IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

JACKSON NGIRAINGAS,
Appellant,
v.
TEMMY SHMULL,
Appellee.

Cite as: 2019 Palau 23
Civil Appeal No. 19-002
Appeal from Civil Action No. 15-077

Decided: July 16, 2019

Counsel for Appellant ..... Salvador Remoket
Counsel for Appellee ..... Siegfried B. Nakamura

BEFORE: JOHN K. RECHUCHER, Associate Justice
KATHERINE A. MARAMAN, Associate Justice
KEVIN BENNARDO, Associate Justice

Appeal from the Trial Division, the Honorable Kathleen M. Salii, Associate Justice, presiding.

OPINION

BENNARDO, Justice:

[¶ 1] This appeal traces its origins to a 2015 lawsuit by Temmy Shmull alleging defamation on the part of Jackson Ngiraingas. In 2017, the Trial Division found in Shmull's favor and ordered Ngiraingas to pay $10,000.00 in punitive damages and $9,639.00 in attorney's fees. This Court affirmed the Trial Division's finding of liability in *Ngiraingas v. Shmull*, 2018 Palau 19.

[¶ 2] Shmull then filed a motion for an order in aid of judgment in the Trial Division pursuant to 14 PNC §§ 2001, 2101 *et seq*., and the Trial Division held a hearing on the motion pursuant to 14 PNC § 2105. In the resulting Orders in Aid of Judgment, the Trial Division found that Ngiraingas had made no payment toward the outstanding judgment of $19,636.00. It

ordered Ngiraingas to make payments in the minimum amount of $200.00 per month starting in January 2019. Ngiraingas has appealed those Orders. Finding no error, we affirm.

JURISDICTION

[¶ 3] Neither party raised an issue with our exercise of jurisdiction over this appeal. Nevertheless, we must be the most zealous watchdog over the limits of our own jurisdiction and therefore must consider it in connection with every appeal.

[¶ 4] In *Baules v. Kuartel*, 19 ROP 44 (App. Div. 2012), we found that we lacked jurisdiction to review the appealed Order in Aid of Judgment issued pursuant to 14 PNC § 2105. We did so for two reasons: (1) the order was not a final judgment, nor were any of the exceptions to the final judgment rule applicable; and (2) the order was a ministerial, or "housekeeping," order that lacked independent substance. *Id.* at 46.[1]

[¶ 5] The current appeal is distinguishable on both fronts. First, it is a final judgment. A final judgment requires no further judicial action to determine the parties' rights. *Feichtinger v. Udui*, 16 ROP 173, 175 (App. Div. 2009). In *Baules*, the appealed Order in Aid of Judgment expressly left issues open and reserved ruling on at least one issue until a later time. Thus, it was not "final." *Baules*, 19 ROP at 46.

[¶ 6] Here, the Trial Division's Orders in Aid of Judgment set a definite schedule of payments in a specified amount. While it is true that the Trial Division may revisit the Orders in the event of changed circumstances in the future, no further judicial action is required. Thus, it is an appealable final order.

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[1] We are aware that headnote two of *Baules* states that "*An* Order in Aid of Judgment does not qualify for an exemption under the final judgment rule and is simply not appealable." *Baules*, 19 ROP at 44 (emphasis added). The unfortunate use of the indefinite article in this headnote wrongly conveys the message that orders in aid of judgment are never appealable. This headnote simply does not reflect the actual analysis contained in the *Baules* opinion. In *Baules*, we held that the particular Order in Aid of Judgment at issue in that case was not appealable; we did not hold that orders in aid of judgment are never appealable. We note that the headnotes that precede our opinions do not carry the force of law. Headnotes are merely navigational tools that are added after the issuance of an opinion.

[¶ 7] Second, the appealed Orders are not ministerial. In *Baules*, the judgment following trial enjoined the defendant from using certain land without permission. *Id.* at 45. The defendant did not appeal the judgment. When the defendant continued to use the land without permission, the plaintiff sought an Order in Aid of Judgment to enforce the original injunction. *Id.* Thus, in *Baules*, the appealed Order in Aid of Judgment created no rights or responsibilities between the parties that hadn't already been created by the original judgment. Accordingly, we held that the *Baules* Order in Aid of Judgment was ministerial and therefore unappealable. *Id.* at 46. If the *Baules* defendant wanted to challenge the Trial Division's injunction, he should've done it after the initial judgment rather than wait for the injunction to be reiterated in an order in aid of judgment.

[¶ 8] Here, the Trial Division's Orders in Aid of Judgment do more than simply reiterate the previous judgment. The Orders set a minimum monthly payment ($200) and a schedule of payments (the tenth of each month, beginning on 10 January 2019). While the original judgment required Ngiraingas to pay Shmull $19,636, it did not specify how or when such payments would be made. Thus, the Orders in Aid of Judgment created rights and responsibilities between the parties that were not contained in the original judgment. As such, the Orders in Aid of Judgment are not merely ministerial.

[¶ 9] As an appeal from a non-ministerial final order, it is therefore proper for us to exercise jurisdiction over this appeal. Having determined that we possess jurisdiction over this appeal, we turn to its merits.

ANALYSIS

[¶ 10] Although not clearly styled as such, we perceive two separate arguments in Ngiraingas' appeal. First, Ngiraingas claims that the Orders improperly garnish his Social Security benefits in violation of the statutory provision that prohibits the "execution, attachment, or garnishment" of Social Security benefits. 41 PNC § 784.[2]

[2] Although Appellant's brief cites to 41 PNC § 804, it is clearly meant to be a challenge under section 784.

