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COURT'S OPINION

CAMILLO NOKET, Chief Justice:

Counsel for defendant Deo William filed a motion requesting chamber conference with the presiding justice and motion for entry and withdrawal of appearance in the case captioned above on April 20, 2011. Neither motion contained a Memorandum of Points and Authorities, as required under Chuuk Criminal Procedure Rule 45(c). The rule, in relevant part, provides that "[f]ailure by the moving party to file the memorandum of points and authorities shall be deemed a waiver by the moving party of the motion." The motion requesting chamber conference is also defective in that it specifies neither a legal ground nor the relief or order sought, as required under Chuuk Criminal Procedure Rule 47. This Court does not entertain motions for the purposes of "discussing concerns."

Irrespective of the defects in defendant's complaints, on May 29, 2008, an appeal in the case captioned above was filed with the Appellate Division, Case No. 01-2008. In the absence of any authority indicating otherwise, this Court finds that it no longer retains jurisdiction over the matter. An attorney practicing before the court is expected to know the rules and abide by them." Chuuk v. Davis, 13 FSM Intrm. 178, 183 (App. 2005). Counsel for defendant is encouraged to thoroughly review the relevant rules of procedure before filing further motions before this Court or any other in the jurisdiction. Defendant's motions are dismissed.

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FSM SUPREME COURT APPELLATE DIVISION

FOUSTINO STEPHEN, Appellant, vs. STATE OF CHUUK, Appellee.	)	APPEAL CASE NO. C1-2010 (Civil Action No. 2005-1007)
JOAKIM KAMINANGA, Appellant, vs. STATE OF CHUUK, Appellee.	)	APPEAL CASE NO. C2-2010 (Civil Action No. 2005-1006)

ORDER DENYING PETITION FOR REHEARING

Decided: May 2, 2011

BEFORE:

Hon. Martin G. Yinug, Acting Chief Justice, FSM Supreme Court
Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court
Hon. Beauleen Carl-Worswick, Associate Justice, FSM Supreme Court

APPEARANCE:

For the Appellants: Stephen V. Finnen, Esq.
P.O. Box 1450
Kolonia, Pohnpei FM 96941

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HEADNOTES

Civil Procedure – Default and Default Judgments; Judgments

A default judgment is not a judgment obtained on the merits. In fact, it makes no claim as to the merits of the case at all. Stephen v. Chuuk, 17 FSM Intrm. 496, 499 (App. 2011).

Appellate Review – Rehearing

When, by definition a default judgment is not a judgment obtained on the merits and makes no claim as to the merits of the case at all, the trial court could not have resolved the question of the civil rights nature of the underlying judgment that was a default judgment. Stephen v. Chuuk, 17 FSM Intrm. 496, 499 (App. 2011).

Appellate Review – Decisions Reviewable; Appellate Review – Standard of Review – Civil Cases

The question of the civil rights nature of the underlying cases was not properly before the appellate court when the trial court does not appear to have made a final determination on the question whether the violation should be considered as tort or civil rights in nature. Stephen v. Chuuk, 17 FSM Intrm. 496, 499 (App. 2011).

Appellate Review – Rehearing

When the appellate court has neither overlooked nor misapprehended any material points of law or fact, it will summarily deny petitions for rehearing. Stephen v. Chuuk, 17 FSM Intrm. 496, 499 (App. 2011).

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COURT'S OPINION

MARTIN G. YINUG, Acting Chief Justice:

On April 1, 2011, appellants Foustino Stephen ("Stephen") and Joakim Kaminanga ("Kaminanga") timely filed their petitions for rehearing in, respectively, Appeal Case No. C1-2010 and C2-2010. They ask us to review what they contend are errors in our March 24, 2011 Opinion. Specifically, they argue that we overlooked or misapprehended the nature of the judgment in these cases, that we did not review the trial court's order, and that we erroneously concluded that the parties never submitted further briefing on the takings issue; and that therefore we should reconsider sections D, F and G of our Opinion because they are "based on . . . findings that there were no explicit findings by the trial court that [the] judgment was a civil rights judgment."

In section D of the Opinion, we wrote:

> Because the three causes of action before the trial court were breach of contract, trespass, and takings; because the trial court specifically ruled on damages and requested separate briefing on the issue of takings; and because the parties ignored the court's order for further briefing, neither the judgment nor this appeal are properly positioned in civil rights violations. Upon remand, and as part of the factors for consideration, *supra*, the trial court should spell out the nature of the judgment, so as to provide clarity and avoid obfuscation of issues.

