FSM SUPREME COURT APPELLATE DIVISION

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| MIRAH E. PALSIS, | ) | APPEAL CASE NO. K3-2009 |
| | ) | |
| Appellant, | ) | |
| | ) | |
| vs. | ) | |
| | ) | |
| STATE OF KOSRAE, | ) | |
| | ) | |
| Appellee. | ) | |
| | ) | |

OPINION

Argued: June 16, 2010
Decided: September 1, 2010

BEFORE:

Hon. Martin G. Yinug, Associate Justice, FSM Supreme Court
Hon. Dennis K. Yamase, Associate Justice, FSM Supreme Court
Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court

APPEARANCES:

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HEADNOTES

Constitutional Law – Due Process; Constitutional Law – Kosrae – Due Process

Both the FSM and Kosrae Constitutions provide that "a person may not be deprived of life, liberty, or property without due process of law." The wording of each of these clauses is identical in meaning and scope. Palsis v. Kosrae, 17 FSM Intrm. 236, 240 (App. 2010).

Appellate Review – Standard of Review – Civil Cases

Due process issues are questions of law and are reviewed *de novo*, and findings of fact which support a trial court's legal findings are reviewed for clear error. Palsis v. Kosrae, 17 FSM Intrm. 236, 240 (App. 2010).

Constitutional Law – Due Process – Notice and Hearing; Constitutional Law – Kosrae – Due Process – Notice and Hearing

Procedural due process, or fairness, requires notice and an opportunity to be heard. Fundamentally, the government may not strip its citizens of property in an unfair or arbitrary manner; the Constitution requires the government to follow procedures calculated to assure a fair and rational decision-making process. Palsis v. Kosrae, 17 FSM Intrm. 236, 240 (App. 2010).

Appellate Review – Briefs, Record, and Oral Argument; Appellate Review – Standard of Review – Civil Cases

Arguments in an appeal brief must be supported by citation to the record or other types of supporting authority, and it is particularly important to identify where an argument was raised and preserved for appeal since, except in instances of plain error, an issue raised for the first time on appeal is waived. Palsis v. Kosrae, 17 FSM Intrm. 236, 241 n.2 (App. 2010).

Constitutional Law – Due Process – Notice and Hearing

The essential features of procedural due process require notice and opportunity to be heard. Palsis v. Kosrae, 17 FSM Intrm. 236, 241 (App. 2010).

Constitutional Law – Due Process – Notice and Hearing; Constitutional Law – Kosrae – Due Process – Notice and Hearing; Public Officers and Employees – Kosrae

When a terminated state employee, since she was given an immediate opportunity to respond and another opportunity to respond one week later, had two opportunities to be heard after being informed of the reasons for her dismissal, and when after these two opportunities, she had two full post-termination evidentiary hearings that analyzed the Hospital's decision to terminate her employment, her procedural due process rights were not violated. Palsis v. Kosrae, 17 FSM Intrm. 236, 242 (App. 2010).

Appellate Review – Standard of Review – Civil Cases; Public Officers and Employees – Kosrae

Since a Kosrae public service system management official may, for disciplinary reasons, dismiss an employee when he determines that the good of the public service will be served thereby but since no dismissal of a permanent employee is effective for any purpose until the management official transmits to the employee, by the most practical means, a written notice setting forth the specific reasons for the dismissal and the employee's rights of appeal, the employee must be provided with notice that specifically identifies the reasons for dismissal and the employee's rights of appeal, which is the opportunity to be heard. When the trial court's findings of fact indicate that these specific mandates were satisfied, the appellate court is unable to find that the State Court's reasoning was clearly erroneous. Palsis v. Kosrae, 17 FSM Intrm. 236, 242 (App. 2010).

Appellate Review – Standard of Review – Civil Cases; Evidence – Burden of Proof

The standard of review on a question of the sufficiency of the evidence is whether the trial court's findings are clearly erroneous. A finding is clearly erroneous and reversible error if: 1) the findings are not supported by substantial evidence in the record; 2) the finding was the result of an erroneous conception of the applicable law; or 3) after reviewing the entire body of the evidence in the light most favorable to the appellee, the reviewing court is left with a definite and firm conviction that a mistake has been made. Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Palsis v. Kosrae, 17 FSM Intrm. 236, 243 (App. 2010).

