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

FRIENDS OF MARPI, CHRISTINA-MARIE SABLAN, ANGELO VILLAGOMEZ, SUZANNE KINDEL, GLEN HUNTER, RUTH TIGHE, ERICK VAN DER MAAS, JILL DERICKSON, DEL BENSON, KEN KRAMER, C.E. "BUD" WHITE, FRANK CAMACHO, and ANTHONY PELLEGRINO,
Plaintiffs-Appellees,

v.

COMMONWEALTH GOVERNMENT, COASTAL RESOURCES MANAGEMENT, DEPARTMENT OF COMMUNITY AND CULTURAL AFFAIRS, HISTORIC PRESERVATION OFFICE, OFFICE OF THE GOVERNOR, CAPITAL IMPROVEMENTS PROJECTS OFFICE, COMMONWEALTH UTILITIES CORPORATION, MELVIN FAISAO (DCCA SECRETARY), RITA CHONG (CRM ADMINISTRATOR), and VIRGINIA VILLAGOMEZ (CIP ADMINISTRATOR),
Defendants-Appellants.

SUPREME COURT NO. 2011-SCC-0015-CIV
SUPERIOR COURT NO. 11-0103B

OPINION

Cite as: 2012 MP 9

Decided August 21, 2012

Michael W. Dotts, Saipan, MP for Plaintiffs-Appellees
Michael A. Stanker and Charles E. Brasington, Office of the Attorney General, Saipan, MP for Defendants- Appellants

BEFORE: HERBERT D. SOLL, Justice Pro Tem; F. PHILIP CARBULLIDO, Justice Pro Tem; ROBERT J. TORRES, JR., Justice Pro Tem.

SOLL, J.P.T.:

¶ 1 The Commonwealth appeals a preliminary injunction issued by the Superior Court. Article IV, section 3 of the Commonwealth Constitution and 1 CMC § 3102(a) grant appellate jurisdiction to the Supreme Court over final judgments and orders. Interlocutory orders are generally not appealable unless expressly permitted by statute, rule, constitutional provision or other recognized common law doctrine. The preliminary injunction order issued by the trial court is a non-final, interlocutory order and no exception exists under which we can consider this appeal. Accordingly, we hold that the Supreme Court lacks jurisdiction to review the Commonwealth's appeal and this appeal is DISMISSED.

I

¶ 2 The Plaintiffs-Appellees Friends of Marpi et al. ("Plaintiffs") filed a complaint against the Commonwealth government, several of its agencies, and several Commonwealth officials (collectively "Commonwealth"). The complaint alleges several violations of both the Commonwealth Constitution and Commonwealth statutes that purport to protect the environment as well as historical places and things. On the same day, Plaintiffs moved for a temporary restraining order preventing the Commonwealth Utilities Corporation from installing power poles that would connect a public cemetery under construction in Marpi with its electrical grid.

¶ 3 The trial court granted Plaintiffs' motion for a temporary restraining order. It then held a hearing for and orally granted a preliminary injunction for 90 days. The trial court thereafter issued a written preliminary injunction order, which it subsequently extended through the trial date for this matter.[1] This appeal followed.[2]

II

A. The Final Judgment Rule

¶ 4 We must always resolve issues related to appellate jurisdiction before examining or addressing the merits of an appeal. *Pac. Amusement, Inc. v. Villanueva*, 2005 MP 11 ¶ 7 (quoting *Williamson v. UNUM Life Ins. Co. of Am.*, 160 F.3d 1247, 1250 (9th Cir. 1998)). "Whether jurisdiction can be exercised is a question of law subject to a de novo review." *Id.* (emphasis omitted).

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[1] *Friends of Marpi v. Commonwealth*, Civ. No. 11-0103 (NMI Super. Ct. May 11, 2011) (Preliminary Injunction Order); *Friends of Marpi v. Commonwealth*, Civ. No. 11-0103 (NMI Super. Ct. Aug. 2, 2011) (Order Granting and Continuing the Preliminary Injunction).

[2] Although we dismiss this appeal on other grounds, we note that the record in this case does not contain a separate entry of judgment. Since our opinion in *Commonwealth v. Kumagai*, 2006 MP 20, "this Court has consistently maintained that the separate document rule is jurisdictional, in that we [do not] consider an appeal until a separate entry of judgment is filed." *In re Estate of De Castro*, 2009 MP 3 ¶ 14.

