HOKKONS BAULES,
Appellant,

v.

NGIRAMERIANG YOU KUARTEL,
Appellee.

CIVIL APPEAL NO. 11-013
Civil Action No. 03-195

Supreme Court, Appellate Division
Republic of Palau

Decided: January 16, 2012

[1] **Appeal and Error:** Interlocutory Appeals

An order is final and appealable when there is no further judicial action required to determine the rights of parties. However, there are exceptions to the "final judgment" rule.

[2] **Appeal and Error:** Interlocutory Appeals

An Order in Aid of Judgment does not qualify for an exemption under the final judgment rule and is simply not appealable.

[3] **Appeal and Error**: Frivolous Appeal

Under Rule 38 of the Appellate Rules of Procedure, the Court may issue sanctions against the appellant if the result of the appeal is obvious, and the Court has no jurisdiction over the frivolous appeal.

Counsel for Appellant: Mark P. Doran
Counsel for Appellees: Rachel Dimitruk

BEFORE: KATHLEEN M. SALII, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice; and KATHERINE A. MARAMAN, Part-Time Associate Justice.

Appeal from the Trial Division, the Honorable LOURDES F. MATERNE, Associate Justice, presiding.

PER CURIAM:

This appeal concerns Defendant Hokkons Baules's residence and presence on Meriang Clan lands located in the Meriang-Desekel area of Ngerbeched. Baules appeals the Trial Division's Order in Aid of Judgment. The Order sought to effect a judgment from 2004 enjoining Baules from occupying or using Meriang Clan lands. Because we lack jurisdiction to hear an appeal of this interim order issued by the Trial Division, we dismiss the appeal. Additionally, because the appeal is frivolous, we award court costs and reasonable attorney's fees to Appellees.

BACKGROUND

In 1990, the Land Claims Hearing Office determined that Meriang Clan owns Cadastral Lot Nos. 40636 and 41046, the property upon which Baules resides.[1] *In re Meriang*, 12-PL-05, at 12 (April 26, 1990). In 2004, a number of Meriang Clan members, including current Appellees, sought a

[1] Despite inconsistent identification of the land at issue in the parties' briefs, the parties do not dispute that Baules's residence is located on Meriang Clan lands. Baules's main argument on appeal is whether the Meriang Clan owned the land upon which he lives in 2004, when the Trial Division found that Meriang Clan owned the land and ordered Baules off of the land.

declaration concerning Baules's position in the Clan and sought to enjoin Baules from living on the land without their consent or permission. The parties went to trial, and the Trial Division issued a judgment concluding that "[a]ny occupation or use of Meriang Clan lands by the Baules defendants must be approved by the strong senior members of the Clan." *Kuartel v. Baules*, Civ. Act. No. 03-195, at 1 (Nov. 26, 2004). Baules did not appeal the Trial Division's Order.

Starting in 2006, Appellees, who are members of the Meriang Clan, filed numerous motions for orders in aid of judgment and to show cause, and sought sanctions and other relief against Baules because he continued to live on Meriang Clan lands. On April 20, 2010, the trial court held a hearing on Appellees' motion for an order to show cause, but no order was forthcoming. On November 4, 2010, Appellees filed a renewed motion for an order in aid of judgment.

On April 13, 2011, the Trial Division issued the Order in Aid of Judgment. The Order sought to effect the 2004 judgment. The Court found that it was "uncontroverted that a judgment was entered enjoining [D]efendant from occupying or using Meriang Clan lands, that [D]efendant was served with the court's judgment and is well aware that he is enjoined from occupying clan lands."

The Court also held that Baules had continued to occupy clan lands for five years, in violation of the Court's judgment, and that the Appellees had proven all elements of contempt of court. However, the Trial Division reserved its contempt finding to give Baules thirty days to vacate Meriang Clan lands and warned that failure to comply with the Court's directive would result in reinstatement of the finding of contempt. On July 22, 2011, Baules appealed the Trial Division's Order.

Baules argues that Meriang Clan did not own the land at issue when the Trial Division ordered him off the land and that he is now entitled to relitigate the issue of whether he was given permission to live on the land. Appellees have filed a combined response brief. They argue that the Court has no jurisdiction over this appeal; that Baules's appeal relies on an inaccurate version of the facts; and that Baules's defense has been waived. Appellees also seek sanctions against Baules for filing this appeal.

