Fanna v. Sonsorol State Gov't, 8 ROP Intrm. 9 (1999)

FANNA & MERIR
MUNICIPAL GOVERNMENTS,
Appellants,

v.

SONSOROL STATE GOVERNMENT,
Appellee.

CIVIL APPEAL NO. 98-01
Civil Action No. 434-93

Supreme Court, Appellate Division
Republic of Palau

Argued: April 16, 1999
Decided: July 30, 1999

Counsel for Appellant: Mariano Carlos

Counsel for Appellee: Kevin Kirk

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

MICHELSEN, Justice:

Provisions of the Sonsorol Constitution require revenue sharing between that State's government ("the State") and its constituent municipal governments. In this case, Fanna and Merir Municipalities ("the Municipalities") argue that they have not been receiving the correct allocation of state revenue, and seek injunctive and declaratory relief, as well as a court order directing the State to pay the alleged shortfall. They appeal the judgment of the Trial Division that declared that although the State's previous allocations had violated the state constitution, no further injunctive or monetary relief was available under the complaint as pled.

SCOPE OF APPELLATE REVIEW

The Municipalities did not (for economic reasons, they explain) order a trial transcript. An appellant is not obligated to file a trial transcript. However, the absence of a transcript, or partial transcript, largely precludes any challenge to the findings of fact made in the Trial Division. *Smau v. Emilian* , 6 ROP Intrm. 31 (1996). [1] Furthermore, we cannot review

[1] *See also* Rule 10(b), ROP R. App. Pro. which provides in pertinent part that "any party desiring to raise an issue on appeal depending on the whole or any part of the testimony or evidence adduced in the trial court shall request in writing that a transcript be made of such testimony and evidence."

evidentiary rulings without the appropriate parts of the transcript. A party who seeks review of a ruling on evidence must show that substantial rights were affected, and that the appellant's motion or objection was either apparent from the context, or made known to the court. ROP R. Evid. 103(a). In the absence of a transcript, the evidentiary objections of the Municipalities are outside the scope of our review.

Legal conclusions are still reviewable *de novo*. *Ongalk Ra Teblak v. Santos*, 7 ROP Intrm. 1, 2 (1998). The record must show, however, that the issue was pressed or passed upon below. *United States v. Williams,* 112 S. Ct. 1735 (1992). "A claim or an issue is 'pressed or passed upon below' when it fairly appears in the record as having been raised or decided." 19 *Moore's Federal Practice* § 205.05 [1] (3d ed.).

⊥10 **DISCUSSION**

A. Article XII, Section 10(a), Sonsorol Constitution

Article XII, Section 10 of the Sonsorol State Constitution provides in part:

> all block grants received from the national government shall be shared by the State Government and all the Municipalities within the State according to the following formula: (a) the first one half of the block grant shall be divided equally among the Municipalities and the State Government . . . .

The Municipalities' first claim is that Sonsorol State has failed to make all of these constitutionally-required payments to them. The argument is twofold. The Municipalities assert that the State has failed to appropriate sufficient sums to complete the Section 10(a) payments. They further argue that even when the state legislature appropriated the funds, the Governor did not release the full amounts authorized by the appropriation.

The Trial Division found that "the State Legislature appropriated the correct amount for plaintiffs in all but three of the relevant years--1984, 1986 and 1988." The Court held that any claims for shortfalls for 1984 and 1986 were barred by the statute of limitations. We agree. Title 14, Section 405 of the Palau National Code provides that, except for cases not applicable here, all civil actions "shall be commenced within six years after the cause of action accrues." A "cause of action accrues as soon as the party in whose favor it arises is entitled to maintain an action." *Fed. Sav. & Loan Ins. Corp. v. Haralson*, 813 F.2d 370, 377 (11th Cir. 1987). The cause of action accrued when the appropriation bills were enacted in 1984 and 1986 because at that point the Municipalities had a right to sue. The Municipalities argue that the limitation period runs from the time the state received the funding from the national government, or from the time funds were distributed. These later dates, significant though they are, do not change the fact that the cause of action accrued when the legislature enacted the pertinent appropriations bill. The limitation period must therefore be measured from that point, and the claim is untimely for the years 1984 and 1986.

The Municipalities also argue that payments made in later years should be considered

partial payments for 1984 and 1986, which toll the statute of limitations. The record does not reflect that this argument was raised in the Trial Division and we therefore apply the usual rule that arguments not made in the Trial Division are waived. *Ngerketiit Lineage v. Ngerukebid Clan*, 7 ROP Intrm. 38 (1998).

The complaint regarding the year 1988 was timely filed, and the Trial Division held "the amount appropriated from plaintiffs was $60 less than the amount it should have been under section 10(a)." However, the Court declined to order the State to pay that amount because "[u]nder the Sonsorol Constitution, expenditures from the treasury can only be made pursuant to an appropriation law."