Appellate Review – Briefs, Record, and Oral Argument; Appellate Review – Dismissal

An appellant's failure to include a transcript in the record on an appeal based upon a claim of insufficiency of evidence may warrant a dismissal since the presumption is that the evidence was

sufficient to sustain the lower court's judgment. An appellant must include in the record all necessary parts of the transcript. Palsis v. Kosrae, 17 FSM Intrm. 236, 243 (App. 2010).

Appellate Review – Briefs, Record, and Oral Argument; Appellate Review – Standard of Review – Civil Cases

If an appellant asserts that there was no evidence to support certain findings but has not provided a full transcript, the appellate court cannot determine that there was no evidence before the lower court to support its findings, and it will be unable to identify any of the trial court's factual findings as clearly erroneous. This is true even when the appellant has provided portions of the trial transcript in its brief and as part of its appendix, but has not directed the appellate court to the relevant portions of the transcript that show that the trial court's findings were clearly erroneous. Palsis v. Kosrae, 17 FSM Intrm. 236, 243 (App. 2010).

Appellate Review – Standard of Review – Civil Cases

The appropriate standard of review cannot be applied to an appellant's assertions of fact when she does not identify which of the trial court's findings were not supported by substantial evidence and when she does not explain or analyze how those findings were not supported by the testimony elicited and introduced at the trial. Absent these arguments and assertions, the appellate court need not further analyze this issue. Palsis v. Kosrae, 17 FSM Intrm. 236, 244 (App. 2010).

Appellate Review – Standard of Review – Civil Cases; Evidence

If an objection to the admission of evidence is not raised at the trial level, it is not preserved for appeal, and the appellate court will not consider the issue. But, in rulings excluding evidence, the issue is preserved so long as the substance of the evidence was made known to the court by an offer of proof or was apparent from the context within which questions were asked and the offering of the evidence must otherwise be on the record, and it must reveal the grounds for admission. Palsis v. Kosrae, 17 FSM Intrm. 236, 244 (App. 2010).

Appellate Review – Standard of Review – Civil Cases; Evidence

When the trial court granted a motion in limine excluding a letter, the proponent did not need to take any further steps to preserve the issue for appeal since, as an interlocutory order excluding evidence, the denial order merged with the final judgment because the letter's substance had been made known to the trial court before its ruling. Palsis v. Kosrae, 17 FSM Intrm. 236, 244 (App. 2010).

Appellate Review – Standard of Review – Civil Cases; Evidence

Reversible error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected and no error in the admission or the exclusion of evidence is ground for granting a new trial or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. Palsis v. Kosrae, 17 FSM Intrm. 236, 244 (App. 2010).

Evidence – Hearsay

When a letter is hearsay and the proponent does not argue its admissibility under any exception to the hearsay rule and when the letter's contents were irrelevant and inadmissible since the letter was proffered as evidence that, in terminating the proponent, the Director was acting in conformity with other wrongs he allegedly committed, the Kosrae State Court correctly granted the State's motion in limine to exclude the letter since evidence of other crimes, wrongs, or acts is not admissible to prove a person's character in order to show that he acted in conformity therewith. Palsis v. Kosrae, 17 FSM Intrm. 236, 244 (App. 2010).

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COURT'S OPINION

MARTIN G. YINUG, Associate Justice:

## I. PROCEDURAL BACKGROUND

This is an appeal by Mirah E. Palsis ("Palsis") of the Kosrae State Court's decision upholding the termination of her employment as Chief Clinical Nurse at the Kosrae State Hospital ("Hospital").

Palsis received a Notice of Dismissal on August 7, 2007, indicating that her employment with the Hospital, Department of Health Services, State of Kosrae, would be terminated on August 30, 2007. She appealed the termination to an *ad hoc* committee on August 22, 2007. The committee held a full evidentiary hearing on February 7 and 8, 2008. Both parties and their attorneys were present at the hearing.

The *ad hoc* committee issued its written decision on February 13, 2008, affirming the Hospital's termination decision. On February 21, 2008, Governor Robert J. Weilbacher upheld the committee's decision. Palsis appealed, and filed a complaint with the Kosrae State Court on March 19, 2008. After a trial *de novo*, the Kosrae State Court affirmed the Hospital's decision. Palsis v. Kosrae, 16 FSM Intrm. 297 (Kos. S. Ct. Tr. 2009). For the reasons below, we affirm the Kosrae State Court's decision.

