FSM Intrm. 3, 9 (Chk. 2003); Estate of Mori, 11 FSM Intrm. at 541. Due respect must be given to the constitutional separation of powers. The usual first step for an order in aid of judgment against a state when there are no appropriated funds available for that purpose is to order the executive to submit an appropriation bill. Barrett v. Chuuk, 14 FSM Intrm. 509, 511 (Chk. 2006); *see also* Kama v. Chuuk, 10 FSM Intrm. 593, 600 (Chk. S. Ct. App. 2002). Pohnpei has done that. Since legislative appropriation can be a time-consuming process, the state must be given a reasonable time and opportunity to complete the process and be given further opportunity to meet its obligation in some other manner before a plaintiff can resort to a writ of garnishment. Tipingeni v. Chuuk, 14 FSM Intrm. 539, 543 (Chk. 2007).

The Pohnpei Governor's authority to reprogram funds apparently allows the Governor a certain amount of flexibility if expenses do not quite come out the way the Legislature envisioned when it enacted the budget and the appropriation bills. The proposed act allows the Governor "to reprogram a cumulative total of not more than 15 percent, or $20,000, whichever is less." § 1-4. To order the Governor to reprogram $12,000 ($1,000 a month) of that $20,000 (or less) would deprive him of the flexibility and the discretion that the proposed budget act would grant him. Furthermore, this is only a bill before the Pohnpei Legislature, not yet law.

Alexander also contends that the Governor could be ordered to use the money in his representation fund, as created by 3 Pon. C. § 10-101, to help pay her judgment. The court concludes that the payment of judgments is not a representation expense in the course of official public relations and therefore those funds cannot be used to pay Alexander's judgment.

Accordingly, the request to order the Governor to reprogram funds or to use his representation funds to pay this judgment is denied. Alexander shall await the outcome of the legislative process.

* * * *

FSM SUPREME COURT APPELLATE DIVISION

| | | |
|---|---|---|
| GINN P. NENA,<br><br>Appellant,<br><br>vs.<br><br>HAMLIN SAIMON, JOSHAIA SAIMON, and LENORA T. SIGRAH,<br><br>Appellees. | ) | APPEAL CASE NO. K7-2013<br>(KSC Civil Action No. 39-2013) |

ORDER DENYING DISMISSAL

Martin G. Yinug
Chief Justice

Decided: September 10, 2013

APPEARANCES:

For the Appellant: Sasaki L. George, Esq.
P.O. Box 780
Tofol, Kosrae FM 96944

For the Appellees: Snyder H. Simon, Esq.
P.O. Box 1017
Tofol, Kosrae FM 96944

* * * *

HEADNOTES

Appellate Review – Decisions Reviewable

Generally, only final orders of the Kosrae State Court may be appealed to the FSM Supreme Court appellate division, but the FSM Supreme Court may also hear appeals from the Kosrae State Court in any other civil case in which an appeal to the FSM Supreme Court appellate division is permitted as a matter of law. Nena v. Saimon, 19 FSM R. 136, 138 (App. 2013).

Appellate Review – Decisions Reviewable

Since under Kosrae state law a party may appeal from the Kosrae State Court to the appellate court from an interlocutory order granting, continuing, modifying, refusing or dissolving an injunction, or refusing to dissolve or modify an injunction, an appeal from a Kosrae State Court order granting a preliminary injunction is thus an appeal to the FSM Supreme Court appellate division that is permitted by Kosrae state law. Nena v. Saimon, 19 FSM R. 136, 138 (App. 2013).

Appellate Review – Dismissal; Appellate Review – Motions

A single FSM Supreme Court appellate division justice may not dismiss or otherwise determine an appeal other than on all the parties' stipulation or on a party's failure to comply with the appellate rules' timing requirements, but a single justice may deny a motion to dismiss an appeal. Nena v. Saimon, 19 FSM R. 136, 138 (App. 2013).

Appellate Review – Dismissal

Grounds for dismissal that go to either the merits of the preliminary injunction or the merits of the underlying case are not grounds for dismissal before the parties brief and argue the appeal. Nena v. Saimon, 19 FSM R. 136, 138 (App. 2013).

* * * *

COURT'S OPINION

MARTIN G. YINUG, Chief Justice:

On September 4, 2013, the appellees filed their Motion to Dismiss Appeal. They contend that the appeal should be dismissed because Ginn P. Nena does not have standing since he does not own land called Inwalul, because his due process rights were not violated, and because the appeal is not from a final order and the law disfavors interlocutory appeals of an injunction order. Appellant Ginn P. Nena's opposition to the motion to dismiss was filed on August 27, 2013.

This appeal is from the Kosrae State Court's July 12, 2013 Order Granting Motion for Temporary

Restraining Order; Preliminary Injunction in Civil Action No. 39-13. Generally, only final orders of the Kosrae State Court may be appealed to the FSM Supreme Court appellate division. *See* In re Parcel 79T11, 16 FSM Intrm. 24, 25 (App. 2008); Heirs of George v. Heirs of Tosie, 15 FSM Intrm. 560, 562 (App. 2008); Kosrae v. Langu, 9 FSM Intrm. 243, 246 (App. 1999); *see also* FSM App. R. 4(a)(1)(A).

The order appealed from is not a final order, but from an order granting a preliminary injunction. The FSM Supreme Court may also hear appeals from the Kosrae State Court "in any other civil case in which an appeal to the FSM Supreme Court appellate division is permitted as a matter of law." FSM App. R. 4(a)(1)(E). Under Kosrae state law "[a] party may appeal from the [Kosrae State] Court to the appellate court . . . [f]rom an interlocutory order granting, continuing, modifying, refusing or dissolving an injunction, or refusing to dissolve or modify an injunction." Kos. S.C. § 6.404(2). This appeal from the July 12, 2013 order granting a preliminary injunction is thus an appeal to the FSM Supreme Court appellate division which is permitted as a matter of Kosrae state law.

A single FSM Supreme Court appellate division justice may not dismiss or otherwise determine an appeal other than on all the parties' stipulation or on a party's failure to comply with the appellate rules' timing requirements, but a single justice may deny a motion to dismiss an appeal. Heirs of Henry v. Heirs of Akinaga, 18 FSM Intrm. 207, 209 (App. 2012) (single justice's order denying a motion to dismiss an appeal is a procedural order requiring the appeal to be briefed and put on the calendar; it is not a determination having preclusive effect on the appeal's validity, and it remains subject to correction by the full appellate panel).

The other grounds for dismissal raised by the movants go to either the merits of the preliminary injunction or the merits of the underlying case and, as such, or not grounds for dismissal at this stage. *Id.* (when the appellees' ground for dismissal is the issue that the appellant will raise, brief, and argue on appeal, the court will not permit the appellees to short circuit the appellate process by a preemptive dismissal motion).

Accordingly, the motion to dismiss is denied.

* * * *