[¶ 11] At the hearing, Ngiraingas testified that his sole source of income was approximately $600.00 per month in Social Security benefits. Orders at 1. Thus, according to Ngiraingas, the Trial Division's directive that he pay $200 per month toward the satisfaction of the judgment is an impermissible garnishment of his Social Security benefits. Appellant's Br. 2 ("The Trial Division committed a reversible error when it ordered a garnishment of Appellant's Social Security Benefits to pay its judgment.").

[¶ 12] In its Orders, the Trial Division expressly acknowledged that it could not garnish Ngiraingas' Social Security benefits. Orders at 2 ("While Defendant is correct that his social security benefits cannot be garnished or attached, based on the testimony presented, the evidence is that he can make minimum, monthly payments on the judgment."). The Trial Division clearly recognized that garnishment of Social Security benefits was beyond its authority.

[¶ 13] We approach this issue as essentially a matter of statutory interpretation. The Trial Division did not find that the monthly $200 payment constituted a "garnishment" within the meaning of 41 PNC § 784. We review this legal conclusion *de novo*. *Mengeolt v. ROP*, 2017 Palau 17 ¶ 4.

[¶ 14] While we haven't previously had the occasion to interpret the word "garnishment" in the context of section 784, we see no reason to diverge from the ordinary meaning of the term. Under its ordinary meaning, "'Garnishment' is a proceeding in which the property, money, or credits of a debtor that are in the possession of another, i.e., the garnishee, are applied to the payment of a debt that arises from a final judgment against the debtor." 6 Am. Jur. 2d *Attachment & Garnishment* § 2. "In other words, garnishment proceedings enable a judgment creditor to enforce its judgment against the judgment debtor even though the judgment debtor is not in possession of the property." *Id.*; *see also* Restatement (Second) of Judgments §§ 6 cmt. a, 8 (explaining attachment jurisdiction, also known as garnishment jurisdiction); ROP R. Civ. P. 64 (listing garnishment as an example of a remedy "providing for seizure of person or property"); *First Commercial Bank v. Wong*, 20 ROP 132, 139 (App. Div. 2013) (discussing ROP Rule Civ. P. 64).

[¶ 15] The very crux of a garnishment is that the money or property is diverted from a third party to a judgment creditor before it makes it into the

hands of the judgment debtor. A garnishment necessarily involves a transfer directly from a third party to the judgment creditor. Thus, ordering the Social Security Administration to pay Ngiraingas' benefit directly to Shmull to satisfy the judgment would be an example of a garnishment. But that is not what happened here. Here, the Trial Division ordered Ngiraingas to make monthly payments to Shmull to satisfy the outstanding judgment. That is simply not a garnishment. Accordingly, Ngiraingas' argument that the Orders impose an impermissible garnishment of his Social Security benefits must fail.

[¶ 16] Second, Ngiraingas argues that the Trial Division improperly set the level of his monthly payment at a minimum of $200. Pursuant to statute, the Trial Division is to determine, based on the judgment debtor's ability to pay, the fastest manner in which the debtor can reasonably pay a judgment. 14 PNC § 2105. Although not clearly indicated in Ngiraingas' brief, he appears to seek a *de novo* standard of review on this issue.[3] However, the setting of a payment schedule under 14 PNC § 2105 is generally reviewed under the much more stringent abuse of discretion standard. *See, e.g.*, *W. Caroline Trading Co. v. Bekebekmad*, 9 ROP 53, 54 (App. Div. 2002) (noting that "the factual findings concerning the debtor's income and expenses and the weighing of those findings, necessary to making the statutory determination [under section 2105], calls for the exercise of discretion").

[¶ 17] Regardless of what standard of review we apply to Ngiraingas' argument, the outcome is the same. The nub of the argument is that the Trial Division improperly considered the income of Ngiraingas' spouse and his child in setting his minimum monthly payment at $200. Ngiraingas argues that, by considering his family members' income, the Trial Division enforced the judgment against them instead of enforcing it only against him. Appellant's Br. 2–3.

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[3] While Appellant's brief has a section labeled "Standard of Review," it simply states that legal conclusions and mixed findings of law and fact are reviewed *de novo*. Appellant's Br. 1. Appellant's brief makes no effort to identify which aspects of the appealed Orders are legal conclusions, which are mixed findings of law and fact, and which are something else entirely.

[¶ 18] Ngiraingas' argument mischaracterizes the Trial Division's Orders. While the Trial Division did consider the incomes of Ngiraingas' family members, it did so as part of an assessment of whether Ngiraingas' income was necessary to support them. Orders at 2 ("His wife earns space rental income, one child in college in Cuba receives financial aid and another child has recently graduated from college and is home working, thus reducing any financial assistance [Ngiraingas] has been previously providing to them."). This type of consideration is entirely appropriate; indeed, the statute expressly provides that the Trial Division should "allow the debtor to retain such property and such portion of his income as may be necessary to provide the reasonable living requirements of the debtor and his dependents." 14 PNC § 2105. In order to make this determination, the Trial Division necessarily must consider the judgment debtor's family members' external sources of income.

CONCLUSION

[¶ 19] Finding no error, we **AFFIRM** the Trial Division's Orders in Aid of Judgment.

SO ORDERED, this 16th day of July, 2019.