IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

NGARAMETAL ASSOCIATION,
Appellant,
v.
OFFICE OF THE ATTORNEY GENERAL,
Appellee.

Cite as: 2021 Palau 14
Civil Appeal No. 20-029
Appeal from Civil Action No. 16-053

Argued: February 24, 2021
Decided: May 20, 2021

Counsel for Appellant	.....	James W. Kennedy
Counsel for Appellee	.....	Georgine M. Bells, Assistant Attorney General

BEFORE: JOHN K. RECHUCHER, Associate Justice
GREGORY DOLIN, Associate Justice
KEVIN BENNARDO, Associate Justice

Appeal from the Trial Division, the Honorable Kathleen M. Salii, Presiding Justice,[1] presiding.

OPINION

DOLIN, Associate Justice:

[¶ 1] The case before this Court emanates from the ongoing Civil Action No. 16-053 between Ngarametal Association ("Ngarametal"), Appellant herein, and Island Paradise Resort Club ("IPRC"), which remains pending in the Trial Division.[2] During the pendency of that dispute, the Trial Division

[1] On August 19, 2020, while the Trial Division proceedings were ongoing, Justice Salii became Presiding Justice of the Trial Division.

[2] The facts undergirding the dispute between Ngarametal and IPRC are recounted in *Island Paradise Resort Club v. Ngarametal Ass'n*, 2020 Palau 27.

ordered the Bureau of Public Safety ("BPS") to secure the property owned by IPRC, which was scheduled to be sold at a public auction. The Office of the Attorney General ("OAG") thereafter filed a motion to recover fees allegedly incurred by the BPS in carrying out the Trial Division's order.[3]

[¶ 2] In the normal course of events, the BPS fees would have been paid out of proceeds of the public auction. *See* 14 PNC § 2104(c). However, because we vacated the Trial Division's judgment against IPRC, *see Island Paradise Resort Club v. Ngarametal Ass'n*, 2020 Palau 27, no sale has yet taken place. Accordingly, we are now being asked to determine whether the BPS can recover its fees, and if so, in what amount, from the party on whose behalf they secured the property that was supposed to be, but never was, sold at a public auction. For the reasons that follow, we decline to resolve this difficult question because we conclude that the OAG's attempted intervention in this matter was improper. Accordingly, we **VACATE** the judgment below and **REMAND** with instructions to **STRIKE** the OAG's filings.

BACKGROUND

[¶ 3] On June 2, 2016, Ngarametal filed suit against IPRC alleging breach of contract. The case proceeded to trial on September 24-26, 2019. On January 10, 2020, the trial court issued its Decision and Judgment, concluding that IPRC was in breach of its contractual obligations to Ngarametal and awarding damages to the latter entity. On March 2, 2020, Ngarametal filed a petition for a writ of execution, which the trial court granted four days later. The writ, directed at the Director of Public Safety, ordered that the judgment be satisfied through the levying of execution on property owned by IPRC and identified by Ngarametal. *See* 14 PNC § 2104.

[¶ 4] In implementing the writ of execution, the BPS placed officers on IPRC's property from March 6 through March 18, 2020. No auction took place, however, because on March 17, 2020, we granted a stay pending appeal,

[3] Although the OAG does not expressly state in which capacity it is intervening in relation to the BPS, we presume it is doing so as part of its obligation to represent governmental entities. *See Kekerelchad v. PPLA*, 1 ROP Intrm. 127, 128 (Tr. Div. 1984) (noting that "in Palau it is the duty and function of the Attorney General to represent the Executive Branch of Government '[]in all Civil litigation[]'") (quoting Executive Order No. 9, Part IV, § 1, b).

and thereafter vacated the judgment underlying the writ of execution. *See Island Paradise Resort Club*, 2020 Palau 27 ¶ 20.

[¶ 5] On April 10, 2020, while the appeal on the underlying dispute was pending (leaving the BPS unable to recoup its expenses from the proceeds of the auction), the OAG filed a motion in the trial court to recoup the BPS's fees in the amount of $9,992.22. That motion was filed not in a new Civil Action but in the underlying case between IPRC and Ngarametal.[4] Several procedural twists and turns followed.