## II. FACTS

Palsis was employed from 1977 until August 30, 2007 by the Department of Health Services, State of Kosrae, beginning as Staff Nurse I, through promotions to Staff Nurse II and Staff Nurse III, and finally to Chief Clinical Nurse ("Chief Nurse"), in which position she was employed from March 2002 until August 2007. *Id.* at 301-02. Palsis's specific responsibilities as Chief Nurse included: maintaining authority, counseling and disciplining nursing personnel regarding policies and procedures governing work conditions and nursing standards; developing policies and procedures and participating in a quality assurance program to maintain high standards of care; promoting harmonious relationships amongst personnel, and between personnel and patients and their families and visitors; being available at all hours for emergency situations; and acting as a role model. *Id.* at 302.

In May 2007, Kosrae State hired a new Director for the Department of Health Services, Donald C. Post ("Director Post" or "Director"), a former Fleet Medical Liaison Division Head as well as Command Master Chief at the U.S. Naval Medical Center, in San Diego, California. *Id.* Director Post proceeded to assess the Hospital, and observed that: Palsis was never present in the ward; the ward was dirty; there was a bad odor throughout the Hospital from dressing not being changed frequently; the IVs were not properly sterilized; and the narcotics count had been wrong for some time. *Id.* He spoke to Palsis about the IVs, and for the subsequent week, they were properly sterilized; however, the problem resurfaced thereafter. *Id.* Other than this, Director Post did not interview Palsis during the investigation. *Id.* at 303.[1]

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[1] The Hospital's employees are supposed to be evaluated twice a year, but often are not. Palsis, 16 FSM Intrm. at 303. Palsis only had one evaluation from 1991-1994. *Id.* She also had evaluations on August 1989, August 1994, May 1998, and June 2003, in which she received satisfactory ratings and two exceptional ratings. *Id.* However, she had also received several warning letters and notices of disciplinary action, each for excessive absences without leave. *Id.* The most serious of these was in March 1991, when she was notified of the Hospital's intention to terminate her employment; however, this was modified to a maximum 30-day suspension. *Id.*

Director Post also interviewed the staff, and noted that the nurses were unhappy, complaining that they received bad treatment from Palsis, that she was not performing her responsibilities, and that she did many things despite their objections, such as: scheduling nurses to work consecutive night shifts; refusing to give time off for community activities and family events; scheduling them in such a way that they could not car pool to work; allowing them to switch shifts even if it meant there would not be a nurse on duty who could dispense medication; refusing to acknowledge requests for sick or annual leave unless done without pay; scolding nurses in public; playing favorites and granting favored nurses with increased access and confidential information; not being available when needed; and not assisting with complaints or requests for help. *Id.* at 302-03. The nurses had brought these issues to Palsis's attention, but had not made written complaints because they thought it would be a waste of time. *Id.* at 303.

Director Post took a few weeks to assess the situation at the Hospital to confirm that what he was told, and what he observed, reflected a trend instead of a snapshot. *Id.* He concluded that Palsis's behavior produced conditions which threatened the lives of patients, and after weighing the seriousness of the situation and the length of her tenure as Chief Nurse, decided it would be in the best interest of the public to terminate her employment, reasoning that simply demoting her or retaining her would only be a distraction to the other nurses. *Id.* at 303-04.

On August 7, 2007, Director Post called Palsis into his office and gave her a Notice of Dismissal, which indicated that her employment would be terminated on August 30, 2007, and which included the following grounds for termination: (1) poor management of the nursing work schedule; (2) favoritism; (3) public scolding of nurses; (4) mismanagement of narcotics; (5) routinely giving nurses leave without pay rather than allowing them to take earned leave; and (6) unwillingness to perform nursing/leadership duties. *Id.* Palsis read the letter and asked the Director if he would consider a lesser form of punishment; he responded that he had already given the matter sufficient consideration, and denied her request. *Id.* Palsis stated that it was ridiculous, signed the document and left. *Id.*

Approximately one week later, before the date of termination, Palsis's attorney, Sasaki George, arranged a meeting with Director Post for August 15, 2007. *Id.* Palsis was not present for this meeting; Attorney George asked questions and posed concerns on her behalf. *Id.* He asked Director Post to explain what Palsis had done and how the Director had investigated the matter, and argued in favor of Palsis keeping her employment. *Id.* Director Post considered the arguments and assertions, but declined to change his decision. *Id.* The meeting lasted approximately 30 minutes. *Id.*

## III. Analysis

Both the FSM and Kosrae Constitutions provide that "a person may not be deprived of life, liberty, or property without due process of law . . ." FSM Const. art. IV, § 3; Kos. Const. art. II, § 1(b). The wording of each of these clauses is identical in meaning and scope. Alik v. Kosrae Hotel Corp., 5 FSM Intrm. 294, 297 (Kos. 1992). Due process issues are questions of law and are reviewed *de novo*. Heirs of Jerry v. Heirs of Abraham, 15 FSM Intrm. 567, 571 (App. 2008). Findings of fact which support a trial court's legal findings are reviewed for clear error. Pohnpei v. Ponape Constr. Co., 7 FSM Intrm. 613, 620 (App. 1996).

