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

LEONORA C. ANGELLO,	)	**APPEAL NO. 2000-003**
	)	**CIVIL ACTION NO. 99-0449**
Petitioner/Appellant,	)	
	)	OPINION
v.	)	
LOUIS VUITTON SAIPAN, INC.,	)	
Respondent/Appellee.	)	

Argued and submitted September 15, 2000

Cite as: *Angello v. Louis Vuitton Saipan, Inc.,* 2000 MP 17

Appellant: Pro Se

Counsel for Appellees: John F. Biehl
Carlsmith Ball
Saipan

BEFORE: DEMAPAN, Chief Justice, CASTRO and MANGLONA, Associate Justices.

CASTRO, Associate Justice:

[1]Leonora C. Angello ("Angello") appeals, pro se, from the Superior Court's January 12, 2000 Order Denying Plaintiff's Motion for Reconsideration. The Superior Court found that Angello failed to show adequate grounds for modifying or setting aside the court's prior order dismissing Angello's request for judicial review of an administrative decision issued by the Department of Labor and Immigration

FOR PUBLICATION

("DOLI") in favor of Angello's former employer, Louis Vuitton Saipan, Inc. ("Louis Vuitton"). We have jurisdiction pursuant to Article IV, Section 3 of the Commonwealth Constitution. N.M.I. Const. art. IV, § 3. For the reasons set forth herein, we affirm the orders of the Superior Court.

ISSUES PRESENTED AND STANDARDS OF REVIEW

[2]The parties disagree as to the issues presented for review. Angello states that the issue is whether 3 CMC § 4445 is unconstitutionally vague in that it is unclear whether the 15-day period to appeal a determination from DOLI begins to run from the date of signature or the date of service. Louis Vuitton responds that although the underlying Order of Dismissal was not properly appealed to this Court, a better statement of the issue is whether the trial court lacked subject matter jurisdiction to decide any issues relating to Angello's appeal of the July 16, 1999 decision of the Secretary of DOLI due to her failure to initially appeal the September 28, 1998 decision of the Director of the Division of Employment Services within 15 days and her failure to appeal the July 16, 1999 decision of the Secretary of DOLI within 15 days. We review dismissals for lack of jurisdiction, made pursuant to Com. R. Civ. P. 12(b)(1), *de novo*. *See Rivera v. Guerrero*, 4 N.M.I. 79, 81 (1993).

[3]Louis Vuitton further asserts that the true issue on appeal is whether the Superior Court abused its discretion in denying Angello's motion to reconsider the Order of Dismissal. The denial of a motion for reconsideration is reviewed under the abuse of discretion standard. *See Bellus v. United States*, 125 F.3d 821, 822 (9th Cir. 1997); *Edward H. Bohlin Co. v. Banning Co.*, 6 F.3d 350, 353 (5th Cir. 1993).

FACTUAL AND PROCEDURAL BACKGROUND

On or about August 5, 1998, Angello filed a complaint with the Division of Employment Services ("DES") of DOLI against her employer Louis Vuitton, alleging a claim for "preferential treatment" as a local

U.S. resident worker, based on her immediate relative status through marriage to a U.S. citizen and her possession of a green card. The Director of DES issued a Determination of Employment Agency Case No. 98-081-08 ("DES Determination") on September 28, 1998, in which he denied Angello's claims. Angello's husband appeared at DES on September 30, 1998 and learned of the DES Determination, but was not served with it until October 5, 1998.

On October 19, 1998, twenty-one days after the date of the DES Determination, but fourteen days after service, Angello filed an appeal to the Secretary of DOLI. A hearing was held on January 11, 1999, and on January 12, 1999, the Secretary issued an Order reversing the DES Determination which dismissed the complaint and remanding the matter for further investigation. Thereafter, on April 9, 1999, DES issued a Notice of Violation and Notice of Hearing to Louis Vuitton.