[¶ 6] On April 24, 2020, Ngarametal filed a Motion to Strike the OAG's filing on the basis that the OAG was not a party to the underlying litigation and failed to seek permission to file or provide any justification for its motion. On April 29, 2020, the trial court granted Ngarametal's motion and struck the OAG's filing. The next day, the OAG filed a "Notice and Pending Response" informing the trial court that it was neither served with nor aware of Ngarametal's motion to strike until the court issued its decision on the same. In light of that filing, the trial court vacated its decision to strike the OAG's motion for fees and set deadlines for briefing on Ngarametal's motion to strike. The briefing was completed on May 21, 2020.[5] On August 14, 2020, the trial court denied Ngarametal's motion to strike and set briefing deadlines on the OAG's motion for fees. The briefing on that motion was completed on August 31, 2020. In a written order entered on September 4, 2020, the trial court granted the OAG's motion for fees and ordered Ngarametal to remit to the BPS $9,992.22 within 30 days of its order. On September 22, 2020, the trial court denied Ngarametal's motion for reconsideration.

[¶ 7] Ngarametal appealed from the trial court's orders on October 22, 2020. In its brief, Appellant argues that the trial court erred when it 1) declined to strike the OAG's motion for fees, 2) declined to impose sanctions on the

[4] The OAG did not seek money from IPRC.

[5] Thereafter, there were a number of motions filed by both sides seeking to strike certain portions of various filings. These motions were all denied by the Trial Division, and though Ngarametal appealed the denial of its motions, in light of our resolution of this appeal, we decline to reach these questions.

OAG for allegedly "scandalous" filings,[6] and 3) ordered Ngarametal to pay the BPS's fees.

[¶ 8] The OAG filed a motion to dismiss the appeal on the basis that it is allegedly untimely. We deferred consideration of that motion until briefing and argument on the merits of the underlying appeal.[7]

STANDARD OF REVIEW

[¶ 9] Whether intervention is allowed is generally left to the broad discretion of the Trial Division and is reviewed on appeal for abuse of discretion. *See Rengulbai v. Klai Clan*, 22 ROP 56, 63 (2015). A court necessarily abuses its discretion when it "grounds its decision upon a mistaken view of the evidence or an erroneous view of the law." *Idid Clan v. Palau Pub. Lands Auth.*, 2016 Palau 7 ¶ 6 (quoting *Krolikowski v. Chicago & Nw. Transp. Co.*, 278 N.W.2d 865, 868 (Wis. 1979)).

DISCUSSION

I.

[¶ 10] We begin by addressing the OAG's argument that the appeal is improperly brought because it is a) untimely and b) seeks review of a non-appealable ministerial order. We disagree.

A.

[¶ 11] We have repeatedly held that failure to file a timely notice of appeal is fatal "because of the clear, inflexible time limits contained in our [R]ules" of Appellate Procedure. *Henry v. Shizushi*, 21 ROP 52, 55 (2014).

[¶ 12] A party must ordinarily file a notice of appeal within 30 days after service of the order from which it appeals. *See* ROP R. App. P. 4(a). Because Ngarametal challenges orders entered many months before its October 22, 2020, Notice of Appeal, the OAG contends that the appeal is untimely. The problem with the OAG's argument is that it would have required Ngarametal

[6] As discussed above, in light of our resolution of this appeal, we decline to reach this question.

[7] On IPRC's motion, we also dismissed it as a party to this appeal.

to bring three separate appeals — one after the trial court vacated its order striking the OAG's motion for fees, another when the trial court formally denied the motion to strike, and yet another after the trial court ordered that Ngarametal pay the BPS's fees. Such an approach runs counter to our repeated admonitions that "[p]iecemeal appeals disrupt the trial process, extend the time required to litigate a case, and burden appellate courts." *Salii v. Etpison*, 18 ROP 41, 43 (2011) (quoting *Ngirchechol v. Triple J. Enters., Inc.*, 11 ROP 58, 60 (2004)); *see also ROP v. Black Micro Corp.*, 7 ROP Intrm. 46, 47 (1998). Furthermore, until the trial court ordered Ngarametal to pay the BPS's fees, Appellant had little to appeal. Though Appellant may have been unhappy that the order to strike the OAG's motion was vacated, such vacatur imposed no duties on Appellant. Similarly, once the trial court considered arguments on the motion to strike and ultimately declined to grant relief, Appellant was not obligated to do anything. True enough, had the trial court struck the OAG's motion, Ngarametal would have been relieved of the burdens of further litigation. However, burdens of litigation are not sufficient grounds for an appeal. *Cf. Hamilton v. Firestone Tire & Rubber Co.*, 679 F.2d 143, 145 (9th Cir. 1982) ("[T]he mere inconvenience of defending another lawsuit does not constitute plain legal prejudice."). It is for this reason that only final orders and those falling within the "collateral order" exception are appealable to this Court. *See Koror State Legis. v. KSPLA*, 2019 Palau 38 ¶ 7. Because the vacatur of the order striking the OAG's motion for fees and the later outright denial of the motion to strike were neither final nor fit within the collateral order exception doctrine, they were not appealable to this Court. Consequently, Ngarametal could not have missed a deadline to appeal orders that were not appealable in the first place.

