



IN THE
Supreme Court
OF THE
Commonwealth of the Northern Mariana Islands

JULIA KOTOMAR NORITA
BY AND THROUGH HER ATTORNEY-IN-FACT, **CLAUDIO K. NORITA**,
Plaintiff-Appellant,

v.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Defendant-Appellee.

Supreme Court No. 2019-SCC-0020-CIV

ORDER DISMISSING APPEAL

Cite as: 2020 MP 12

Decided June 3, 2020

ASSOCIATE JUSTICE JOHN A. MANGLOÑA
ASSOCIATE JUSTICE PERRY B. INOS
JUSTICE PRO TEMPORE F. PHILIP CARBULLIDO

Superior Court Civil Action No. 18-0164
Associate Judge Kenneth L. Govendo, Presiding

PER CURIAM:

¶ 1 Defendant-Appellee Commonwealth of the Northern Mariana Islands (“Commonwealth”) requests dismissal based on the allegedly untimeliness of Plaintiff-Appellant Julia Kotomar Norita’s (“Norita”) appeal. In this case, we expound on the mandatory claim-processing rule when a party objects to an untimely appeal. For the following reasons, we DISMISS Norita’s appeal.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 In 1989, then-Governor Pedro P. Tenorio certified the Commonwealth’s acquisition of a lot that had originally belonged to Norita. In 1998, Norita filed an inverse condemnation lawsuit against the Commonwealth. *Norita v. Commonwealth*, Civ. Action No. 18-0164 (NMI Super. Ct. June 10, 2019) (Order Granting the Commonwealth’s Motion to Dismiss at 2). In 2018, Norita sued under NMI Rule of Civil Procedure 60(b),¹ asking the court to relieve her from its original Findings of Fact and Conclusions of Law, which determined that the Commonwealth officially took the lot many decades before. The court dismissed the NMI Rule of Civil Procedure 60(b) claim on June 10, 2019, and issued a final judgment on November 14, 2019.

¶ 3 Under NMI Supreme Court Rule 4(a)(1), Norita must file a notice of appeal “within 30 days after the entry of judgment or order appealed from.” A “judgment or order is entered . . . when the earlier of these events occurs: (1) the judgment or order is set forth on a separate document, or (2) 150 days have run from entry of the judgment or order in the civil docket under NMI Rule of Civil Procedure 79(a).” NMI SUP. CT. R. 4(a)(7)(ii). One hundred and fifty days from June 10, the date of the order dismissing the claim, was November 7, 2019. Because November 7, 2019, is earlier than when the judgment was issued on November 14, 2019, the November 7, 2019 date controls.²

¹ NMI Rule of Civil Procedure 60(b) allows for relief from a final judgment based on a mistake, inadvertence, excusable neglect, newly discovered evidence, fraud, or “any other reason justifying relief from the operation of the judgment.” Here, Norita filed her claim to seek relief from her prior lawsuit’s judgment in 2015. *Norita v. Commonwealth*, Civil Action No. 98-1310 (NMI Super. Ct. Feb. 5, 2015) (Findings of Fact and Conclusions of Law).

² The Ninth Circuit has addressed “the recurrent problem of which of two documents filed by a court, both arguably pronouncing the court’s final order in a matter, constitutes the final, appealable order.” *In re Slimick*, 928 F.2d 304, 306–07 (9th Cir. 1990). There, the court was tasked with determining whether the original order or the more formal judgment controlled the timeline for an appeal. *Slimick* began with the proposition that “if, after filing a final disposition, a court files a more formal judgment, the latter *does not constitute a second final disposition or extend the appeal period.*” *Id.* at 307 (emphasis added).

Here, the 150-day time period had elapsed before a judgment set forth on a separate document was issued. Importantly, the judgment did not pronounce anything different from the court’s original order; it merely reiterated that Norita’s NMI Rule of Civil

¶ 4 Absent a time extension, Norita’s notice of appeal would have been due December 7, 2019—thirty days after the November 7, 2019 date. She filed her notice of appeal on December 16, 2019—thirty-nine days after November 7, 2019.