A hearing was held on June 8, 1999, and consequently, a DOLI hearing officer issued an administrative order on June 22, 1999. This order advised that "[a]ny person, party or insurance company (appellant) aggrieved by this Order may appeal, in writing, to the Secretary of Labor and Immigration within fifteen (15) days of the date of this Order, under 3 CMC § 4445(a). *In re Leonora C. Angello v. Louis Vuitton, Saipan, Inc.*, Employment Agency Case No. 98-081-08 (Administrative Order at 1). Angello timely appealed this administrative order on July 2, 1999.

On July 16, 1999, the Secretary upheld the administrative order in favor of Louis Vuitton. In his decision, the Secretary advised that any party aggrieved by the decision should seek judicial review within 15 days pursuant to 3 CMC § 4446. *See In re Leonora C. Angelo* [sic] *v. Louis Vuitton, Saipan, Inc.*, Employment Agency Case No 98-081-08 (Administrative Order: Appeal at 1).

On August 2, 1999, Angello, through counsel, filed a complaint in Superior Court, setting forth causes of action for defamation and for intentional infliction of emotional distress. The complaint did not

state that the court action was intended as an appeal of the July 16, 1999 administrative decision issued by the Secretary of DOLI. However, on August 6, 1999, Angello filed an Amended Complaint and Request for Judicial Review, seeking review and reversal of the Secretary's decision.[1]

Louis Vuitton moved to dismiss on August 31, 1999 by filing motions (1) to dismiss appeal portion of Complaint due to lack of subject matter jurisdiction; (2) to strike appeal due to improper joinder with original claims; (3) to dismiss original claims for insufficiency of service of process; and (4) to dismiss causes of action 1, 2, 3, 4, and 6 for failure to state a claim upon which relief may be granted. Angello did not file any opposition to the motions. She did, however, file a Second Amended Petition for Judicial Review on October 29, 1999, which removed the original claims and left only the appellate claims.

Louis Vuitton's motions to dismiss came on for hearing on November 17, 1999. Angello appeared with her counsel. Through counsel, she conceded that the Superior Court lacked subject matter jurisdiction over the appeal of the Secretary's July 16, 1999 decision because her intra-agency appeal of the September 28, 1998 DES Determination was untimely. Angello also agreed, through counsel, to the dismissal of her appellate claims which appeared as the first two causes of action in her Amended Complaint and Petition for Judicial Review. Based on Angello's concessions and the agreement of the parties, the Superior Court found that it lacked subject matter jurisdiction to consider Angello's appellate claims and dismissed them with prejudice. *See Angello v. Secretary of Labor*, Civ. No. 99-0449 (N.M.I. Super. Ct. Nov. 24, 1999) (Order of Dismissal). The Court dismissed the remaining original claims without prejudice. *See id.*

On December 3, 1999, Angello, pro se, filed a motion for reconsideration, claiming that her counsel

[1] The first two causes of action related to the appeal of the Secretary's July 16, 1999 decision, and the remaining causes of action related to new claims invoking the original jurisdiction of the Superior Court. *See* Supplemental Excerpts of Record ("S.E.R.") at 16-26.

was not authorized to agree to dismissal of her appellate claims. After a hearing on the motion, the Superior Court issued an order denying Angello's motion for reconsideration on January 12, 2000. *See Angello v. Secretary of Labor*, Civ. No. 99-0449 (N.M.I. Super. Ct. Jan. 12, 2000) (Order Denying Plaintiff's Motion for Reconsideration). The court found that Angello had failed to present any adequate grounds to justify granting reconsideration, such as an intervening change in the controlling law, the availability of new evidence, the need to correct a clear error or to prevent manifest injustice. *See id.* The court further noted that it was "satisfied with the representation of counsel on November 17, 1999, that the court lacked subject matter jurisdiction to hear the appeal and would not have certified such an agreement had it been without merit." *Id.* at 3.

Five days after issuance of the order, Angello filed a Notice of Appeal which designated and attached the Superior Court's January 12, 2000 Order Denying Plaintiff's Motion for Reconsideration as the judgment appealed from. The Notice of Appeal did not designate or attach the November 24, 1999 Order of Dismissal.

ANALYSIS

I. This Court Has Jurisdiction to Review the Order of Dismissal

We must first decide whether we have jurisdiction to review the November 24, 1999 Order of Dismissal. Louis Vuitton contends that Angello only appealed from the Superior Court's January 12, 2000 Order Denying Plaintiff's Motion for Reconsideration. Angello did not designate or attach a copy of the November 24, 1999 Order of Dismissal.