The Municipalities merged two procedurally distinct steps when they simultaneously requested a declaratory ⊥11 judgment and an order to pay. Palau's Declaratory Judgment Act is codified at 14 PNC § 1001, and provides that the Trial Division may "declare the rights and other legal relations of any interested party..." The Trial Division exercised its discretion and issued a declaratory judgment regarding the year 1988. The Municipalities are not, however, automatically entitled to an "order to pay" as part of a declaratory judgment. When declaratory relief is awarded, "[f]urther necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment." 14 PNC § 1001. In this regard, Palau's statute is similar to section 8 of the Uniform Declaratory Judgment Act as well as the declaratory judgment procedure used in the United States federal courts. *Alexander & Alexander v. Van Impe* , 787 F.2d 163, 166 (3d Cir. 1986); *Edward B . Marks Music Corp. v. Charles K. Harris Music Publishing*, 255 F.2d 518, 522 (2d Cir. 1958). Therefore, on these facts the Municipalities were entitled to a declaratory judgment, but not an order in aid of that judgment, at the conclusion of the fact-finding.

This sequential approach is particularly appropriate when a government entity is the defendant. For any budgetary period, a government's fiscal decisions are already in place, and commitments made regarding public funds. An immediate "order to pay" could be financially disruptive. Once a declaratory judgment is issued, appropriate government officials can adjust priorities based on the decision, and possibly reach an acceptable settlement with the plaintiffs. In such cases, further relief from the court is not necessary. Nonetheless, after reasonable notice and hearing, further post-judgment relief can be considered. However, such relief may be constrained by the court's usual unwillingness to order payments not supported by an appropriation. *See, e.g., Bd. of Comm'rs v. 19th Jud. Dist.* , 895 P.2d 545 (Colo. 1995); *State for Use of Dept. of Corrections v. Pena* , 855 P.2d 805 (Colo. 1993); *Mandel v. Myers*, 629 P.2d 935 (Cal. 1981); *but see Gates v. Collier* , 616 F.2d 1268, 1270-72 (5th Cir. 1980) (upholding order requiring state treasurer to satisfy civil rights judgment notwithstanding lack of appropriation by legislature). The Municipalities' request for an order to pay was therefore premature, and the Trial Division correctly denied it. However, Plaintiffs may return to court for subsequent enforcement proceedings. We will leave it to the Trial Division to fashion any available relief if and when necessary.

The Municipalities' second argument concerns the funds appropriated but not released.

The Court found the actual funds released by the state "were short by $19,460.50." The Trial Division held that "[w]ith respect to the funds that were appropriated but not paid, Plaintiff has no viable claim against the Sonsorol State Government--the claim is against the individual or individuals who expended the funds in violation of the appropriation law."[2]

⊥12 In effect, the Trial Division held that the availability of declaratory relief depended upon whether legislative acts (the failure to appropriate), as distinguished from executive acts (the failure to properly disburse appropriated funds), were involved. We disagree. It is true that normally a constitutional challenge seeking a declaratory judgment will name specific government officials in their official capacities, probably because plaintiffs desire that any subsequent orders be directed to identified individuals. Nonetheless, when government officials are sued in their official capacities, the case is still one against the government itself. *Jungels v. Pierce*, 825 F.2d 127 (7th Cir. 1987). However, assuming that the plaintiff has standing to sue and capacity to sue (issues not raised by the parties in this case), declaratory relief may be requested directly against a government entity for the acts of its officers, even if those officers are not part of the legislative branch. *See, e.g., Buckley Powder Co. v. State of Colorado* , 924 P.2d 1133 (Colo. App. 1996); *McKamey v. State of Montana* , 885 P.2d 515 (Mont. 1994); *Alto v. State of Oregon,* 876 P.2d 774 (Or. 1994); *Bd. of Law Library Trustees v. State of Oklahoma* , 825 P.2d 1285 (Okl. 1991); *Lucchesi v. State of Colorado,* 807 P.2d 1185 (Colo. App. 1990); *Burman v. State of Washington* , 749 P.2d 708 (Wash. App. 1988); *Rocky Mountain Oil and Gas Ass'n v. State of Wyoming* , 645 P.2d 1163 (Wyo. 1982). The request for declaratory relief was therefore improperly denied on the grounds that the claim can only be made against individual officers. If, because of the actions of its officers, Sonsorol State Government failed to meet its obligations to the Municipalities, then plaintiffs are entitled, in the first instance, to seek declaratory relief against it.[3] This issue is therefore remanded to the Trial Division for further consideration.