[¶ 13] That, of course, does not mean that these orders are not reviewable. It merely means that Ngarametal had to wait until an order that finally determined its rights to appeal that order and any other orders that led to the entry of the final judgment. *See Salii*, 18 ROP at 43 ("It is far better to consolidate all alleged trial court errors in one appeal."). There is nothing unusual about such a procedure. For example, we usually do not permit interlocutory appeals of evidentiary rulings but will entertain arguments about the trial court's evidentiary decisions once a final judgment is entered. *See Cement Div., Nat. Gypsum Co. v. City of Milwaukee*, 915 F.2d 1154, 1158 (7th

Cir. 1990) ("[E]videntiary ruling cannot normally be appealed until there has been a final judgment."). In such cases we do not require a notice of appeal to be filed within 30 days of the evidentiary ruling. To the contrary, the clock begins to run only once a final judgment is entered. *See Arugay v. Wolff*, 5 ROP Intrm. 239, 240 n.1 (1996) (holding that a notice of appeal must be filed within 30 days of a final order setting the amount of sanctions, and not within 30 days of the earlier order that merely imposed sanctions).[8]

[¶ 14] Because Ngarametal filed its notice of appeal within 30 days of the trial court Order denying its motion for reconsideration, it complied with the requirements of Rule 4(a) of the Rules of Appellate Procedure, and we reject the OAG's argument to the contrary.

B.

[¶ 15] We also reject the OAG's argument that the trial court order directing that Ngarametal remit $9,992.22 to the BPS is not an appealable order because it was both "ministerial" and not a final order. We have previously held that ministerial, non-final orders are generally not subject to immediate appeal. *See Ngiraingas v. Shmull*, 2019 Palau 23 ¶ 4 (discussing *Baules v. Kuartel*, 19 ROP 44 (2012)). As we explained in *Ngiraingas*, a ministerial order is one that "create[s] no rights or responsibilities between the parties." *Id*. ¶ 7. This is obviously not the case here. Prior to the trial court order fixing the BPS's fees and ordering Ngarametal to pay them, Ngarametal had no obligations to the BPS. The OAG's argument that Ngarametal's responsibilities are fixed by statute, and that the court's order merely confirmed the extant statutory obligation, misses the mark. First of all, it is an open question whether the statute means what the OAG argues it to mean. More importantly, even in cases where statutory or contractual obligations are clear, a court order that finds such obligations binding on a party is, provided it meets other finality requirements, an appealable order. For example, a statute prohibiting driving above a posted speed limit and setting fines for doing so delineates clear obligations on the part of drivers. But it does not follow that a

[8] The OAG's timeliness argument is undermined by its argument that the Trial Division's order directing Ngarametal to pay the BPS's fees is not appealable because it itself was ministerial. But if so, then it necessarily follows that earlier orders are also not appealable, and therefore the time established by Rule 4(a) could not have possibly begun to run.

court order imposing a penalty for violation of the statute is "ministerial" and not appealable.

[¶ 16] The order Ngarametal is seeking to appeal "d[id] more than simply reiterate the previous" legal obligations between the parties. *Id.* ¶ 8. Instead, the order set a payment amount and ordered the payment to be remitted within 30 days. Thus, the order "created rights and responsibilities between the parties" that did not previously exist. *Id.* Therefore, the order directing Ngarametal to pay the BPS fees is not merely ministerial and is therefore subject to appeal. *See id.* ¶¶ 8-9.

[¶ 17] For the same reason, we conclude that the order is a "final" order. "An order is final and appealable '[w]hen there is no further judicial action required to determine the rights of parties.'" *Baules*, 19 ROP at 45 (quoting *Feichtinger v. Udui*, 16 ROP 173, 175 (2009)). Because following the trial court's order "no further judicial action" was required in order to fix Ngarametal's responsibilities to the BPS, the order was final. The fact that Ngarametal may, should it prevail in the underlying action, recoup these moneys from IPRC is irrelevant to the question of whether its obligations vis-à-vis the BPS have been conclusively determined.

