2011).

Accordingly, on remand the case is limited to whether injunctive relief is available and, if so, the nature and extent of that relief.

V. Conclusion

Accordingly, we affirm the denial of the injunction to remove the toilet on the berm based on the regulation cited because that regulation does not apply to the situation; we affirm that the May 17, 1991 order in Civil Action No. 1990-075 is no longer valid and cannot support the issuance of an injunction; and we remand for the trial court to consider and develop a record on whether Dr. Pretrick's April 11, 1991 agency decision, the previously-issued earthmoving permits, and FSM statutory and regulatory law may require Pohnpei or the PTA to apply for and obtain an earthmoving permit to remove the Mesenpal berm or whether that agency decision combined with national statutory law would require Pohnpei to apply for an earthmoving permit to remove the Mesenpal berm. The parties shall bear their own costs.

* * * *

FSM SUPREME COURT APPELLATE DIVISION

MARY BERMAN and KADALINO DAMARLANE, Appellants, vs. FSM NATIONAL POLICE, FSM MARINE SURVEILLANCE POLICE, and FSM GOVERNMENT, Appellees.	)	APPEAL CASE NO. P7-2012 (Civil Action No. 2011-007)

OPINION

Argued: June 28, 2013
Decided: August 13, 2013

BEFORE:

Hon. Dennis K. Yamase, Associate Justice, FSM Supreme Court
Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court
Hon. Beauleen Carl-Worswick, Associate Justice, FSM Supreme Court

APPEARANCES:

For the Appellants: Mary Berman, Esq.
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For the Appellees: Pole Antanraoi-Reim, Esq.
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* * * *

HEADNOTES

Appellate Review – Decisions Reviewable

Since the issue of a court's subject-matter jurisdiction can be raised at any time, no cross-appeal is needed for the appellee to raise it, and since the appellate court has an obligation to examine the basis of its jurisdiction even if it must do so sua sponte, the appellate court must promptly address any claim that it lacks jurisdiction and examine the basis for its jurisdiction before it considers the appeal's merits. Berman v. FSM Nat'l Police, 19 FSM R. 118, 123 (App. 2013).

Appellate Review – Decisions Reviewable – Interlocutory; Civil Procedure – Injunctions

The appellate rules authorize interlocutory appeals from interlocutory orders of the FSM Supreme Court trial division granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions. Berman v. FSM Nat'l Police, 19 FSM R. 118, 123 (App. 2013).

Appellate Review – Decisions Reviewable – Interlocutory; Civil Procedure – Injunctions

A party to an order refusing an injunction has the option of either pursuing an interlocutory appeal or, if still aggrieved after the final judgment, appealing the entire matter then. The opportunity to take an interlocutory appeal under Appellate Rule 4(a)(1)(B) is not an obligation to do so; if the parties are content to preserve the status quo while the trial court decides the case, they retain their right to comprehensive review at the end. Berman v. FSM Nat'l Police, 19 FSM R. 118, 123 (App. 2013).

Appellate Review

While the appellate court must first look to FSM sources of law rather than start with a review of other courts' cases, when it has not already construed an FSM appellate rule which is similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. Berman v. FSM Nat'l Police, 19 FSM R. 118, 123-24 n.1 (App. 2013).

Appellate Review – Decisions Reviewable; Civil Procedure – Injunctions

Appellants can raise the matter of the orders denying their injunction requests when they timely appealed from the final judgment into which the interlocutory orders denying their injunction requests had merged. Berman v. FSM Nat'l Police, 19 FSM R. 118, 124 (App. 2013).

Appellate Review – Standard – Civil Cases – Abuse of Discretion

The appellate court reviews whether a trial court erred in issuing, modifying, or denying an injunction under an abuse of discretion standard. Berman v. FSM Nat'l Police, 19 FSM R. 118, 124 (App. 2013).

Civil Procedure – Injunctions

Neither the appellate nor the trial court could order the halt of all bar activity on a berm or the removal of a toilet or sleeping huts put there by private persons who are not parties and who are not national government employees but are members of the general public over whom the national government has no control and no right to exercise control. An injunction against the FSM would not

affect the bar's operation or its patrons or their behavior. The trial court thus did not abuse its discretion when it denied issuing an injunction barring the public from using the berm and its allegedly illegal bar and party business. Berman v. FSM Nat'l Police, 19 FSM R. 118, 124 (App. 2013).