Procedural due process, or fairness, requires notice and an opportunity to be heard. Taulung v. Kosrae, 8 FSM Intrm. 270, 275 (App. 1998). Fundamentally, the government may not strip its citizens of property in an unfair or arbitrary manner; the Constitution requires the government to follow procedures calculated to assure a fair and rational decision-making process. Suldan v. FSM (II), 1 FSM Intrm. 339, 354-55 (Pon. 1983).

A. *Procedural Due Process*

Palsis first argues that her procedural due process rights were violated; specifically, that the August 7, 2007, Notice of Dismissal and the August 15, 2007, meeting were insufficient for procedural due process.[2] Appellant's Br. at 9-17. She argues that the procedures the Hospital followed were not proper because they did not provide an opportunity to appear before Director Post and challenge the charges against her. *Id.* at 10, 13. These arguments are not supported by the record.[3] The trial court found that before her dismissal became effective, she had been given opportunities twice to challenge the decision. Appellant's App. at 6-8.

B. *Pre-Termination Requirements*

Palsis argues that the August 7 and 15, 2007, meetings were not hearings, and therefore violate the constitution, but cites only a 1996 edition of Barron's Law Dictionary, which defines the term "hearing" as a proceeding where evidence is received and which takes place before a magistrate. *Id.* at 15. This definition, though useful in acquiring a general understanding of the meaning of the term, is not applicable to these facts.

We addressed the pre-termination procedural due process rights of government employees in Semes v. FSM, 4 FSM Intrm. 66 (App. 1989). In Semes, a 17-year government employee, one week after being involved in the inappropriate use and destruction of a government vehicle, was issued a letter which terminated his employment immediately, gave him no opportunity to explain himself, and notified him of his appeal rights. *Id.* at 69-70. We held that constitutional due process requirements entitled the appellant to "the opportunity to present reasons, either in person or in writing, why proposed action should not be taken." *Id.* at 76. Our analysis relied on a United States Supreme Court decision, in which that court held that a pre-termination hearing is something less than a full evidentiary hearing and need not definitively resolve the propriety of the discharge. Cleveland Board of Education v. Loudermill, 470 U.S. 532, 545, 105 S. Ct. 1487, 1495, 84 L. Ed. 2d 494, 506 (1985).

Both the FSM and the United States employ a much more limited definition than that proposed by Palsis. We have held that "the essential features of procedural due process require notice and opportunity to be heard." Taulung, 8 FSM Intrm. at 275. In Taulung, we held that a temporarily-suspended employee's "opportunity to be heard was contained in the notice . . . of suspension [when] the official said, 'as always if you have any questions you can come and see me.'" *Id.* The United States Supreme Court, in revisiting Loudermill, further held that sometimes post-deprivation hearings may satisfy due process requirements. Gilbert v. Homar, 520 U.S. 924, 932-33, 117 S. Ct. 1807, 1813, 138 L. Ed. 2d 120, 128 (1997). At least one U.S. Circuit Court of Appeals applying the Loudermill principles held that informal meetings with supervisors pre-termination are sufficient to satisfy due process. Riggins v. Board of Regents, 790 F.2d 707, 711 (8th Cir. 1986).

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[2] Palsis's brief does not point out where in the record the procedural due process argument was first raised or preserved. Arguments in an appeal brief must be supported by citation to the record or other types of supporting authority. FSM App. R. 28(a)(4). It is particularly important to identify where an argument was raised and preserved for appeal and, except in instances of plain error, an issue raised for the first time on appeal is waived. Hartman v. Bank of Guam, 10 FSM Intrm. 89, 95 (App. 2001).

[3] Palsis also asserts that she was never once disciplined or warned for poor performance during her 20 year career. Appellant's Br. at 12. This is not supported by the record, and is contrary to the trial court's factual findings.