[¶ 18] Because we determine that the order appealed from was both final and not ministerial, we conclude that the appeal is proper and timely. We therefore turn to the merits of the appeal.

II.

[¶ 19] This case serves as a great reminder that the Rules of Civil Procedure are not mere suggestions, but mandatory directives that all litigants must comply with. Strict adherence to the rules helps avoid a procedural morass like we currently find ourselves in. Failure to comply with the rules may deny a litigant the status of a proper "party" or deny a proper party the relief sought.

A.

[¶ 20] Generally speaking, a third party lacks standing to bring any claims in an ongoing proceeding between unrelated parties. *See Rengulbai*, 22 ROP at 64 ("Simply put, a person must be a party to a case to cross-examine a witness, and to become a party to a case that is already ongoing a person must

intervene."); *Tmetbab Clan v. Gibbons*, 5 ROP Intrm. 295, 297 n.3 (Tr. Div. 1995) ("If KSPLA wishes to participate further in this action, or to be able to appeal this decision, it should file a formal motion to intervene."). The intervention procedure in the Trial Division is governed by Rule 24(c) of the Rules of Civil Procedure. In the usual case, the Rules of Civil Procedure would require the OAG, prior to seeking any relief, to file a motion to intervene which "shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought." ROP R. Civ. P. 24(c). It is undisputed that the OAG did not follow this procedure. Complicating the matter, however, is the fact that the OAG arguably did not voluntarily enter this action. Rather, the BPS (which is represented by the OAG) was ordered by the Trial Division, pursuant to the writ of execution, to secure property belonging to IPRC. In essence, it could be said that the OAG became part of the case not through its own motion, but through the Trial Division's order. Even if under these unique circumstances we could excuse the failure to file the motion required by Rule 24 and treat the OAG's motion for fees together with the Trial Division's writ of execution as a sufficient substitute for such a motion,[9] the mere fact that intervention was properly sought does not *ipso facto* mean that it should have been granted.

B.

[¶ 21] The question before us, then, is whether the trial court, in permitting the OAG to intervene, misapprehended the law governing this process and therefore abused its discretion.

[¶ 22] Intervention is defined as "[t]he entry into a lawsuit by a third party who, despite not being named a party to the action, *has a personal stake in the outcome*." *Intervention*, Black's Law Dictionary (11th ed. 2019) (emphasis added). The Rules of Civil Procedure contemplate two types of intervention: "Of Right," ROP R. Civ. P. 24(a), and "Permissive," ROP R. Civ. P. 24(b). The former permits intervention when the intervenor's interest relates to "the property or transaction which is the subject of the action and the [intervenor]

[9] We reiterate that our hesitancy to insist on strict compliance with the Rules of Civil Procedure is occasioned solely by the unique procedural posture of this case. Future putative intervenors are cautioned to strictly adhere to the requirements of Rule 24, or else risk having their attempted intervention be held improper.

is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest," ROP R. Civ. P. 24(a)(2), whereas the latter permits intervention when the intervenor's "claim or defense and the main action have a question of law or fact in common," *id.* 24(b)(2).

[¶ 23] It is clear that the OAG's intervention does not fit within the parameters of subsection (a). The resolution of the underlying contract dispute between Ngarametal and IPRC in no way "impair[s] or impede[s] [the OAG]'s ability to protect" its interest in recouping the expenses incurred in safeguarding IPRC's property. The OAG is not an interested party in the Ngarametal-IPRC dispute but is rather claiming to be a general creditor of Ngarametal. Unless permitted by statute, the right of intervention is usually denied to a general creditor of one of the parties. *See Bronson v. La Crosse & M.R. Co.*, 67 U.S. 524, 527 (1862); *Herring v. New York, L.E. & W.R. Co.*, 105 N.Y. 340, 370 (1887); *Miller v. White*, 33 S.E. 332, 333 (W. Va. 1899). No such statute has been raised in this case.