Appellate Review – Standard – Civil Cases – Abuse of Discretion; Civil Procedure – Injunctions

When the plaintiffs did not produce any evidence that the FSM national police intended to or might choose to have another party there, the trial court did not abuse its discretion by refusing to issue an injunction barring the police from holding parties on the berm because the FSM police's actions were non-continuing – there was no future action to enjoin. Berman v. FSM Nat'l Police, 19 FSM R. 118, 124 (App. 2013).

Civil Procedure – Injunctions

The trial court could not order a mandatory injunction for the FSM to issue an earthmoving permit to remove a berm when no one had applied to the FSM for one. While injunctions can be mandatory, mandatory injunctions are disfavored, and when the proposed mandatory injunction would require the FSM to issue an earthmoving permit to Pohnpei or to the Pohnpei Transportation Authority which would then be ordered to remove the berm and neither the state nor the PTA was a party to the case below, the trial court could not issue any orders directed to those non-parties. Berman v. FSM Nat'l Police, 19 FSM R. 118, 124-25 (App. 2013).

Appellate Review – Standard – Civil Cases – Abuse of Discretion; Civil Procedure – Injunctions

When no injunction could compel the issuance of a earthmoving permit since there was no application for one; when no injunction was needed to bar the FSM police from holding a party on the berm since the police did not have any plans to do so again; and when no injunction could issue ordering non-parties to cease certain activities or to perform certain acts since they were not parties and not the agents of any party, the trial court did not abuse its discretion by denying injunctive relief. Berman v. FSM Nat'l Police, 19 FSM R. 118, 125 (App. 2013).

Civil Procedure – Service

When, in a case filed in January 2011, a copy of the complaint and summons was served on the acting Secretary of Health on February 15, 2012, two days after the trial court denied the plaintiffs' motions in part because the Secretary was not a party and when the FSM Attorney General was not given the required notice of this "service" on a new party, this "service" was ineffective to make the Secretary a party in the case. Berman v. FSM Nat'l Police, 19 FSM R. 118, 125 (App. 2013).

Appellate Review – Standard – Civil Cases – Abuse of Discretion; Civil Procedure – Consolidation

Since the granting of a motion to consolidate rests with the trial court's broad judicial discretion, an appellate court reviews the trial court's denial of consolidation on an abuse of discretion standard. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126 (App. 2013).

Civil Procedure – Consolidation

Although a person must be joined as a party if in the person's absence complete relief cannot be accorded among those already parties, consolidation will be denied when complete relief between the parties in both cases can be afforded between the parties in those cases without consolidation. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126 (App. 2013).

Civil Procedure – Consolidation

The trial court's denial of the motion to consolidate was not an abuse of discretion when the trial court could easily resolve the issues between the plaintiffs and the national government without the need to join the private business operators on the berm against whom they (along with one additional plaintiff) have very different claims and when the trial court can also resolve the claims in the other case

without consolidation with this case. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126 (App. 2013).

Constitutional Law – Case or Dispute – Mootness

A motion is not "moot" when the parties still have a legally cognizable interest in the case's outcome because a case or dispute becomes moot only when the parties lack a legally cognizable interest in the outcome. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126 (App. 2013).

Civil Procedure; Judgments

"Law of the case" refers to the principle that once issues are decided in a case, they will not be redetermined later in the same case. This is a policy relied on by courts out of concern for judicial economy and to avoid the confusion that would result if a court reversed its own decisions during the course of a case. In the absence of statute the phrase, "law of the case," as applied to the effect of previous orders on the later action of the court rendering them in the same case, merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126 (App. 2013).

Civil Procedure – Motions; Judgments

When a trial court has already ruled against the plaintiffs on all the issues and arguments they raised in their summary judgment motion, it could refuse to reopen what it had already been decided unless there was new evidence presented or a there had been a change in the controlling law. This is true even though any decision, however designated, which adjudicates fewer than all the claims does not terminate the action as to any of the claims or parties, and is subject to revision at any time before the entry of judgment adjudicating all the claims. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126-27 (App. 2013).

Civil Procedure – Motions

A summary judgment motion and a motion to reconsider were, since no final judgment had yet been entered and regardless of how the plaintiffs or the court styled them, Rule 54(b) motions to reconsider and to grant the plaintiffs further relief if the reconsideration was favorable. Although the trial court erred in calling the summary judgment motion "moot," the trial court was within its rights to deny that motion when it had already decided the issues the motion raised and those decisions were the law of the case and were unfavorable to the plaintiffs. Berman v. FSM Nat'l Police, 19 FSM R. 118, 127 (App. 2013).