In the present case, Palsis had two opportunities to be heard: after being informed of the reasons for her dismissal, she was given an immediate opportunity to respond and another opportunity to respond one week later. Palsis, 16 FSM Intrm. at 304. Moreover, after Palsis had these two opportunities, two full post-termination evidentiary hearings[4] were held to analyze the Hospital's decision to terminate her employment. *Id.* at 301. Under these facts we are unable to find that her procedural due process rights were violated under the Semes standard.[5]

C. *Post-Termination Requirements*

Palsis asserts that the Kosrae State Court's March 10, 2009 finding that extensive post-termination processes obviate the need for an elaborate pre-termination hearing, constitutes reversible error. Appellant's Br. at 17-19. She does not cite the record to support this assertion, or indicate where the trial court made the erroneous finding in its 29-page opinion. In its decision, the State Court cited Gilbert v. Homar for the proposition that an extensive post-termination hearing may satisfy the need for a pre-termination hearing, and found:

> When an Employee is terminated, there does need to be a pre-termination hearing which includes notice and an opportunity to be heard.
>
> . . . .
>
> [Palsis] was entitled to a full scale post-termination review; and in light of this fact the purpose of the pre-termination review in this case is merely to show that there were reasonable grounds to believe the charges against the employee
>
> . . . .
>
> The pre-termination hearing need not be elaborate and notice of a hearing can be orally [sic] and is highly informal, given that [Palsis] was given opportunity for a post-deprivation review.

Palsis, 16 FSM Intrm. at 315, 310, 311. These findings contradict Palsis's assertion.

D. *Pre-Termination Hearing*

Palsis also argues that Section 18.502 of the Kosrae State Code, when read together with the Kosrae State and FSM Constitutions, requires the type of hearing defined by Barron's Law Dictionary, and that any other interpretation would be unconstitutional. Appellant's Br. at 18. She cites no binding or persuasive precedent for this argument.

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[4] The State Court held that, although under Section 18.507 of the Kosrae State Code it shall review agency employment discipline actions *de novo*, nevertheless such action "is entitled to at least some deference regardless of the substantive grounds for the appeal," and the plaintiff has the burden of proving its case. Palsis, 16 FSM Intrm. at 305. Applying this to the facts, we do not find that Palsis's due process rights were infringed by the State Court's analysis of Section 18.507.

[5] Palsis does not mention, address or distinguish the trial court's analysis of the United States courts' persuasive treatment of this issue, nor does she cite to or explain any court rule prescribing the kind of hearing to be provided. Appellant's Br. at 9-17. Therefore, we decline to analyze this issue further.

The Kosrae State Code provides,

> A management official may, for disciplinary reasons, dismiss or demote an employee when he determines that the good of the public service will be served thereby. Demotions may also be made for reasons other than disciplinary ones; regulations, rules or directives shall specify the circumstances in which such demotions may be authorized. No dismissal or demotion of a permanent employee shall be effective for any purpose until the management official transmits to the employee, by the most practical means, a written notice setting forth the specific reasons for the dismissal or demotion and the employee's rights of appeal. A copy of the notice shall be filed with the Branch Head and with the Director without delay.

Kos. S.C. § 18.502. On its face, this section requires that an employee be provided with notice which specifically must identify the reasons for dismissal and the employee's rights of appeal, which is the opportunity to be heard. The trial court's findings of fact indicate that section 18.502's specific mandates were satisfied. Under the appropriate standards of review, we are unable to find that the State Court's reasoning was clearly erroneous.

## IV. Standards of Review

The standard of review on a question of the sufficiency of the evidence is whether the trial court's findings are clearly erroneous. Worswick v. FSM Telecomm. Corp., 9 FSM Intrm. 460, 462 (App. 2000). A finding is clearly erroneous and reversible error if: (1) the findings are not supported by substantial evidence in the record; (2) the finding was the result of an erroneous conception of the applicable law; or (3) after reviewing the entire body of the evidence in the light most favorable to the appellee, the reviewing court is left with a definite and firm conviction that a mistake has been made. George v. Albert, 17 FSM Intrm. 25, 30 (App. 2010). Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. *Id.* at 33 n.3.