¶ 5 The Commonwealth adheres to the final judgment rule under which "only final decisions and orders [of the Commonwealth Superior Court] are appealable."[3] *Commonwealth Brown v. Kumagai*, 2006 MP 20 ¶ 8 (citing *Commonwealth v. Crisostimo*, 2005 MP 18 ¶ 10). Both constitutional and statutory provisions impose the final judgment rule upon all appeals in the Commonwealth.

¶ 6 Article IV, section 3 of "[t]he Commonwealth Constitution limits the jurisdiction of the Supreme Court to judgments that are final." *Crisostimo*, 2005 MP 18 ¶ 10. "Article IV, Section 3 states: '[t]he Commonwealth [S]upreme [C]ourt shall hear appeals from *final* judgments and orders of the Commonwealth [S]uperior [C]ourt.'" *Id.* (quoting NMI Const. art. IV, § 3). Moreover, this Court has repeatedly construed 1 CMC § 3102(a) to only grant it "appellate jurisdiction over Superior Court judgments and orders which are *final*." *Commonwealth v. Hasinto*, 1 NMI 377, 385 (1990); *see also Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 13 ("This Court's appellate jurisdiction over Superior Court proceedings, set forth in 1 CMC § 3102(a), permits us to hear appeals only from judgments and orders which are final, except as otherwise provided by law."); *Chan v. Chan*, 2003 MP 5 ¶ 18 ("This provision has been interpreted by the Supreme Court as granting jurisdiction only over Superior Court judgments and orders which are *final*."). Accordingly, as a general rule "only final orders are immediately appealable." *Pac. Amusement*, 2005 MP 11 ¶ 9 (citing *Hasinto*, 1 NMI at 385).

B. Exceptions to the Final Judgment Rule

¶ 7 Despite the finality requirement, we have acknowledged and adopted exceptions to the final judgment rule.[4] Interlocutory appeals are permitted where expressly allowed by statute, rule, or constitutional provision. *Hasinto*, 1 NMI at 384 ("[C]ourts generally do not permit appeals from interlocutory orders unless they are *expressly* permitted by statute, rule or constitutional provision."). For example, this Court has jurisdiction to hear some interlocutory appeals of orders made by the Superior Court while sitting in probate "by virtue of 8 CMC [§] 2206, which grants the [h]eirs a right of appeal from an order either 'directing or allowing the payment of a debt, claim, legacy, or attorney's fee . . . [or] refusing to make [such an] order . . . .'" *Malite v. Superior Court*, 2007 MP 3 ¶ 21; *see also In re Estate of Roberto*, 2010 MP 7 ¶ 9 ("Under *Hasinto*, because the Court permitted interlocutory appeals authorized by statute, the appeals permitted by 8 CMC § 2206 would have been permissible before the passage of

[3] Under Commonwealth Rule of Civil Procedure 54(a), "'[j]udgment,' as used in [the Rules of Civil Procedure] includes a decree and any order from which an appeal lies." Com. R. Civ. P. 54(a).

[4] These exceptions were adopted by Commonwealth voters in 1997 when they passed House Legislative Initiative 10-3, which specifically added the word "final" into article IV, section 3. *Crisostimo*, 2005 MP 18 ¶ 10. The initiative expressly incorporated statutory provisions, case law, and rules already in existence that affect the Judiciary. *In re Estate of Roberto*, 2010 MP 7 ¶ 7 ("The initiative . . . stated that 'all laws, regulations, and rules affecting the judiciary shall continue to exist as if established pursuant to this [amendment], and shall unless *clearly inconsistent*, be read to be consistent with [this amendment].'" (citation omitted)). Thus, "exceptions to the finality requirement first recognized before the 1997 amendments still existed after its passage." *Id.* ¶ 10.

House Legislative Initiative 10-3, HS1, HD1."); *In re Estate of De Castro*, 2009 MP 3 ¶ 15 (concluding that while an appeal was interlocutory, the Court had jurisdiction pursuant to section 2206). Nevertheless, the Commonwealth does not have a statute that broadly grants this Court jurisdiction over interlocutory appeals of preliminary injunctions, thus this exception does not apply to the present case.