Stephen v. Chuuk, 17 FSM Intrm. 453, 462 (App. 2011). In section F, relying on section D, we wrote:

> As we noted in section D, *supra*, the character of the judgments upon which Stephen and Kaminanga requested writs of garnishment is not one of civil rights violations. Further, in Stephen, the one case that involves a judgment from a different court, the trial court whose Order of Denial Stephen appeals did not state that the plaintiff had a property right in the state court judgment. Once again, then, the question is not properly before the court.

Id. at 463. In section G, we wrote:

> As noted, the record shows no evidence that the parties filed briefs on the takings issue, including the remedy of eviction, pursuant to the trial court's June 20, 2007 order. In the summary judgments issued June 5, 2008 (in Kaminanga) and July 17, 2008 (in Stephen), the trial court observed that the question of ejectment was still open. There is no evidence in the record that the parties have made further motions or filed further briefs on that question. Therefore this question is not properly before us.

Id.

Stephen and Kaminanga supplied copies of their July 16, 2007 responses to the June 20, 2007 orders to support their petitions. Both responses include motions for attorney's fees, as well as an assertion that such motions were "supported by the Court's finding of a civil rights violation under 112 FSMC section 701 [*sic*], in its order of June 20, 2007." Stephen, Pet'r's App. at 90; Kaminanga, Pet'r's. App. at 105.

In Stephen, the trial court's June 20, 2007 order makes two primary references to a civil rights nature. First, the court parenthetically refers to such a nature: "That leaves the amount of damages for the one lot still retained by the State, which the plaintiff argues is $7,627 per year and the attorney's fees (since this is a civil rights case) and costs since the implementation of the memorandum of understanding broke down." Stephen, Order at 2 (Jun. 20, 2007), Appellant's App. at 12. Then, the court invokes a taking in the final paragraph: "Lastly, the plaintiff has asked that the court order the defendants evicted from the one retained lot, which the State apparently intends to continue using indefinitely, thus constituting a taking without compensation." *Id.* However, both references are conclusory and not supported by explicit findings. Moreover, the first reference does not characterize the underlying *judgment* as a civil rights judgment, and the second reference, without further support in the Order, is more likely a rephrasing of Stephen's argument, rather than a specific finding on that takings issue.

In Kaminanga, the trial court's June 20, 2007 order is an order granting default judgment. As we noted in Narruhn v. Chuuk, 17 FSM Intrm. 289, 298 (App. 2010), "A default judgment is not a

judgment obtained on the merits. In fact, it makes no claim as to the merits of the case at all." By definition, the trial court could not have resolved the question of the civil rights nature of the underlying judgment on its merits.

We observe here that we did, in fact, overlook Stephen and Kaminanga's July 16, 2007 responses to the trial court. These responses address valuation of the properties as well as attorney's fees. The trial court had ordered these responses filed by July 15, 2007 in Stephen, and by July 30, 2007 in Kaminanga. However, the trial court had, in both cases, also ordered that the parties file responses by July 15, 2007, as to whether the remedies for the ongoing trespass should be considered as an ejectment or as an inverse condemnation. Stephen, Appellant's App. at 12; Kaminanga, Appellant's App. at 27. This begs the question whether the violation should be considered as tort or civil rights in nature. Although Stephen and Kaminanga addressed all these requests in their July 16, 2007 responses, the trial court does not appear to have made a final determination on this question. Thus, as we wrote in sections D, F and G, the question of the civil rights nature of the underlying cases was not properly before us.

Finally, we remind the appellants of the conclusion of our March 24, 2011 Opinion:

> Because the trial court applied a different set of factors from that prescribed in Barrett in considering the requests for writs of garnishment, we remand with instructions for the trial court to consider the following factors: (1) the nature of the judgment, such as whether the judgment is in tort or contract, and whether the judgment is partial, and if so, whether it is for a civil rights cause of action in cases containing such claims; (2) whether or not the debtor has acted in good or bad faith in its attempts to satisfy the judgment; (3) the length of time the judgment has gone unsatisfied; (4) the ability of the debtor to pay; and (5) the balance of interests.

Stephen, 17 FSM Intrm. at 463.

In so remanding and in so instructing the trial court, we believe, as we wrote at the end of section D of our Opinion, that the trial court will have an opportunity "to provide clarity and avoid obfuscation of issues." *Id.* at 462.

Accordingly, because we have neither overlooked nor misapprehended any material points of law or fact, we summarily deny the petitions for rehearing. Nena v. Kosrae (II), 6 FSM Intrm. 437, 438 (App. 1994); Wito Clan v. United Church of Christ, 6 FSM Intrm. 291, 292 (App. 1993).

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