Civil Procedure – Dismissal

When after notice that the case was subject to dismissal for failure to prosecute, the plaintiffs acquiesced to a dismissal so that they could "appeal forthwith," they necessarily must have abandoned their remaining nuisance claim because they could have responded that they wanted trial on the remaining claim and reminded the court that they had earlier asked that trial take place four weeks after their motions were decided but they did not. Berman v. FSM Nat'l Police, 19 FSM R. 118, 127 (App. 2013).

Appellate Review – Decisions Reviewable; Civil Procedure – Dismissal

The plaintiffs, having acquiesced to a dismissal so they could appeal, cannot revive on appeal, by asserting that the dismissal was a trial court error, a claim for which they agreed to a dismissal even though if they had proceeded to trial and proved their allegations, they could have been awarded money damages. Berman v. FSM Nat'l Police, 19 FSM R. 118, 127 (App. 2013).

* * * *

COURT'S OPINION

DENNIS K. YAMASE, Associate Justice:

This appeal is from the trial court's denial of a request for an injunction requiring the FSM national government to issue an earthmoving permit to remove a berm at Mesenpal, Awak, U, Pohnpei and from the trial court's dismissal of the case. We affirm the trial court decisions. Our reasons follow.

I. BACKGROUND

On January 14, 2011, starting in the morning, the FSM national police, including its marine surveillance unit, held an all-day New Years' party for the staff on a berm constructed out into the lagoon at Mesenpal, Awak, U, Pohnpei, where an allegedly illegal bar business had been operated for some time. Nearby residents, Mary Berman and Kadalino Damarlane, complained about the loud music to the acting FSM Attorney General at Palikir and to the party-goers at the scene. The noise got louder in the afternoon with the arrival of a live band. Despite continued complaints by Berman including calling the State Police, the party continued until about around midnight and the noise, including that produced by allegedly drunken behavior, did not abate until then.

On January 26, 2011, Berman and Damarlane filed suit against the FSM national police, its marine surveillance unit, and the FSM national government ("FSM" collectively). They sought $10 million in damages to compensate for the loss of peace and quiet, which they alleged was a civil rights violation, and requiring the FSM national government to issue a legal earthmoving permit mandating the removal of the berm where the party had been held and where the allegedly illegal bar business operates.

On December 15, 2011, the trial court denied the request for a preliminary injunction against the FSM police and a permanent mandatory injunction that the government remove the berm. The preliminary injunction was denied because there was no indication that the police intended to return to the berm to hold future parties and the permanent injunction was denied because the statute of limitations had run on the plaintiffs' cause of action to order the FSM to remove the berm. Berman v. FSM Nat'l Police, 18 FSM Intrm. 103, 105-06 (Pon. 2011). That left the claim for damages caused by the January 14, 2011 party as the plaintiffs' sole remaining claim.

The trial court also ordered the parties to submit by January 13, 2012, all pretrial motions, including proposed trial dates, on the remaining cause of action. *Id.* at 106. On January 13, 2012, Berman and Damarlane filed their proposal that the trial was to start four weeks after the court's disposition of the motions accompanying the proposal. On February 13, 2012, the trial court decided those motions and denied the plaintiffs' motion to consolidate this case, Civil Action No. 2011-007, with Damarlane v. Damarlane, Civil Action No. 2011-004 since joinder was unnecessary because the parties in Civil Action No. 2011-004 could obtain complete relief between those already parties. Order & Mem. at 2-3. The trial court also denied the plaintiffs' motion to reconsider its statute of limitations ruling and denied the plaintiffs' summary judgment motion because the court's earlier ruling had dismissed the claims it contained. *Id.* at 4-5.

On September 20, 2012, the trial court issued an order to show cause why the case should not be dismissed because Berman and Damarlane had failed to prosecute their remaining claim. On October 4, 2012, Berman and Damarlane responded that "it appears that the court has denied all relief requested by plaintiffs, and therefore nothing is left for trial. As no issues remain for trial, plaintiffs agree with the court that the matter should be dismissed so that plaintiffs may appeal forthwith." Response to Court Show Cause Order at 2 (Oct. 4, 2012). On November 16, 2012, the trial court

dismissed the case with prejudice for failure to prosecute. Berman and Damarlane timely appealed.