[4,5]Pursuant to Rule 3(c) of the Commonwealth Rules of Appellate Procedure, a notice of appeal must designate the judgment, order or part thereof appealed from. *See* Com. R. App. P. 3(c); *Tanki v. S.N.E. Saipan Co., Ltd.*, 4 N.M.I. 69, 71 (1993); *see also C.A. May Marine Supply Co. v. Brunswick*

Corp., 649 F. 2d 1049, 1056 (5th Cir. 1981) (interpreting Fed. R. App. P. 3(c)). Further, a copy of the judgment or order appealed from is to be appended to the notice of appeal. *See* Com. R. App. P. 3(c). It is based on Rule 3(c) that Louis Vuitton argues that this Court does not have jurisdiction to review the Order of Dismissal. The United States Supreme Court, however, has rejected such an overly technical application of Rule 3(c) of the Federal Rules of Appellate Procedure.[2]

[6]In *Foman v. Davis*, 371 U.S. 178, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962), the petitioner filed a notice of appeal from the denial of her motions to vacate the judgment and to amend the complaint. The court of appeals held that the plaintiff's failure to designate the underlying judgment of dismissal in the notice of appeal prevented the court from reviewing that judgment. *See id.* at 180-81, 83 S. Ct. at 229. The U.S. Supreme Court reversed, reasoning:

> [T]he Court of Appeals should have treated the appeal from the denial of the motions as an effective, although inept, attempt to appeal from the judgment sought to be vacated. [P]etitioner's intention to seek review of both the dismissal and the denial of the motions was manifest. Not only did both parties brief and argue the merits of the earlier judgment on appeal, but petitioner's statement of points on which she intended to rely on appeal, submitted to both respondent and the court pursuant to rule, similarly demonstrated the intent to challenge the dismissal. It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities.

Id. at 181, 83 S. Ct. at 229-30.

[7,8]Likewise, the Ninth Circuit Court of Appeals has reached the merits of an initial order of dismissal which was not designated in the notice of appeal where the intent to appeal the ruling was clear. In *United States v. Walker*, 601 F.2d 1051 (9th Cir. 1979), the Government appealed from the district court's order denying its motion for reconsideration instead of from the order of dismissal. The Ninth

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2 It is appropriate to consult the interpretation of counterpart federal rules when interpreting Commonwealth procedural rules, and we find such interpretations instructive. *See Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270, 283 n.14 (1991).

Circuit noted that the district court's order denying the motion for reconsideration included the same issues which the court considered when it issued the initial order of dismissal, and that the court discussed both orders together in its findings of fact and conclusions of law. *See id.* at 1058. Thus, the Ninth Circuit concluded: "It is apparent the Government intended to appeal both orders; and, since the appellees' brief argues fully the merits of the order of dismissal, appellees have not been prejudiced or misled by the Government's failure to specifically designate the order which is the subject of the appeal." *Id.*

> [A] policy of liberal construction of notices of appeal prevails in situations where the intent to appeal an unmentioned or mislabeled ruling is apparent and there is no prejudice to the adverse party. The party who makes a simple mistake in designating the judgment appealed from does not forfeit his right of appeal where the intent to pursue it is clear. Also, where claims or issues are inextricably entwined, each may be reviewed even though not referred to in the notice of appeal.

C.A. May Marine, 649 F.2d at 1056 (internal citations omitted); *see also Cardoza v. Commodity Futures Trading Comm'n*, 768 F.2d 1542 (7th Cir. 1985) (noting that error in designating judgment or part thereof will not result in loss of appeal if intent to appeal from judgment complained of may be inferred from notice and if appellee has not been misled by defect).

