicitly states that "any other method of payment which the court deems just" is acceptable. These provisions do not give carte blanche to the trial court to place any requirement on a debtor so long as its purpose makes it more likely than not that the debtor will satisfy the judgment.⁷ Rather, an order in aid of judgment must make use of the fastest method

⁷ Title 1 CMC § 3202 allows the trial court to craft all necessary orders and writs, but this general power does not expand the scope of 7 CMC § 4206(b). To interpret section 3202 to allow the trial court to issue any order, regardless of the dictates of a specific statutory scheme, would lead to an absurd result. *See Commonwealth Ports Authority v. Hakubotan Saipan Enters., Inc.*, 2 NMI 212, 224 (1991). To hold otherwise would essentially render section 4206(b)'s provisions advisory because the trial court could issue any order it deemed necessary irrespective

of payment that is just to satisfy the judgment. Therefore, we hold that job search orders forcing a debtor to find work exceed the scope of 7 CMC §§ 4205, 4206(a), and 4206(b) because such orders do not result in an immediate exchange of value for debt forgiveness. Moreover, job search orders do not fit into one of the statutorily enumerated categories provided in 7 CMC § 4206(b), and they are not otherwise explicitly provided for by another statute.

¶ 15 This interpretation is also supported by interpretations of post-judgment enforcement statutes in other jurisdictions. The parties acknowledge in their briefs that no other U.S. jurisdiction has post-judgment enforcement statutes identical to our own. Nevertheless, while we cannot rely on other courts' interpretations of their statutory language, we can examine their general reasoning to determine whether it comports with our own. In *Zurich Insurance Inc. v. Santos*, 2007 Guam 23, the Guam Supreme Court faced a situation very similar to the one presently before us. In *Santos*, the trial court ordered the defendant to conduct a job search for the purpose of making payments on a judgment for a private debt, but the defendant maintained that the trial court lacked such authority. On appeal, the Guam Supreme Court held that since Guam's post-judgment enforcement statutes did not explicitly provide for job search orders, the trial court's order was "not legally supported and was "without authority." *Id.* ¶ 19. The *Santos* Court further found that in workers' compensation cases courts in other jurisdictions are allowed to issue job search orders only when the jurisdiction's statutes and regulations provide explicit authority for such orders. *Id.* ¶ 18. (citing *State ex rel. Regal Ware, Inc. v. Indus. Comm.*, 821 N.E.2d 984, 985-87 (Ohio 2004)). Since there was no explicit statutory authority for a job search order, the *Santos* court held that such an order exceeded the statute's scope.

¶ 16 Similarly, in *Business Service Bureau, Inc. v. Martin*, 715 N.E. 2d 764, 765 (Ill. App. Ct. 1999), the defendant was ordered to look for work to pay a judgment, and argued in opposition that the state's statutory scheme only allowed for the discovery of assets, and did not allow the court to order a debtor to create assets for the purpose of satisfying a judgment. The court agreed and reasoned that since the state's post-judgment enforcement statutes enacted "a procedure unknown to the common law, [and does] not by its terms provide for job search orders or otherwise imply that such orders are appropriate," the statutes did not allow for an order to require a debtor to look for work. *Id.* at 767. See *Barber v. Jemery*, 288 A.2d 497, 498 (R.I. 1972) (holding that the trial court improperly "assumed the obligation of finding a way to insure that the court's judgment would be paid" by ordering the debtor to find a second job instead of "complying with the legislative directives"). Thus, while the above authorities interpreted post-judgment enforcement statutes different from our own, in each case, the deciding court refused to sanction job search orders in the absence of explicit legislative authorization.

of the statute's clearly defined contours. See *In re Taisacan*, 2008 MP 6 ¶ 13 (citing *Limon v. Camacho*, 1999 MP 18 ¶ 30).