JURISDICTION

[1] We have jurisdiction over orders that are final. *Ueda v. Ngiwal State*, 7 ROP Intrm. 132, 133 (1998). An order is final and appealable "[w]hen there is no further judicial action required to determine the rights of parties." *Feichtinger v. Udui*, 16 ROP 173, 175 (2009). Of course, as discussed below and as we have long recognized, there are exceptions to the "final judgment" rule. *ROP v. Black Micro Corp.,* 7 ROP Intrm. 46, 47 (1998). Orders with an impact on "real world events" such that the outcome cannot be easily undone after judgment may, in certain circumstances, be appealable. *Id.*[2]

Baules argues that he has a right to appeal the Order in Aid of Judgment because

[2] For example, an order granting or denying a request for a preliminary injunction is immediately appealable because we recognize its impact on real world events. *ROP v. Black Micro Corp.,* 7 ROP Intrm. 46, 47 (1998). *See also Olikong v. Salii*, 1 ROP Intrm. 406, 411 (1987).

otherwise he "would be required to vacate his residence before he could file an appeal" and would suffer "irreparable harm." Baules offers no additional argument in favor of jurisdiction, other than to urge the Court to "allow for an immediate appeal of an order with a significant impact on real world events." Appellees argue that further judicial action must be taken because Meriang Clan seeks financial compensation from Baules for his "unauthorized and continued presence on Meriang Clan lands." Moreover, Appellees argue that unresolved questions exist as to whether Baules will be held in contempt and ordered to pay sanctions.

[2] We agree with Appellees. While true that we have held that the final order rule is "flexible enough to allow for immediate appeal" of an order with significant impact on real world events, *Feichtinger*, 16 ROP at 174, this is not an appeal of the 2004 Order. This is an appeal from a 2011 order issued in aid of a judgment from 2004. The order does not qualify for an exception to the final judgment rule. As discussed below, the Order in Aid of Judgment is simply not appealable.

In *Feichtinger*, we held that although a stipulated judgment was not a final order, we had jurisdiction to hear the appeal because the Trial Division had decided "there can be no further judicial action with regard to the claims against Appellee." 16 ROP at 175. Here, however, the April 13, 2011, Order leaves open several questions. The Trial Division explicitly reserved its ruling on contempt.[3] Further, the Trial Division left open the possibility of imposing sanctions. Accordingly, the Order in Aid of Judgment does not dispose of all of the issues in this case and cannot be considered a final appealable judgment.

We also are convinced by Appellees' argument that the Order in Aid of Judgment is ministerial and therefore not an appealable final order. Action to enforce an earlier judgment is almost always ministerial and not appealable. *See Powell v. Georgia-Pacific Corp.,* 90 F.3d 283, 284 (8th Cir. 1996) ("The disbursement order [directing court clerk to disburse funds pursuant to earlier court order] . . . is merely a 'housekeeping' order, and we have repeatedly held that 'the mere retention of jurisdiction for future ministerial orders does not withhold the finality required to make a previous order appealable."). Here, the 2011 Order enforced the original Trial Division judgment enjoining Baules from occupying or using Meriang Clan land without permission. As in *Powell*, the Order in Aid of Judgment was a housekeeping order enforcing a judgment from seven years ago. It cannot be appealed to this Court.

Accordingly, having found that we lack jurisdiction, we **DISMISS** the appeal.

SANCTIONS

Appellees seek damages, including attorney's fees, because they believe this appeal is frivolous under Rule of Appellate Procedure 38. That Rule provides that if the Appellate Division determines an appeal is frivolous, it may award just damages, including attorney's fees. ROP R. App. P. 38.

[3] As Appellees correctly argue, even if the Trial Division had found Baules in contempt, the general rule is that "a finding of civil contempt is not reviewable on interlocutory appeal." *U.S. v. Gonzales*, 531 F.3d 1198, 1202 (10th Cir. 2008) (internal citation omitted).

Courts in the United States have interpreted the analogue to this rule, United States Federal Rule of Appellate Procedure 38, to mean that "an appeal is frivolous if the result is obvious, or the arguments of error are wholly without merit." *Wilcox v. Comm'r of Internal Revenue*, 848 F.2d 1007, 1009 (9th Cir. 1988).

[3] Here, we find that the result of the appeal is obvious: we have no jurisdiction to hear an appeal of this order in aid of judgment, clearly a ministerial interlocutory order. The appeal is frivolous. We therefore **ORDER** Baules to pay sanctions in the form of attorney's fees for the work performed on this appeal. Moreover, we note that Rule of Appellate Procedure 39 provides that "if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the court." ROP R. App. P. 39. Accordingly, we also **ORDER** Baules to pay Appellees' costs for this appeal.

Appellees' counsel shall file a motion for attorney's fees and court costs within fourteen days of issuance of this Opinion. Baules may file a response within fourteen days of the filing of Appellees' motion for attorney's fees and costs. The Court will then issue an order directing Baules to pay Appellees' counsel's reasonable fees and court costs.