[9]This Court has also liberally construed notices of appeal which failed to designate the proper ruling appealed from. In *Robinson v. Robinson*, 1 N.M.I. 81 (1990), the Court reviewed the merits of an underlying divorce decree where the husband filed a notice of appeal which stated that he was appealing from the order denying motion for new trial. *See id. at* 85 n.1 (citing Wright & Miller, Federal Practice and Procedure: Civil § 2818). The Court noted that it would overlook such a technical error. *See id.*

[10]In the instant case, it is clear that Angello intended to appeal from the underlying Order of Dismissal, as evidenced by her Opening Brief which fully argues the merits of the Order of Dismissal. Accordingly, Louis Vuitton has not been prejudiced by Angello's failure to designate the Order of Dismissal

in her notice of appeal. Indeed, we note that Louis Vuitton has also argued the merits of the underlying Order of Dismissal. We will therefore overlook Angello's technical error and grant review of both the Order of Dismissal and the Order Denying Plaintiff's Motion for Reconsideration.

II. Angello is Estopped from Claiming the Trial Court Lacked Jurisdiction to Decide Any Issues Relating to Angello's Appeal of the July 16, 1999 Decision of the Secretary of DOLI.

[11]The parties' main dispute is whether Angello timely filed her intra-agency appeal of the September 28, 1998 DES Determination within the meaning of 3 CMC § 4445(a). If such appeal was untimely, then the trial court lacked subject matter jurisdiction to review the subsequent appeal from the July 16, 1999 decision of the Secretary of DOLI. Section 4445(a) provides:

> Within 15 days of issuance any person or party affected by findings, orders or decisions of the agency made pursuant to 3 CMC § 4444 may appeal to the director by written notice. If no appeal is made to the director within 15 days of issuance of the original findings, orders or decisions shall be unreviewable administratively or judicially.

3 CMC § 4445(a). Angello contends that her 15-day appeal period did not commence until she received a copy of the DES Determination on October 5, 1998. Louis Vuitton, on the other hand, argues that the appeal period started to run on the date of the determination, or in other words, the date that the determination was "issued."

[112]We need not decide the meaning of the term "issuance"[3] as used in Section 4445(a)because Angello is estopped to deny her concession at the trial court that she failed to timely appeal the DES Determination. When Louis Vuitton's motion to dismiss came on for hearing at the trial court on November 17, 1999, Angello, through counsel, conceded that the trial court lacked subject matter jurisdiction over

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[3] This Court, however, recently held in another case involving the Nonresident Workers Act that the term "issuance" means the date a decision is filed or entered. *See Pacific Saipan Technical Contractors v. Rahman*, App. No. 99-008 (N.M.I. Sup. Ct. Oct. 17, 2000) (Opinion).

the appeal of the Secretary of DOLI's July 16, 1999 decision due to her failure to timely appeal the earlier DES Determination.

[13,14]In general, parties who enter into stipulations or agreements during the course of judicial proceedings are estopped from taking positions inconsistent therewith. *See Markow v. Alcock*, 356 F.2d 194, 198 (5th Cir. 1966); *McDonald v. Hester*, 155 S.E.2d 720, 721 (Ga. Ct. App. 1967). A party may not thereafter complain unless it is plainly apparent that the complaining party's consent was obtained by fraud or mistake. *See McDonald v. Hester*, 155 S.E.2d at 721.

> Parties by their stipulation may in many ways make the law for (their) legal proceeding, which not only binds them, but which the courts are bound to enforce. They may stipulate away statutory and even constitutional rights, and, may to a large extent chart their own procedural course through the courts.

Cerbone v. Cerbone, 428 N.Y.S.2d 777 (N.Y. Civ. Ct. 1979) (citing *Matter of New York, L. & W.RR.*, 98 N.Y. 447); *Stevenson v. News Syndicate Co.*, 302 N.Y. 81, 96 N.E.2d 187).