¶ 8 In addition, "Commonwealth Rule of Civil Procedure 54(b) . . . carves out an exception to [the finality] requirement when multiple claims and/or multiple parties are involved." *Commonwealth Dev. Auth. v. Camacho*, 2010 MP 19 ¶ 5; *see also Ito v. Macro Energy, Inc.*, 2 NMI 459, 464-65 (1992) (dismissing appeals because the appealed orders were not final within the meaning of Rule 54(b)). "Rule 54(b) allows the trial court to certify an order as final and ready for appeal 'upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.'" *Commonwealth Dev. Auth.*, 2010 MP 19 ¶ 5 (quoting NMI R. Civ. P. 54(b)). The trial court did not make a Rule 54(b) determination in this case, nor did it direct entry of a final judgment as to the preliminary injunction. Accordingly, the Rule 54(b) exception is inapplicable.

¶ 9 Furthermore, the common law collateral order doctrine does not apply to the preliminary injunction order issued by the trial court. "Under the 'collateral order' doctrine, an appeal may be taken from an order which is collateral to the principal litigation as long as any decision on appeal will not affect the underlying merits of the case." *Pac. Amusement*, 2005 MP 11 ¶ 18 (citing *Hasinto*, 1 NMI at 384 n.6.). Thus, "[t]o come within the collateral order exception to the final judgment rule, the order sought to be appealed must: (1) have conclusively determined the disputed questions; (2) have resolved an important issue completely separate from the merits of the action; and (3) be effectively unreviewable on appeal from a final judgment." *Id.* ¶ 19 (citing *Hasinto*, 1 NMI at 384 n.6.). Moreover, "the collateral order doctrine exception is strictly confined to limited circumstances." *Id.* ¶ 18. (citing *Guo Qiong He v. Commonwealth*, 2003 MP 3 ¶ 14); *Commonwealth v. Guerrero*, 3 NMI 479, 481 (1993)) ("[T]he 'final judgment rule' . . . prevents piecemeal litigation by allowing interlocutory appeals in only limited circumstances.").

¶ 10 By its very nature, a preliminary injunction order does not conclusively determine the disputed questions, which in this case concern whether the Commonwealth complied with applicable constitutional, statutory, and regulatory provisions. Instead, a preliminary injunction preserves the status quo while the parties prepare for trial on the merits. *Villanueva v. Tinian Shipping & Transp., Inc.*, 2005 MP 12 ¶ 19.

¶ 11 Moreover, a preliminary injunction does not satisfy the second factor of the collateral order doctrine because it does not "resolve[] an important issue completely separate from the merits of the action." *Pac. Amusement*, 2005 MP 11 ¶ 19. When considering whether to grant a preliminary injunction, the trial court must determine "whether the plaintiff has a strong likelihood of success on the merits," but

not make a conclusive determination.[5] *Tinian Shipping*, 2005 MP 12 ¶ 20 (citing *Johnson v. California State Bd. of Accountancy*, 72 F.3d 1427, 1430 (9th Cir. 1995). As such, the determination is directly related to the merits of the underlying case. This is unlike a trial court's decision to modify bail where "the very nature of a bail decision is such that it is collateral to, and separate from the guilt or innocence of an accused." *Commonwealth v. Camacho*, 2002 MP 14 ¶ 1 n.1.

¶ 12 Similarly, the third and most crucial factor of the collateral order doctrine is not satisfied. "[T]he order appealed from must be effectively unreviewable if the aggrieved party is forced to wait until the entire case is fully adjudicated." *Camacho v. Demapan*, 2010 MP 3 ¶ 28. "The only situation where an issue would not be reviewable as part of a final judgment is where it involves 'an asserted right the legal and practical value of which would be destroyed if it were not vindicated before trial.'" *Pac. Amusement*, 2005 MP 11 ¶ 20 (quoting *Midland Asphalt Corp. v. United States*, 489 U.S. 794, 799 (1989)). *Camacho v. Demapan*, 2010 MP 3, involved a partial summary judgment. There, we held that "the order sought to be appealed will be reviewable as part of the trial court's final judgment." 2010 MP 3 ¶ 28. "In other words, the collateral order doctrine [did] not apply . . . because the defendant [could] obtain appellate review of the trial court's ruling on the [issue appealed] as well as the order dismissing his counterclaims once the entire case [had] concluded." *Id.*