An appellant's failure to include a transcript in the record on an appeal based upon a claim of insufficiency of evidence may warrant a dismissal, Kephas v. Kosrae, 3 FSM Intrm. 248, 254 (App. 1987), because the presumption is that the evidence was sufficient to sustain the lower court's judgment. Damarlane v. United States, 7 FSM Intrm. 510, 513 (App. 1996). An appellant must include in the record all necessary parts of the transcript. *Id.* (appellant has primary responsibility to insure an adequate record); *see also* Cheida v. FSM, 9 FSM Intrm. 183, 189 (App. 1999) (appellant must include a transcript of all evidence relevant to the trial court's decision if appellant argues that a finding is not supported by or is contrary to the evidence). If an appellant asserts that there was no evidence to support certain findings, but has not provided a full transcript, we cannot determine that there was no evidence before the lower court to support its findings, and we will be unable to identify any of the trial court's factual findings as clearly erroneous. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM Intrm. 510, 514 (App. 2005). This is true even when the appellant has provided portions of the trial transcript in its brief and as part of its appendix, but has not directed us to the relevant portions of the transcript that show that the trial court's findings were clearly erroneous. *Id.*

In support of her argument, Palsis asserts that the following facts in the record support a different outcome: (1) although Director Post noted problems with outpatient care, he did not discipline or suspend anyone; (2) the Director did not discuss his observations or send a message to Palsis prior to providing her notice of her termination; (3) the Director did not conduct a formal employee evaluation of Palsis prior to her dismissal; (4) Palsis had received exemplary rating from her previous supervisors; (5) the Hospital had never terminated an employee on the same grounds as it did in Palsis's case; and

(6) the Director could not identify the names of the nurses who complained and there was no written evidence of their complaints. Appellant's Br. at 23-28.

The appropriate standard of review cannot be applied to these assertions of fact: Palsis does not identify which of the court's findings were not supported by substantial evidence; and she does not explain or analyze how those findings were not supported by the testimony elicited and introduced at the trial. Absent these arguments and assertions, we need not further analyze this issue. Kinere v. Kosrae, 6 FSM Intrm. 307, 309 (App. 1993).

## V. Motion in Limine

Finally, Palsis asserts that the trial court committed reversible error when it granted Kosrae's motion in limine and excluded Dr. Carolee A. Masao's February 4, 2008 letter to Governor Weilbacher, which claimed that Director Post made unreasonable and unfair decisions, and which Palsis asserts would have shown that Director Post's decision in terminating her employment was likewise unreasonable and unfair. Appellant's Br. at 30-32.

If an objection to the admission of evidence is not raised at the trial level, it is not preserved for appeal, and we will not consider the issue. Kos. Evid. R. 103(a)(1); Pohnpei v. AHPW, Inc., 14 FSM Intrm. 1, 19 (App. 2006). In rulings excluding evidence, however, the issue is preserved so long as the substance of the evidence was made known to the court by an offer of proof or was apparent from the context within which questions were asked. Kos. Evid. R. 103(a)(2); *see also* Kos. Civ. R. 46 (exceptions to evidentiary rulings unnecessary to preserve issue for appeal). The offering of the evidence must otherwise be on the record, and it must reveal the grounds for admission. Jack B. Weinstein & Margaret A. Berger, Weinstein's Evidence Manual § 2.03[3] (2006); *see also* Peter v. Jessy, 17 FSM Intrm. 163, 173 (Chk. S. Ct. App. 2010). The State, after learning that Palsis had identified the Dr. Masao letter as potential evidence, filed, before trial, a motion in limine to exclude it. Appellant's App. at 42-45 (Jan. 22, 2009). Thus, when the State Court granted the motion, Palsis did not need to take any further steps to preserve the issue for appeal since, as an interlocutory order excluding evidence, the denial order merged with the final judgment because the letter's substance had been made known to the State Court before its ruling.

Reversible error "may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected." Kos. Evid. R. 103(a). "No error in . . . the admission or the exclusion of evidence . . . is ground for granting a new trial or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice." Kos. Civ. R. 61. The letter is hearsay and Palsis does not argue its admissibility under any exception to the hearsay rule. Further, the letter's contents were irrelevant and inadmissible since the letter was proffered as evidence that in terminating Palsis, Director Post was acting in conformity with other wrongs allegedly committed. "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith." Kos. Evid. R. 404(b). Palsis was thus barred from using Dr. Masao's letter for the purposes for which she sought to use it. The Kosrae State Court correctly granted the State's motion in limine.

## VI. Conclusion

For the reasons outlined above, the Kosrae State Court's decision is AFFIRMED.

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