Here, Angello conceded at the hearing that she had filed an untimely intra-agency appeal. She then agreed with Louis Vuitton to the dismissal of her appellate claims with prejudice. Based upon this agreement, the Superior Court found that it had no jurisdiction to consider such claims. Although Angello later claimed in her motion for reconsideration that her counsel was not authorized to agree to dismissal of her appellate claims, she has presented no persuasive evidence that her consent to the dismissal was obtained by fraud or mistake.[4] She is therefore estopped from taking a position inconsistent with her agreement at the November 17, 1999 hearing. *See Markow v. Alcock*, 356 F.2d at 198; *McDonald v. Hester*, 155 S.E.2d at 721. Accordingly, the Superior Court properly dismissed Angello's appellate claims

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[4] As demonstrated by her filings with this Court and her performance during oral argument, Angello is a well-educated individual with a good command of the English language. We can only assume that despite understanding that her counsel was agreeing to dismissal of her appellate claims at the hearing, Angello stood by without objecting because she had authorized her counsel to agree to such dismissal.

due to lack of subject matter jurisdiction.[5]

III. The Superior Court Did Not Abuse Its Discretion in Denying Angello's Motion to Reconsider the Order of Dismissal.

[15,16,17]A motion for reconsideration may be brought under Rule 59(e) of the Commonwealth Rules of Civil Procedure as a motion to alter or amend the judgment. *See* 11 WRIGHT, MILLER & KANE, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D (hereafter "WRIGHT, MILLER & KANE") § 2810.1 (2d ed. 1995).[6] Rule 59(e) states that "[a] motion to alter or amend the judgment shall be served not later than ten days after entry of the judgment. Com. R. Civ. P. 59(e). This Court has previously noted that the major grounds justifying reconsideration involve an intervening change in the controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.[7] *See Camacho v. J.C. Tenorio Enter. Inc.,* 2 N.M.I. 407, 414 (1992). In this case, the Superior Court considered the foregoing factors and found that Angello failed to demonstrate any adequate grounds justifying reconsideration.[8]

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[5] We note that nothing precluded Angello from pursuing her original claims in the trial court since they were dismissed without prejudice. *See Angello v. Secretary of Labor*, Civ. No. 99-0449 (N.M.I. Super. Ct. Nov. 24, 1999) (Order of Dismissal).

[6] It is appropriate to consult the interpretation of counterpart federal rules when interpreting Commonwealth procedural rules, and we find such interpretations instructive. *See Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270, 283 n.14 (1991).

[7] Under the federal rules of civil procedure, the four main grounds upon which a Rule 59(e) motion may be granted are stated as follows: (1) the need to correct manifest errors of law or fact upon which the judgment is based; (2) the presentation of newly discovered or previously unavailable evidence; (3) the need to prevent manifest injustice; or (4) an intervening change in controlling law. *See* WRIGHT, MILLER & KANE § 2810.1.

[8] The Superior Court also looked to Com. R. Civ. P. 60 which provides in relevant part:

> On motion and upon terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons:
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> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud . . . , misrepresentation, or other misconduct of an adverse party;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

[18]On appellate review, the lower court's denial of a motion for reconsideration is reviewed for abuse of discretion. *See* WRIGHT, MILLER & KANE § 2818 (1995); *Bellus v. United States*, 125 F.3d 821, 822 (9th Cir. 1997); *Edward H. Bohlin Co. v. Banning Co.*, 6 F.3d 350, 353 (5th Cir. 1993). Under this standard, the lower court's decision need only be reasonable to be upheld. *See Edward H. Bohlin Co.*, 6 F. 3d at 353.

[19]We find that Angello has not presented any of the grounds upon which reconsideration may be granted. She has not pointed to any intervening change in the controlling law or the availability of new evidence. Likewise, she has failed to demonstrate any clear error or the need to prevent manifest injustice. There is no clear error where the trial court's decision to dismiss Angello's appellate claims was based upon the agreement of the parties that the court lacked subject matter jurisdiction. Accordingly, we find that the trial court did not abuse its discretion in denying Angello's motion for reconsideration.

CONCLUSION

For the foregoing reasons, the November 24, 1999 Order of Dismissal, as well as the January 12, 2000 Order Denying Plaintiff's Motion for Reconsideration, are hereby **AFFIRMED**.

DATED this 12th day of December, 2000.

/s/ Miguel S. Demapan
MIGUEL S. DEMAPAN, Chief Justice

/s/ Alexandro C. Castro
ALEXANDRO C. CASTRO, Associate Justice

/s/ John A. Manglona
JOHN A. MANGLONA, Associate Justice

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(6) any other reason justifying relief from the operation of the judgment.

Com. R. Civ. P. 60(b).