Koror State Government v. Western Caroling Trading Co., 2 ROP Intrm. 306 (1991)

KOROR STATE GOVERNMENT,
Appellee,

v.

WESTERN CAROLINE TRADING COMPANY, ET AL.,
Appellant.

CIVIL APPEAL NO. 14-91
Civil Action No. 121-91

Supreme Court, Appellate Division
Republic of Palau

Appellate decision
Decided: May 14, 1991

Counsel for Appellee: Mark Doran

Counsel for Appellants: David F. Shadel

BEFORE: MAMORU NAKAMURA, Chief Justice; LOREN A. SUTTON, Associate Justice; FREDERICK J. O'BRIEN, Associate Justice.

SUTTON, Associate Justice:

I. BACKGROUND

On April 3, 1991, Petitioner Koror State Government (KSG) filed a complaint in the trial division of the Supreme Court against Respondent Western Caroline Trading Company, et al., (WCTC) seeking among other things, shareholder inspection of WCTC's Books and Records. Paragraph I of the complaint contains a statement of jurisdiction as required by ROP R. Civ. Pro. 8(a)(1).

On April 4, 1991, KSG filed a Petition for Writ of Mandate in the appellate division of the Supreme Court requesting that WCTC be compelled to permit KSG to inspect its books and ⊥307 records. The Petition contained no statement supporting jurisdiction of the appellate court.

WCTC, on April 10, 1991, filed a Motion to Dismiss or Strike KSG's Petition and For Sanctions. The grounds for the motion are that the appellate division has no jurisdiction to hear KSG's Petition for Writ of Mandate because such jurisdiction is vested exclusively in the trial division pursuant to ROP Const. Art. X, Sec. 5 and that failure to recognize this lack of jurisdiction before filing the Petition warrants sanctions against KSG.

II. LEGAL ANALYSIS

Article X, section 5 of the Constitution of the Republic of Palau provides, in pertinent part:

> The trial division of the Supreme Court shall have original and exclusive jurisdiction over all matters affecting Ambassadors, other Public Ministers and Consuls, admiralty and maritime cases, and those matters in which the national government or a state government is a party . . . . (emphasis supplied).

Article X, section 6 provides that "[t]he appellate division of the Supreme Court shall have jurisdiction to review all decisions of the trial division and all decisions of lower courts." (emphasis supplied).

The plain language of these sections leaves no room to dispute that the trial division has exclusive original jurisdiction over all matters involving a state government and that the appellate court's jurisdiction in such cases is limited to reviewing decisions of the trial division. The appellate division has no original jurisdiction to hear matters in which a ⊥308 state government is a party, which includes KSG's petition for Writ of Mandate.

KSG argues in its opposition to WCTC's Motion to Dismiss or Strike that Rule 21 (c) of the Rules of Appellate Procedure grants the appellate division original jurisdiction to hear its Petition. Rules 21 (a) and (b) set forth the procedure for applying in the appellate division for a Writ of Mandamus or Prohibition directed to a judge or justice and for the proceeding to follow if the writ is not initially denied. Rule 21 (c) sets forth the procedure for "[a]pplication for extraordinary writs other than those provided for in subdivisions (a) and (b)" and provides in substance that the same procedure outlined in subsections (a) and (b) should be followed.

KSG's argument fails for three reasons. First, Title I of the Rules of Appellate Procedure sets forth the scope of the rules and provides that:

> These rules shall govern procedure in appeals to the appellate division of the Supreme Court of the Republic of Palau from . . . the trial division of the Supreme Court and in proceedings in the appellate division for . . . applications for writs . . . which the appellate division or a justice thereof is competent to give.

Rule 1(a) clearly expresses that the rules govern procedure for appeals and applications for writs that the appellate court has jurisdiction to hear. They do not even address procedures for matters over which the trial division has original jurisdiction and KSG should not have relied upon them for guidance in a matter that KSG acknowledged in its complaint was under the trial division's jurisdiction.

⊥309 Secondly, Rule 1(b) states that "[t]hese rules shall not be construed to expand or limit the jurisdiction of the appellate division as established by law." If KSG was confused by Rules 21 (c) and 1(a), this subsection should have alerted KSG to go to the trial division with its Petition.

Thirdly, the position that a rule or law can expand constitutionally mandated jurisdiction is contrary to a basic tenet of constitutional law. The United States Supreme Court addressed this very issue in one of its earliest cases, *Marbury v. Madison*, [5 U.S. (1 Cranch) 137 (1803)]. The Court held a statue unconstitutional which gave the Supreme Court the power to issue Writs of Mandamus because the Constitution did not grant the Court original jurisdiction to issue such writs. Chief Justice John Marshall explained the Court's reasoning:

> Certainly all those who have framed written constitutions contemplate them as forming fundamental and paramount law of the nation, and, consequently, the theory of every such government must be, that an act of the legislature repugnant to the constitution is void. . . . If an act of the legislature, repugnant to the constitution, is void, does it, notwithstanding its invalidity, bind the courts, and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was a law? This would be to overthrow in fact what was established in theory; and would seem . . . an absurdity too gross to be insisted on. *Id.* at 175.

See also, Ex Parte Yeager , [75 U.S. (1 Wall.) 85, 98 (1869)]; 52 Am. Jur. 2d, *Mandamus* sec. 28; 28 Am. Jur. 2d, *Courts* secs. 91, 98, 107; 16 Am. Jur. 2d, *Constitutional Law* sec. 331.

No law or rule may expand the limited jurisdiction granted to the appellate division pursuant to Article X section 6 of the ⊥310 Constitution of the Republic of Palau. Having no jurisdiction to hear KSG's Petition for Writ of Mandate, we therefore grant WCTC's Motion to Dismiss without reaching the merits of the petition.