II. Issues Presented

Berman and Damarlane contend that the trial court erred by 1) refusing to grant their request for an injunction; 2) refusing to consolidate this case with Damarlane v. Damarlane, Civil Action No. 2011-004; 3) by denying summary judgment on their environmental protection enforcement claims; 4) by denying all relief requested in their complaint; and 5) in dismissing their claims.

III. Analysis

Berman and Damarlane ask us to order the FSM government to issue an earthmoving permit to remove the berm and causeway; to enjoin all activity on the causeway; to order the removal of the toilet and the sleeping huts on the causeway; to order the FSM government to enforce an April 11, 1991 agency decision and issue sanctions against the violators; and to order the lower court to conduct a trial on the damages caused to Berman and Damarlane by the continuing nuisance due to public use of the causeway.

A. *Injunction*

1. *Jurisdiction over Appeal of Denial of Injunction*

The FSM contends that we lack jurisdiction to consider the trial court orders denying injunctions because, under FSM Appellate Rule 4(a)(1)(B), those orders could have been appealed within 42 days after they were issued and, since they were not, we cannot review them now. Berman and Damarlane assert that the FSM's raising this issue constitutes a cross-appeal for which it did not file a notice of appeal and thus we cannot consider this issue.

However, the issue of a court's subject-matter jurisdiction can be raised at any time. Hartman v. FSM, 6 FSM Intrm. 293, 296 (App. 1993). Thus, no cross-appeal is needed for the FSM to raise this issue. And we have an obligation to examine the basis of our jurisdiction even if we must do so *sua sponte*. Simon v. Heirs of Tulenkun, 17 FSM Intrm. 646, 648 (App. 2011); Berman v. Pohnpei Legislature, 17 FSM Intrm. 339, 352 (App. 2011); Kosrae v. George, 17 FSM Intrm. 5, 7 (App. 2010); Kosrae v. Benjamin, 17 FSM Intrm. 1, 3 (App. 2010); Alanso v. Pridgen, 15 FSM Intrm. 597, 598 n.1 (App. 2008); Berman v. College of Micronesia-FSM, 15 FSM Intrm. 582, 588 (App. 2008). We therefore must promptly address any claim that we lack jurisdiction and examine the basis for our jurisdiction before we consider the appeal's merits.

The appellate rules authorize interlocutory appeals "from interlocutory orders of the Federated States of Micronesia Supreme Court trial division granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions." FSM App. R. 4(a)(1)(B). Nevertheless, a party to an order refusing an injunction has the option of either pursuing an interlocutory appeal or, if still aggrieved after the final judgment, appealing the entire matter then. "The opportunity to take an interlocutory appeal under [Appellate Rule 4(a)(1)(B)] is not an obligation to do so; if the parties are content to preserve the status quo while the [trial] court decides the case, they retain their right to comprehensive review at the end." Securities & Exch. Comm'n v. Quinn, 997 F.2d 287, 290 (7th Cir. 1993) (construing 28 U.S.C. § 1292(a)(1)).[1] Thus, while Berman and Damarlane could have appealed

[1] FSM Appellate Rule 4(a)(1)(B) is drawn from 28 U.S.C. § 1292(a)(1). While we must first look to FSM sources of law rather than start with a review of other courts' cases, when we have not already construed an

those denials of injunctive relief then, they were not required to, and they may appeal them now.

We conclude that Berman and Damarlane can raise the matter of the orders denying their injunction requests in this appeal because they timely appealed from the November 16, 2012 final judgment into which the interlocutory orders denying their injunction requests merged. *See* Damarlane v. Pohnpei Transp. Auth., 18 FSM Intrm. 366, 373 (App. 2012) ("under the doctrine of merger, all interlocutory orders merge into the final judgment").

2. *Merits of Injunction Requests*

Berman and Damarlane contend that the trial court should have granted them a mandatory injunction. They contend that the trial court finding that there was no evidence that the national police were likely to be back and that therefore no preventive relief was available was inaccurate because on 228 days a year people use the berm in connection with the allegedly illegal bar business there.

Berman and Damarlane contend that the trial court was required to issue a mandatory injunction to enforce an April 11, 1991 FSM administrative agency decision that provided that an earthmoving permit shall be issued to remove the berm. They contend that the trial court erred in applying the six-year statute of limitations to the agency decision because a new statute of limitations starts to run every day of a continuing violation; because the agency order was a "final judgment" and limitations periods do not run against judgments; because a statute of limitations does not run against the government; and because, if a statute of limitations applies, it is the twenty-year statute of limitations applicable to actions on a judgment found in 6 F.S.M.C. 802(1)(a).