[¶ 24] The procedural posture of this appeal confirms the lack of connection between the underlying case and the OAG's interest. The OAG freely admits that had the auction on IPRC's property gone forward, the BPS would have recouped its fees from the proceeds of the auction. *See* 14 PNC § 2104(c). But the OAG also argues that the BPS is owed fees even absent the auction. In other words, the OAG argues that *irrespective* of whether Ngarametal or IPRC prevails in the underlying dispute, the BPS is due its fees for services rendered. The only question is who will ultimately be liable for those fees. However, it does not matter to the OAG who will pay the fees, as long as the fees are paid. Consequently, the Rules of Civil Procedure do not give the OAG an unqualified right to intervene in the Ngarametal-IPRC dispute.

[¶ 25] The OAG fares no better in seeking permissive intervention under subsection (b). The request for fees and the underlying case do not have "a question of law or fact in common." The Ngarametal-IPRC dispute involves questions of contract law, whereas the OAG's claim involves questions of statutory construction and civil procedure. *See* 14 PNC §§ 131, 2104(c). What is more, permitting the OAG to intervene here needlessly complicates matters.

If we were to affirm the trial court's order but also later conclude that IPRC is liable to Ngarametal in the underlying action, we would spawn yet another round of litigation between Ngarametal and IPRC in which Ngarametal would seek to recoup the payment it tendered to the BPS. Additionally, affirmance of the order below may make it harder for Ngarametal and IPRC to settle the underlying dispute — an undesirable outcome in and of itself. *See Trolii v. Rechelbang*, 13 ROP 251, 253 (Tr. Div. 2006) ("Public policy favors the resolution of disputes by the parties to a lawsuit through compromise and settlement . . . .").

[¶ 26] The OAG is of course not left without a remedy. It remains free to bring a separate action against either Ngarametal, or IPRC, or both entities. We express no view on the merits of any such action should it be brought. We do however conclude that on the facts of this case, the Rules of Civil Procedure do not permit the OAG to intervene in the contractual dispute between Ngarametal and IPRC in order to seek recovery of fees the BPS allegedly expended in securing IPRC's property.

[¶ 27] Because the Trial Division incorrectly applied the law governing interventions, it necessarily abused its discretion in permitting the OAG to intervene. *See Whipps v. Idesmang*, 2017 Palau 24 ¶ 8 ("[The] application of the wrong legal standard constitutes a per se abuse of discretion."). Its decision to do so must therefore be vacated.

CONCLUSION

[¶ 28] For the foregoing reasons, the OAG's Motion to Dismiss is **DENIED**. The Trial Division's Order, directing Ngarametal to pay fees allegedly incurred by the Bureau of Public Safety when it carried out the writ of execution, is **VACATED**, and the matter is **REMANDED WITH INSTRUCTIONS TO STRIKE** the OAG's pleadings from the docket of Civil Action No. 16-053.

BENNARDO, J., concurring in the judgment:

[¶ 29] I write separately to express my dissatisfaction with the outcome, although I agree that it is the required result under the Rules of Civil Procedure. The Bureau of Public Safety (and, by extension, the Office of the Attorney

General) has been put in a difficult position. The Trial Division ordered the Bureau of Public Safety to guard an asset. The Bureau of Public Safety did so and expected to recoup its expenses out of the sale of the asset at auction. Because the asset was not auctioned, the Bureau of Public Safety did not recoup its expenses. Thus, the Bureau sought to recoup its expenses by filing a motion in the same action in which it was ordered to guard the asset.

[¶ 30] In our opinion, we tell the Bureau that this procedure was not appropriate under the Rules of Civil Procedure. We tell the Bureau that it is but a potential creditor of some unidentified debtor, and, if it wishes to seek to recoup its expenses, it should file an action against the appropriate debtor. To me, that feels like an unsatisfying response.

[¶ 31] It seems to me that the Bureau deserves to be treated better than a random creditor in this situation. After all, the Bureau did not choose to lend someone money or to sell someone a vehicle on credit. It was *ordered* by the Trial Division to guard a particular asset, and it complied with that order. It did not engage in any transaction under its own volition, but rather operated pursuant to a judicial order. Now that the Bureau's efforts have gone unreimbursed, our judicial response is to tell it that it should find someone to sue.

[¶ 32] Unfortunately, that is the procedure that the law supplies. I perceive no other alternative approach that would comport with the Rules of Civil Procedure. Thus, I concur with the majority's disposition of the appeal. However, I see our decision today not only as a great reminder of the mandatory nature of the Rules of Civil Procedure, but also as a great reminder that the solutions provided by law are not always satisfying ones.