¶ 17 Marianas Eye argues that the statutes from the above cases are sufficiently different, and thus, we should not look to those jurisdictions for guidance. Instead, Marianas Eye directs our attention to *Louis v. Kutta*, 8 FSM Interm. 312 (Chuuk 1998). Marianas Eye points out that *Louis* sanctioned job search orders on the basis of post-judgment enforcement statutes identical to our own.⁸ *Louis*, however, is a case from the Federated States of Micronesia, a foreign jurisdiction, and we must look to the common law as applied in the United States in developing our own jurisprudence. *See* 7 CMC § 3401⁹; *Cf. United States v. Maxwell-Anthony*, 129 F. Supp. 2d 101, 107 (D.P.R. 2000) (finding that “evidence concerning international law [was] irrelevant to the issue of whether Defendant knew that he was entering [a military facility] without authorization”). Therefore, we will not base our decision on *Louis*. Marianas Eye also directs our attention to an order allegedly issued by the Trial Division of the Supreme Court of Palau. As stated above, we cannot rely on cases from foreign jurisdictions as the basis for our decision. Thus, these cases do not persuade us that job search orders are permissible under our statutory scheme.

¶ 18 Based on the language of our statutes and the reasoning contained in the cases discussed above, a provision in an order in aid of judgment requiring a debtor to look for work exceeds the scope of 7 CMC §§ 4205 and 4206(a)-(b), and there is no support for such a requirement in any other section of our post-judgment enforcement statutes. *See* 7 CMC §§ 4201–4210. While the statutes’ language allows for orders in aid of judgment to satisfy a debt in more ways than a direct payment of money, such as its provision allowing for the seizure and sale of assets, ordering a debtor to look for work exceeds the statutes’ scope. While obtaining gainful employment *may* result in a debtor being able to pay a debt, there is no guarantee that this would be the case, and in any event, it does not result in a direct partial or complete forgiveness of the debt. Therefore, an order in aid of judgment issued pursuant to 7 CMC §§ 4205-4206 cannot contain a requirement that a debtor seek employment.

¶ 19 Since neither 7 CMC §§ 4205 nor 4206 permits the trial court to order a judgment debtor to look for work in order to pay a private judgment, there is no need to address Moses’s constitutional arguments. This Court will only consider constitutional issues if necessary. *In re Estate of Tudela*, 4 NMI 1, 5 (1993). Likewise, because the order exceeds the scope of the statutes, there is no need to address Moses’s argument that there is no factual support or rational basis for the order in aid of judgment. Finally, since

⁸ The FSM, formerly of the Trust Territory, adopted the Trust Territory Code’s post-judgment enforcement statutes. The Commonwealth’s post-judgment enforcement statutes are also adopted from the Trust Territory Code.

⁹ 7 CMC § 3401. Applicability of Common Law:
In all proceedings, the rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed as generally understood and applied in the United States, shall be the rules of decision in the courts of the Commonwealth, in the absence of written law or local customary law to the contrary; provided, that no person shall be subject to criminal prosecution except under the written law of the Commonwealth.

the parties stipulated that Moses currently has no income or non-exempt assets to pay the judgment, he has no ability to make payments, and thus, the order in aid of judgment never should have issued because a job search requirement is not a method of payment.¹⁰ Under the plain language of the statutes, such an order in aid of judgment can only issue after the trial court first determines that a debtor has an ability to pay. If the trial court determines that a debtor has no ability to pay, there is no basis to issue an order in aid of judgment. Finally, inasmuch as *Ruben I*, 2008 MP 22 and *Reuben II*, 2009 MP 7, misinterpreted *Paulis*, 2004 MP 10 and sanctioned job search orders pursuant to 7 CMC §§ 4205 and 4206, those holdings are overturned.

III

¶ 20 For the foregoing reasons, the provision in the order in aid of judgment that required Moses to utilize his best efforts to obtain employment is not permitted by 7 CMC §§ 4205-4206. Acceptable methods of payment do not encompass a job search requirement. Furthermore, an order in aid of judgment can only issue if the trial court first determines that the debtor has the ability to pay the judgment debt. In this case, the parties stipulated that Moses possesses no income or non-exempt assets to pay the judgment, and thus, the order never should have issued. Therefore, we REVERSE the order in aid of judgment, and REMAND this matter to the trial court for further proceedings consistent with this opinion.

SO ORDERED this 22nd day of February, 2011.

MIGUEL S. DEMAPAN
Chief Justice

ALEXANDRO C. CASTRO
Associate Justice

JOHN A. MANGLONA
Associate Justice

¹⁰ Marianas Eye is entitled to have the trial court periodically examine Moses's financial situation to determine if he obtains the ability to pay the judgment at a later date.