¶ 5 On March 2, 2020, we issued an Order to Show Cause requiring Norita “to show cause as to why this Court should not dismiss for lack of jurisdiction.” Norita responded the next day, stating that the notice of appeal was due on December 15, 2019 (thirty days after the final judgment was issued), and that she had “pursuant to NMI Supreme Court Rule 26(a)(3) . . . filed her Notice of Appeal on the next business day.” NMI Supreme Court Rule 26(a)(3) states that “[i]f a party must manually file a paper when the weather or other conditions [make] the Clerk’s office inaccessible, the party may do so on the next business day.” She gave no reason for suggesting that the Clerk’s office or the electronic filing system were inaccessible. Nevertheless, the Court issued an Order Withdrawing Order to Show Cause on April 3, 2020.

¶ 6 The Commonwealth filed its response brief stating that Norita became eligible to file a notice of appeal on November 7, 2019, and that her appeal was due by December 7, 2019. Because she filed her notice of appeal “on December 16, 2019, about nine (9) days too late . . . [Norita]’s filing of her notice of appeal was untimely.” Resp. Br. 6. It further stated: “this appeal is time-barred and must be dismissed for this Court’s lack of jurisdiction.” *Id.*

II. JURISDICTION

¶ 7 We have jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3. The time limitations bearing on this appeal are not jurisdictional but are mandatory if properly invoked.

III. STANDARDS OF REVIEW

¶ 8 The sole issue is whether the notice of appeal is untimely. Jurisdictional issues are questions of law, which we review de novo. *Friends of Marpi v. Commonwealth*, 2012 MP 9 ¶ 4.

IV. DISCUSSION

¶ 9 In *Commonwealth v. Borja*, 2015 MP 8, we grappled with the untimely appeal of a criminal case, ultimately holding that court-promulgated rules governing time limitations of criminal appeals are not jurisdictional. There, the appellant filed his notice of appeal just two days past the deadline, a time limitation governed by the NMI Supreme Court Rules.³ Reviewing United States

Procedure 60(b) claim was dismissed. *See Norita v. Commonwealth*, Civ. Action No. 18-0164 (NMI Super. Ct. Nov. 14, 2019) (Judgment). Consequently, because the end of the 150-day period came earlier than the more formal judgment, that date controls.

³ *See* NMI SUP. CT. R. 4(b)(1)(A) (“In a criminal case, a defendant’s notice of appeal must be filed in the Superior Court within 30 days after the later of: (i) [t]he entry of

Supreme Court precedent, we acknowledged the difference between “court-promulgated rules and limits enacted by Congress.” *Id.* ¶ 16 (quoting *Bowles v. Russell*, 551 U.S. 205, 211–12 (2007)). Such rules may be respectively categorized as “claim-processing” rules and “jurisdictional” rules. *Id.* ¶ 15. For federal courts, “[a] time limit [is] ‘jurisdictional’ if the time limitation is also set forth by statute.” *Id.* By contrast, rules not derived from statute, such as court-made rules, are not jurisdictional. “Rules provisions governing timeliness that do not implement congressionally mandated ‘built in time constraints’ are therefore properly considered nonjurisdictional limitations.” *Id.* ¶ 17 (quoting *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007)). Thus, in *Bowles*, the Supreme Court determined that the statutory ninety-day time limit to file a petition for certiorari in civil cases is jurisdictional. However, “the rule-based time limit for criminal cases” is not set forth by statute and is therefore not jurisdictional. Such a distinction “comports with Congress’ constitutional power to limit federal courts’ jurisdiction.” *Id.*; see *Fort Bend Cty., Texas v. Davis*, 139 S. Ct. 1843, 1849 (2019) (“Congress may make other prescriptions jurisdictional by incorporating them into a jurisdictional provision . . .”).