¶ 13 Likewise, even a determination on the merits at trial does not destroy the rights of the Commonwealth with regard to the preliminary injunction. This Court would have an opportunity to review the preliminary injunction should the Commonwealth appeal the trial court's final judgment. The validity of the preliminary injunction may also come into play if the final judgment suffers from an infirmity that requires remand to the trial court. Such was the case in *Olopai v. Fitial*, 3 NMI 101 (1992), where we vacated the trial court's final judgment but left its preliminary injunction in place during the subsequent proceedings before the trial court. *Olopai v. Fitial*, 3 NMI 101, 109 (1992). Consequently, the

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[5] In *Tinian Shipping*, we stated that:

> The factors, which must be examined when a trial court determines whether to grant a preliminary injunction, are whether: (1) the plaintiff has a strong likelihood of success on the merits; (2) the level of the threat of irreparable harm to the plaintiff if the relief is not granted; (3) the balance between the harm the plaintiff will face if the injunction is denied and the harm the defendant will face if the injunction is granted; and (4) any effect the injunction may have on the public interest.

Tinian Shipping, 2005 MP 12 ¶ 20 (citing *Johnson*, 72 F.3d at 1430).

collateral order doctrine does not permit the Commonwealth to appeal the interlocutory preliminary injunction order.[6]

C. Inconsistent Case Law

¶ 14 We recognize that our opinions in *Pacific American Title Insurance & Escrow (CNMI), Inc. v. Anderson*, 1999 MP 15, and *Villanueva v. Tinian Shipping & Transportation, Inc*., 2005 MP 12, appear to be inconsistent with the general rule requiring finality and do not fit within the well-defined and very narrow exceptions to the final judgment rule. In *Pacific American*, this Court assumed jurisdiction of an appeal from a preliminary injunction without any jurisdictional analysis. 1999 MP 15 ¶ 1. At this point in time, we are unable to reconcile our perfunctory assertion of jurisdiction in that case with prior and subsequent case law strictly applying the general rule requiring a final judgment or order. *See Hasinto*, 1 NMI at 385 ("We construe 1 CMC § 3102(a) to grant this Court appellate jurisdiction over Superior Court judgments and orders which are *final*."); *Camacho v. Demapan*, 2010 MP 3 ¶ 22 ("Given the jurisdictional limitation contained in Article IV, section 3, we have interpreted 1 CMC § 3102 . . . as granting this Court with jurisdiction only 'over Superior Court judgments and orders which are *final*.'" (quoting *Kumagai*, 2006 MP 20 ¶ 9)).

¶ 15 Similarly, in *Tinian Shipping* we assumed jurisdiction over an appeal from a preliminary injunction without applying the final judgment rule. 2005 MP 12 ¶ 6. In doing so, we asserted that while article IV, section 3 of the Commonwealth Constitution vests this Court with jurisdiction over final judgments and orders of the Commonwealth Superior Court, "there is no constitutional prohibition against [the Supreme Court's] review of interlocutory orders." *Id.* ¶ 6 n.1. This jurisdictional statement is incorrect. This Court only hears appeals from *final* judgments and orders of the Commonwealth Superior Court unless a recognized exception applies. NMI Const. art. IV, § 3. Nevertheless, *Tinian Shipping* is distinguishable from both the present case and *Pacific American* in that the suit underlying *Tinian Shipping* was filed by the Commonwealth to collect on an unpaid excise tax, for which the tax bill was final. "Taxes are not ordinary debts; rather, they are imposts levied for the support of the government." *Tinian Shipping*, 2005 MP 12 ¶ 16. In that regard, we distinguished preliminary injunctions issued in