B. Article XII, Section 10(b), Sonsorol Constitution

The Municipalities also object to the State's distribution of funds pursuant to Article XII, section 10(b), which provides that "the remaining half [of the block grant funds] shall be apportioned among the Municipalities and the State Government equitably in accordance with an appropriation law."

The Municipalities do not believe their share was equitable. However, as Trial Division noted:

> Under the Sonsorol Constitution, plaintiffs are guaranteed that at least four, and possibly six, of the ten members of the Sonsorol Legislature come from Fanna and Merir Municipalities. If the people of Fanna and Merir disagree with how

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[2] The Municipalities may or may not have a viable claim against the individual officials who failed to act on these appropriations. The state legislature might have authorized appropriations in excess of actual revenue, in which case expenditures could have exhausted available funds without any official violating the appropriations law.

[3] As stated earlier, if the Municipalities prove their entitlement to declaratory relief against the State, they may thereafter seek additional post-judgment relief from it.

their elected leaders are allocating the section 10(b) funds, they may exercise their political rights at the voting booths.

The language of section 10(b) places the responsibility of determining the equitable allocation of the remaining block grant funds with the legislature. On this facts, there was ⊥13 no reason for the Trial Division to second-guess this exercise of discretion.

C. Article XII, Section 7, Sonsorol Constitution

The Municipalities also argue that their share of national revenue from foreign fishing activities within the State was not equitable, and such revenue must "be divided equitably." Article XII, section 7, Sonsorol Constitution. Here, the absence of a trial transcript precludes the Municipalities from challenging the Trial Division's finding of fact: "There is no evidence that the funds received from the national government were derived from licensing within Sonsorol's jurisdiction." And, of course, our remarks about the legislature's responsibility to determine an equitable division of funds pursuant to Article XII, section 10(b) applies with equal force to Article XIII.

D. 40 PNC § 2206

The Municipalities' final reviewable claim is that the State's appropriations of national block grants have been inconsistent with the requirements of 40 PNC § 2206 that 50% of such grants be spent on capital improvement projects.[4] The Municipalities do not appear to challenge the Trial Division's finding that no restitution or injunctive relief is appropriate on these facts. Rather, their appeal focuses on the Trial Division's refusal to enter a declaratory judgment.

The Trial Division held that "the block funds for 1993 were appropriated in accordance with the conditions placed on them by the OEK,"[5] but the funds "were not spent in accordance with those terms." The Trial Division held the State was not a proper defendant even if executive branch spending did not comply with the appropriations. As we noted earlier, in a case where plaintiff asks for relief based on the actions of government officials, a government can be an appropriate defendant. That being the case, the Trial Division erred in not reaching the

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[4] Beginning in 1992, the 50% requirement was codified in the PNC, first at 5 PNC § 406, and now at 40 PNC § 2206. RPPL 3-60. Prior to that time, the 50% rule was apparently contained within the individual budget acts passed by the OEK. The record on appeal contains only excerpts from those acts, and does not indicate whether the national budget in FY 1985, 1987, 1988, 1990, or 1991 actually contained the restriction relied upon by the Municipalities. The 1986 national budget actually requires the expenditure of 60% of block grant funds on capital projects.

[5] The Municipalities challenge the Trial Division's factual finding that the 1993 budget appropriated the correct amount to capital projects. Given the state of the record and the submissions before us on this point, and because we are remanding the claim under § 2206 to the Trial Division for further consideration, we believe that the parties' arguments regarding the correctness of the appropriations in the contested years should be first presented to the Trial Division.

question of whether declaratory relief with respect to this claim was available against the State.[6]

⊥14 **CONCLUSION**

We affirm the Court's decision granting a declaratory judgment regarding the Municipalities' claims regarding the failure to appropriate funds in accordance with Article XII, Section 10(a) for the year 1988. We also affirm, on other grounds, the denial of an order for the Defendant State to pay a sum certain at this stage. We remand, however, for a determination whether the Municipalities are also entitled to declaratory relief regarding funds that were appropriated but not paid to them. We affirm the Court's judgment denying relief sought pursuant to Article XII, Section 10(b), and Article XIII, Section 7. We reverse the Court's judgment to the extent it holds that the State was not a proper party concerning the Municipalities' claim for declaratory relief pursuant to 40 PNC § 2206. The matter is therefore remanded for the Trial Division to consider whether, and to what extent, a declaratory judgment should issue on this last claim in light of its previous findings of fact.

[6] The Trial Division also said that the "evidence shows that in some earlier years, the appropriation laws of Sonsorol State did not reflect the conditions put on its block grants by the OEK." Because the Court held the State was not a proper party with respect to this claim, it did not need to further analyze this evidence. On remand, the Court may utilize these findings of fact when considering the request for declaratory judgment on this claim for relief.