¶ 10 “In contrast, the CNMI Legislature lacks the constitutional authority to limit this Court’s jurisdiction . . .” *Id.* ¶ 18. Our Court is independent and constitutional, with the only jurisdictional limitation imposed by Article IV, Section 3 of the NMI Constitution, which states: “the Commonwealth supreme court shall hear appeals from final judgments and orders of the Commonwealth superior court.” As a result of the independent nature of our Court, “this Court’s jurisdiction cannot be limited by statute,” and the rule governing deadlines in a criminal appeal “is necessarily a claim-processing rule.” *Borja*, 2015 MP 8 ¶ 18. We thus emphatically held that we did not have to dismiss the defendant’s appeal in *Borja*.

¶ 11 Since we decided *Borja*, the United States Supreme Court has reiterated the distinction between jurisdictional limitations and mandatory claims-processing rules. In *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 17 (2017), the Court stated that “a provision governing the time to appeal in a civil action qualifies as jurisdictional only if Congress sets the time.” Otherwise, it is considered “a mandatory claim-processing rule, serving ‘to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times.’” *Id.* (quoting *Henderson v. Shinseki*, 562 U.S. 428, 435 (2011)). The distinction is “critical.” *Id.* “Failure to comply with a jurisdictional time prescription . . . deprives a court of adjudicatory authority over the case, necessitating dismissal—a ‘drastic’ result.” *Id.* Jurisdictional time limitations may not be waived or forfeited “and may be raised at any time in the court of first instance and on direct appeal.” *Id.* Indeed, “courts are obliged to notice jurisdictional issues and raise them on their own initiative.” *Id.*

either the judgment or the order being appealed; or (ii) [t]he filing of the government’s notice of appeal.”).

¶ 12 In contrast, “mandatory claim-processing rules are less stern. If properly invoked, mandatory claim-processing rules must be enforced, but they may be waived or forfeited.” *Id.* at 17–18. Properly invoking the rules ensures “relief to a party properly raising them.” *Id.* at 18 (quoting *Eberhart v. United States*, 546 U.S. 12, 19 (2005)). Thus, the rule becomes mandatory (though not jurisdictional) once raised. *See Davis*, 139 S. Ct. at 1852 (“[A] rule may be mandatory without being jurisdictional.”). In *Borja*, we agreed and stated that the rule governing the timeliness of criminal appeals “is not jurisdictional in nature, [yet] the rule remains mandatory if properly invoked by a party.” *Borja*, 2015 MP 8 ¶ 19. “To invoke the rule, a party must ‘object to timeliness at any point up to and including in its merits brief.’” *Id.* (quoting *United States v. Muhammad*, 701 F.3d 109, 111 (3d Cir. 2012)). Because the appellee did not invoke NMI Supreme Court Rule 4(b) until oral argument, we did not dismiss the appeal.

¶ 13 Here, the Commonwealth properly invoked NMI Supreme Court Rule 4(a) governing the timeliness of civil appeals in its response brief, rendering it a mandatory claim-processing rule. Although *Borja* concerns the timeliness of a criminal appeal, the same principles apply to civil cases. Norita’s notice of appeal was due on December 7, 2019, yet she filed the notice nine days past the deadline.⁴ The failure to timely file her appeal, and the Commonwealth’s subsequent pleading to dismiss based on its untimeliness, mandate our dismissal of the appeal.

V. CONCLUSION

¶ 14 For the foregoing reasons, we DISMISS Norita’s appeal.

SO ORDERED this 3rd day of June, 2020.

/s/

JOHN A. MANGLOÑA
Associate Justice

/s/

PERRY B. INOS
Associate Justice

/s/

F. PHILIP CARBULLIDO
Justice Pro Tempore

COUNSEL

Brien Sers Nicholas, Saipan, MP, for Defendant-Appellant.

⁴ Norita did not file for an extension of time under NMI Supreme Court Rule 4(a)(5).

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