[6] The practical finality doctrine adopted in *Pacific Amusement*, 2005 MP 11, also does not apply to the instant case because this case does not involve or resolve any unsettled matters that have national significance. *Pac. Amusement*, 2005 MP 11 ¶ 13-17 (adopting the practical finality doctrine from *Gillespie v. U. S. Steel Corp.*, 379 U.S. 148 (1964), without discussion or jurisdictional analysis); *Kiaaina v. Jackson*, 851 F.2d 287, 290 n.5 (9th Cir. 1988) ("The *Gillespie* test is applied sparingly to orders involving unsettled issues of national importance where immediate review would serve the purpose of judicial economy underlying the finality rule."). As such, we do not consider the potential inconsistencies between *Pacific Amusement* and article IV, section 3 as amended by House Legislative Initiative 10-3, HS1, HD1. S*ee In re Estate of Roberto*, 2010 MP 7 ¶ 8 (addressing the potential inconsistency between 8 CMC § 2206 and the Commonwealth Constitution after the passage of House Legislative Initiative 10-3, HS1, HD1" and providing "the rationale behind the continued applicability of 8 CMC § 2206 following the passage of the 1997 amendments to the Commonwealth Constitution.").

support of a tax lien from an earlier case in which we held that preliminary injunctions could not be used to prevent a defendant from disposing of assets pending adjudication. *Id.* ¶ 15*; cf. Kevin Int'l Corp. v. Superior Court*, 2006 MP 3 ¶ 25 (denying a petition for mandamus asking this Court to order the trial court to issue a preliminary injunction against a debtor removing property from the Commonwealth).

¶ 16 "The doctrine of *stare decisis* is essential to the respect accorded to the judgments of [this] Court and to the stability of the law. It is not, however, an inexorable command." *Lawrence v. Texas*, 539 U.S. 558, 577 (2003) (citing *Payne v. Tennessee*, 501 U.S. 808, 828 (1991)). Moreover, *stare decisis* "does not shield court-created error from correction." S*an Miguel v. Dep't of Pub. Works*, 2008 Guam 3 ¶ 40 (citing *People v. Mendoza*, 4 P.3d 265, 285 (Cal. 2000)). "[*S*]*tare decisis* is a principle of policy and not a mechanical formula of adherence to [a] . . . decision . . . [that] involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience." *Helvering v. Hallock*, 309 U.S. 106, 119 (1940).

¶ 17 Our inadvertent failure to consider the extent of our jurisdiction in *Pacific American* did not create binding precedent. Likewise, our footnote in *Tinian Shipping* that "there is no constitutional prohibition against [the Supreme Court's] review of interlocutory orders" is not controlling. 2005 MP 12 ¶ 6 n.1. While *Tinian Shipping* can be distinguished because the preliminary injunction was based upon a tax order that was final, our jurisdictional statement ignored the final judgment rule and was devoid of jurisdictional analysis or guidance to justify why this Court might have jurisdiction. Moreover, taken to its furthest reach, the *Tinian Shipping* holding would mean that all interlocutory orders may be appealed based on our discretionary review, which is in complete contradiction to our prior and subsequent case law. Furthermore, as an appellate court we are mindful of the fact that a subsequent court would have serious reservations in finding a legal rule persuasive when placed into a footnote without concrete legal analysis. In addition, the jurisdictional holdings in *Pacific American* and *Tinian Shipping* were effectively overridden by subsequent case law strictly applying the general rule. *See In re Estate of Roberto*, 2010 MP 7 ¶¶ 8-10 (affirming that *Hasinto*, 1 NMI 377, remains applicable after House Legislative Initiative 10-3 became law in 1997 and holding that 8 CMC § 2206 provides for interlocutory appeals of some probate matters); *Camacho v. Demapan*, 2010 MP 3 ¶¶ 21-23, 28 (applying the final judgment rule and considering whether the collateral order doctrine applies). Hence, we do not think either case is binding or persuasive on this Court, nor do we think the doctrine of *stare decisis* is applicable.

¶ 18 The jurisdictional underpinnings of *Pacific American* and *Tinian Shipping* cannot withstand scrutiny and we explicitly overrule *Pacific American*, 1999 MP 15, and *Tinian Shipping*, 2005 MP 12, to the extent that those cases suggest this Court has jurisdiction to hear appeals of preliminary injunctions or otherwise has broad discretion to hear interlocutory appeals.

III

¶ 19 This Court does not have jurisdiction to hear the Commonwealth's appeal because the preliminary injunction order is not a final order and no exception to the final judgment rule applies. Accordingly, this appeal is DISMISSED.

SO ORDERED this 21st day of August, 2012.

/s/
HERBERT D. SOLL
Justice Pro Tem

/s/
F. PHILIP CARBULLIDO
Justice Pro Tem

/s/
ROBERT J. TORRES, JR.
Justice Pro Tem