We review whether a trial court erred in issuing, modifying, or denying an injunction under an abuse of discretion standard. *See* FSM v. Udot Municipality, 12 FSM Intrm. 29, 52 (App. 2003).

Neither we nor the trial court could order in this case the halt of all activity on the berm or the removal of a toilet or sleeping huts put there by private persons who are not parties. Those private persons responsible are not national government employees but are members of the general public over whom the national government has no control and no right to exercise control. An injunction against the FSM would thus not affect the bar's operation or its patrons or their behavior. Therefore the trial court did not abuse its discretion when it denied issuing an injunction barring the public from using the berm and its allegedly illegal bar and party business. And since, as noted by the trial court, Berman and Damarlane did not produce any evidence that the FSM national police intended to or might choose to have another party there, the trial court did not abuse its discretion by refusing to issue an injunction barring the police from holding parties on the berm because the FSM police's actions were non-continuing – there was no future action to enjoin.

The trial court could not order a mandatory injunction for the FSM to issue an earthmoving permit to remove the berm since no one had applied to the FSM for one. While injunctions can be mandatory, mandatory injunctions are disfavored. Udot Municipality v. FSM, 10 FSM Intrm. 354, 360 (Chk. 2001) (courts rarely grant mandatory injunctions because courts are ill-equipped to involve themselves in day-to-day administration and because of the difficulty of enforcing such injunctions). Here, the proposed mandatory injunction would require the FSM to issue an earthmoving permit to Pohnpei or to the

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FSM appellate rule which is similar to a U.S. counterpart, we may look to U.S. sources for guidance in interpreting the rule. *See, e.g.*, Palsis v. Tafunsak Mun. Gov't, 16 FSM Intrm. 116, 123 n.4 (App. 2008); Heirs of George v. Heirs of Dizon, 16 FSM Intrm. 100, 107 n.4 (App. 2008); Kosrae v. Langu, 16 FSM Intrm. 83, 87 n.1 (App. 2008).

Pohnpei Transportation Authority ("PTA") which would then be ordered to remove the berm. Neither the state nor the PTA was a party to the case below. The trial court could not issue any orders directed to Pohnpei or the PTA in the case below. If the state had applied for a permit and the FSM had refused it one, then the state could have sought a writ of mandamus to compel its issuance. But that is not this case. Berman and Damarlane are not the State of Pohnpei and they are not applying for a permit for them to remove the berm.

Furthermore, this lawsuit is not the proper vehicle for Berman and Damarlane to enjoin the public's use of the berm. Their suit against the operators of the allegedly illegal bar business (Damarlane v. Damarlane, Civ. No. 2011-004) could, if successful, accomplish that both by abating a continuing nuisance (if it is found to be one) and by awarding Berman and Damarlane damages for the nuisance caused by the patrons of that business. That cannot be accomplished in this case because the persons causing the alleged nuisance are private parties not under the FSM's control or direction and therefore the FSM is not liable for the consequences of their actions.

No injunction could compel the issuance of a earthmoving permit when there was no application for one. No injunction was needed to bar the FSM police from holding a party on the berm since the police did not have any plans to do so again. And no injunction could issue ordering non-parties to cease certain activities or to perform certain acts since they were not parties and not the agents of any party. Accordingly, the trial court did not abuse its discretion by denying injunctive relief. That being so, we will not address the trial court's ruling about the statute of limitations barring this action. We take no position on whether that statute of limitations is applicable to this case.

B. *Consolidation with Civil Action No. 2011-004*

Berman and Damarlane contend that the trial court should have granted their motion to consolidate this case with Damarlane v. Damarlane, Civil Action No. 2011-004 because only then could complete relief between the parties be granted because without the FSM as a defendant in 2011-004, the court could not order the FSM to remove the berm where the offending business is conducted. They argue that it is a necessary joinder.

The trial court in Damarlane v. Damarlane, Civil Action No. 2011-004, denied the consolidation motion because the FSM Secretary of Human Resources, the official the plaintiffs sought to have order the berm's removal, was not a defendant in either that case or in this case; because the plaintiffs' grievances against Brian and Paulino Damarlane were state law claims and related to but independent of the claims in this case; and because the plaintiffs' claims in that case are independent of the rights and responsibilities stemming from the creation of the berm that are asserted in this case. Damarlane v. Damarlane, 18 FSM Intrm. 177, 181 (Pon. 2012). In this case, the trial court cited and discussed its decision in Damarlane v. Damarlane, 18 FSM Intrm. 177, 181 (Pon. 2012), when it denied consolidation.