III. SANCTIONS

WCTC seeks sanctions against KSG pursuant to ROP R. Civ. Pro. 11, 14 PNC sec. 702, and the court's inherent authority to award sanctions.

Rule 11 provides in pertinent part:

> The signature of an attorney or trial assistant constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law , and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation . . . . If a pleading, motion, or other paper is signed in violation of this rule, the Court, upon motion, or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay . . . a reasonable attorney or trial assistant's fee. (emphasis supplied).

Rule 11 is virtually identical to Rule 11 of the United States Federal Rules of Civil Procedure (FRCP) as amended in 1983. FRCP 11 was amended to increase its effectiveness in deterring abuses and to eliminate the previous requirement that the attorney to be sanctioned acted in bad faith. *Rodgers v. Lincoln Towing Service Inc.* , 771 F.2d 194 (7th Cir. 1985) "The new language is intended to reduce the reluctance of courts to ⊥311 impose sanctions . . . by emphasizing the responsibilities of the attorney and re-enforcing those obligations by the imposition of sanctions". FRCP 11 Advisory Note. Rule 11 stresses the need for pre-filing inquiry into both the facts and the law and "[t]he standard is one of reasonableness under the circumstances", *Id.* at 194. In short, Rule 11 holds attorneys to certain standards and requires sanctions when those standards are not satisfied.

There are no facts before us supporting a finding that KSG acted in bad faith, to harass, or for the purpose of delay. KSG is seeking inspection of WCTC's books and records and the delay it caused by misfiling its petition only further delayed any right to inspect that it may be able to prove. We therefore focus our inquiry on whether KSG's petition violates Rule 11 because it was filed without sufficient inquiry into the law regarding jurisdiction of the appellate division to hear the petition.

KSG was familiar or should have been familiar with the constitutional grant of exclusive original jurisdiction to the trial division in all matters involving a state government as a party in the ROP. As stated above, Article X, section 5 is cited in paragraph I of the complaint KSG filed with the trial division and presumably counsel would have also read section 6 regarding appellate division jurisdiction before citing Article X.

Once KSG's counsel read and misinterpreted Rule of Appellate Procedure 21 he should have, at minimum, been aware of the conflict between his interpretation of that rule and Article X. Counsel then should have attempted to resolve this conflict by conducting basic legal research into the scope of the appellate ⊥312 rules and the law regarding whether a law or rule can alter a court's constitutionally mandated jurisdiction. This legal research would have lead him to Rule 1 which resolves the conflict. If counsel was still unsure about which division had jurisdiction after reading Rule 1 a minimum amount of additional research would have uncovered a wealth of authority that would have left no room for the position that the Rules of Appellate Procedure expands the appellate division's grant of jurisdiction.

Moreover, had KSG complied with ROP R. Civ. Pro. 8(a)(1) when it filed its petition it would have been forced to focus on the issue of whether the appellate division had jurisdiction. Rule 8 requires that every pleading setting forth a claim for relief contain "a short statement of the grounds upon which the court's jurisdiction depends unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it . . ." As stated, minimal legal research would have resolved any perceived conflict between Article X and Rule 21.

The answer to why this conflict was not resolved prior to filing the petition is revealed by KSG's explanation regarding why it did not comply with Rule 8. KSG argues that "the complaint filed in the trial division states the grounds for jurisdiction, and the Rules of Appellate Procedure contain the procedure for writs of mandate, therefore, the petition for writ of mandate is properly

Koror State Government v. Western Caroling Trading Co., 2 ROP Intrm. 306 (1991) before the court, and no statement of jurisdiction is necessary" (KSG's Opposition to Motion to Dismiss Petition p. 2 paragraph 3). This circular reasoning begs the question and illustrates either a fundamental misunderstanding of the ⊥313 difference between original and appellate jurisdiction or a bald refusal to focus on the issue at hand.

Counsel's recalcitrance on the issue was illustrated at oral argument when after hearing WCTC plainly lay out the well established law regarding why this court has no jurisdiction, he declined the court's invitation to counter-argue the issue yet also refused to concede the point. The refusal to grapple with established law and the failure to even attempt to construct a meaningful argument as to why the law one is asserting applies are additional factors warranting sanctions. See *Rodgers, supra*, at 205.

KSG's failure to conduct preliminary legal research before filing its petition, its failure to withdraw the petition once WCTC presented clear indisputable authority showing that this court had no jurisdiction, and the failure to either grapple with the issue or concede it at oral argument were unreasonable under the circumstances and a violation of Rule 11. Having found a violation of Rule 11 this court has no choice but to sanction KSG $250.00 plus WCTC's reasonable attorney fees incurred responding to the misfiled petition and appearing at oral argument.

For the reasons outlined above we also find that the misfiled petition was groundless. Sanctions are therefore also required by 14 PNC Section 702.

IV. CONCLUSION

WCTC's Motion to Dismiss or Strike Petition for Writ of Mandate is granted on the grounds that this court has no jurisdiction. As we have no jurisdiction, we do not reach the ⊥314 merits of KSG's underlying petition for mandate. In addition, sanctions are warranted pursuant to Rule of Civil Procedure 11 and 14 PNC Section 702, in the amount of $250.00 plus WCTC's reasonable attorneys fees and costs incurred in responding to KSG's misfiled petition and appearing at oral argument. WCTC is ordered to file with this court a detailed accounting of its attorneys fees and costs by no later than May 24, 1991, and KSG shall pay said fees and costs by no later than one week following the Court's approval thereof.