Berman and Damarlane argue that the FSM Secretary of Human Resources is a party to this case because he was served with a copy of the complaint. According to the certificate of service signed by Berman, a copy of the complaint and summons was served on acting Secretary of Health (successor to the Secretary of Human Services) Vida Skilling by certified mail on February 15, 2012. We note that this "service" was accomplished two days after the trial court denied the motion to consolidate, the summary judgment motion, and the motion for reconsideration of the denial of injunctive relief. We further note that the FSM Attorney General was not given the required notice of this "service" on a new party. We conclude therefore that this "service" was ineffective to make the Secretary a party in this case.

Since the granting of a motion to consolidate rests with the trial court's broad judicial discretion, Suldan v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 463, 464 (Pon. 2001); FSM Dev. Bank v. Arthur, 10 FSM Intrm. 293, 295 (Pon. 2001), we review the trial court's denial of consolidation on an abuse of discretion standard. We note that a person must be joined as a party if "in the person's absence complete relief cannot be accorded among those already parties . . . ." FSM Civ. R. 19(a)(1). Complete relief between the parties in both cases can be afforded between the parties in those cases without consolidation. The plaintiffs' allegations in Civil Action No. 2011-004, set out facts, which, if proven, state a cause of action for the common law torts of trespass and nuisance against the two operators of a private business and a common law breach of contract claim for $5,000. Other than the FSM national police holding a party on the berm one night, which the appellants allege disturbed them that night, the claims by Berman and Damarlane in this case do not overlap with the claims in that case and the defendants in this case are only the FSM national government and one of its agencies.

The trial court could easily resolve the issues between Berman and Damarlane and the national government without the need to join the private business operators on the berm against whom they (along with one additional plaintiff) have very different claims, a nuisance cause of action against the private business owners that may, except for the removal of the berm itself, give Berman and Damarlane much of the relief they seek – closure of the allegedly illegal bar business and its removal from the berm or some adequate lesser measure as the abatement of a continuing nuisance. The trial court can also resolve the claims in Civil Action No. 2011-004 without consolidation with this case. The trial court's denial of the motion to consolidate was not an abuse of discretion. We therefore affirm it.

C. *Summary Judgment*

Berman and Damarlane contend that the trial court erred when it denied their summary judgment motion as moot because it was still a live controversy. Their summary judgment motion sought the removal of the berm and causeway and everything on them. Order & Mem. at 5 (Feb. 13, 2012). We review de novo any issues of law. *E.g.*, Simina v. Kimeuo, 16 FSM Intrm. 616, 619 (App. 2009).

The trial court, on February 13, 2012, denied the summary judgment motion because that court had already dismissed that claim on the basis of res judicata, failure to state a claim for which the court can grant relief, and the statute of limitations and therefore the motion was moot. We conclude that it was not "moot." The parties still had a legally cognizable interest in the case's outcome. A case or dispute becomes moot when the parties lack a legally cognizable interest in the outcome. FSM Dev. Bank v. Yinug, 11 FSM Intrm. 405, 410 (App. 2003). The trial court, however, did not err in denying the summary judgment motion. It just misunderstood or mislabeled the proper ground. The trial court should have given the ground as the law of the case doctrine.

> "Law of the case" refers to the principle that once issues are decided in a case, they will not be redetermined later in the same case. This is a policy relied on by courts out of concern for judicial economy and to avoid the confusion that would result if a court reversed its own decisions during the course of a case. "In the absence of statute the phrase, 'law of the case,' as applied to the effect of previous orders on the later action of the court rendering them in the same case, merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power."

Heirs of Wakap v. Heirs of Obet, 15 FSM Intrm. 450, 453 (Kos. S. Ct. Tr. 2007) (quoting Messinger v. Anderson, 225 U.S. 436, 444, 32 S. Ct. 739, 740, 56 L. Ed. 1152, 1156 (1912)). The trial court had already ruled against Berman and Damarlane on all the issues and arguments they raised in their summary judgment motion. It could therefore refuse to reopen what it had already been decided unless

there was new evidence presented or a there had been a change in the controlling law. The trial court could deny the summary judgment motion based on those earlier rulings. This is true even though "any . . . decision, however designated, which adjudicates fewer than all the claims . . . shall not terminate the action as to any of the claims or parties, and [it] is subject to revision at any time before the entry of judgment adjudicating all the claims . . . ." FSM Civ. R. 54(b).

The summary judgment motion and the motion to reconsider that the trial court decided on February 13, 2012, were, since no final judgment had yet been entered and regardless of how Berman and Damarlane or the court styled them, Rule 54(b) motions to reconsider and to grant Berman and Damarlane further relief if the reconsideration was favorable. Although the trial court erred in calling the summary judgment motion "moot," the trial court was within its rights to deny that motion because it had already decided the issues the motion raised and those decisions were the law of the case and were unfavorable to Berman and Damarlane.

D. *Denial of Relief Requested and Dismissal*

Berman and Damarlane assert that the trial court dismissed their nuisance claim because it found that the action was non-continuing. This inaccurately describes the trial court action.

The trial court denied the request for a preliminary injunction against the FSM national police because it found that any nuisance created by the national police was non-continuing – there was no evidence that they would return to hold another party. After the trial court issued its December 15, 2011 and February 13, 2012 orders, only the nuisance claim for damages for the January 14, 2011 party by the FSM police remained pending. On September 20, 2012, the trial court issued an order asking Berman and Damarlane to show cause why the case should not be dismissed for their failure to prosecute the case. Order to Show Cause Why the Case Should Not Be Dismissed for Failure to Prosecute; Scheduling Order at 2 (Sept. 20, 2012). Once Berman and Damarlane responded with their statement that the court could dismiss the case because all their requested relief had been denied, the trial court, stating that this was an indication that the nuisance claim for the January 14, 2011 party was just a pretext to raise other issues, dismissed the case with prejudice on November 16, 2012.

Berman and Damarlane seem to argue now that the damages claim for the January 14, 2011 party was dismissed when the trial court denied their request for an injunction against the use of the berm for party purposes. They are mistaken. The trial court when it first denied the injunction request clearly stated that there was a remaining cause of action when it ordered "the parties to submit all pretrial motions, including proposed dates for trial, on the remaining cause of action." Berman v. FSM Nat'l Police, 18 FSM Intrm. at 106. The February 13, 2012 order also stated that "the court left as the only discernable cause of action a possible claim of nuisance against the defendants arising from the New Year party," Order & Mem. at 2 (Feb. 13, 2012), and asked the parties to submit trial dates. Berman and Damarlane thus should have been aware that there was a remaining claim for them to try.

When after the September 20, 2012 notice that the case was subject to dismissal for failure to prosecute, Berman and Damarlane acquiesced to a dismissal so that they could "appeal forthwith," they necessarily must have abandoned their nuisance claim for the January 14, 2011 party. They could have responded that they wanted trial on the remaining claim and reminded the court that they had earlier, in their January 13, 2012 filing, asked that trial take place four weeks after their motions were decided. They did not do so. Thus, Berman and Damarlane, having acquiesced to a dismissal so they could appeal, cannot revive on appeal, by asserting that the dismissal was a trial court error, a claim for which they agreed to a dismissal. This is true since if they had proceeded to trial and proved their allegations about the January 14, 2011 party, they could have been awarded money damages.

The November 16, 2012 dismissal with prejudice is therefore affirmed.

IV. Conclusion

Accordingly, we 1) affirm the denials of injunction requests; 2) affirm the denial of consolidation; 3) affirm the denial of summary judgment on the law of the case ground; and 4) affirm the case's dismissal with prejudice.

* * * *

FSM SUPREME COURT TRIAL DIVISION

FSM DEVELOPMENT BANK, Plaintiff, vs. PERDUS I. EHSA and TIMAKYO I. EHSA a/k/a TIMAKIO I. EHSA, Defendants.	)	CIVIL ACTION NO. 2007-035

ORDER DENYING VACATION OF HEARING

Ready E. Johnny
Associate Justice

Decided: September 2, 2013

APPEARANCES:

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HEADNOTES

Appellate Review – Stay – Civil Cases – Money Judgments; Attachment and Execution

By rule, a judgment is automatically stayed for only ten days. Once that ten days has passed, the judgment holder is free to execute on or to enforce the judgment unless a supersedeas bond has been posted and approved by the court or a stay sought and granted. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).