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Dison v. Bank of Hawaii
19 FSM R. 157 (App. 2013)

FSM SUPREME COURT APPELLATE DIVISION

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| WILLIAM DISON, |) | APPEAL CASE NO. P3-2012 |
| |) | Civil Action No. 2009-002 |
| Appellant, |) | |
| |) | |
| vs. |) | |
| |) | |
| BANK OF HAWAII, |) | |
| |) | |
| Appellee. |) | |
| <hr style="width: 20%; margin-left: 0;"/> |) | |

OPINION

Argued: August 8, 2013
Decided: September 17, 2013

BEFORE:

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

APPEARANCES:

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HEADNOTES

Appellate Review – Standard – Civil Cases

The standard for appellate review of decisions involving comity can be either the abuse of discretion standard or de novo review depending on the nature of the comity involved. Dison v. Bank of Hawaii, 19 FSM R. 157, 160 (App. 2013).

Appellate Review – Standard – Civil Cases – Abuse of Discretion

A trial court's abuse of discretion occurs when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence on which the court could rationally have based its decision. Dison v. Bank of Hawaii, 19 FSM R. 157, 160 (App. 2013).

Appellate Review – Standard – Civil Cases – De Novo

Any issues of law are reviewed de novo. Dison v. Bank of Hawaii, 19 FSM R. 157, 160 (App. 2013).

Debtors' and Creditors' Rights – Orders in Aid of Judgment; Social Security

The FSM social security non-assignment of benefits statute, 53 F.S.M.C. 604, does not bar legal process such as orders in aid of judgment from reaching FSM social security benefits. Dison v. Bank of Hawaii, 19 FSM R. 157, 161 (App. 2013).

Debtors' and Creditors' Rights – Orders in Aid of Judgment; Statutes – Construction

Congress enacted an exemption statute, 6 F.S.M.C. 1415, and courts cannot broaden statutes beyond their original meaning. Nor do courts have the power to amend a statute. Dison v. Bank of Hawaii, 19 FSM R. 157, 161 (App. 2013).

Separation of Powers – Judicial Powers

The separation-of-powers doctrine enshrined in the Constitution bars the FSM Supreme Court from legislating. The court has the ultimate responsibility in interpreting the law and in deciding what the law is and it has the ability to set aside any statute to the extent that the statute violates the Constitution. Dison v. Bank of Hawaii, 19 FSM R. 157, 161 (App. 2013).

Separation of Powers

Articles IX, X, and XI of the Constitution provide each branch of the national government with its own specific powers and this structure provides for each branch's independence in a system of checks and balances wherein no one branch may encroach upon another's domain. Dison v. Bank of Hawaii, 19 FSM R. 157, 161 n.2 (App. 2013).

Debtors' and Creditors' Rights – Orders in Aid of Judgment; Separation of Powers; Social Security

If the trial court had taken the large step of making U.S. military retirement and U.S. social security benefits paid to FSM citizens in the FSM exempt from all legal process, that would be a judicial encroachment on Congress's power to enact laws and set public policy because those recipients would then (along with U.S. veterans) have greater judicial protection than Congress has legislated for persons (regardless of citizenship) who receive FSM social security benefits. Whether foreign retirement benefits should carry equal or greater protection from legal process than FSM social security benefits is a public policy decision to be made by the people's elected representatives in Congress, not by the unelected court. Dison v. Bank of Hawaii, 19 FSM R. 157, 161-62 (App. 2013).

Choice of Law

Comity is a recognition which one nation extends within its own territory to the legislative, executive, or judicial acts of another, and it is not a rule of law, but one of practice, convenience, and expediency. Every nation must be the final judge for itself, not only of the nature and extent of the duty, but of the occasions on which it may be justly demanded. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

Choice of Law

Under principles of comity, courts will enforce foreign judgments, but not when the foreign court lacked jurisdiction, or where enforcement of the foreign judgment would violate a public policy, or where granting comity would result in prejudice to the forum's citizens. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

Choice of Law

Comity analysis involves the balancing of three interests and a threshold question. The threshold

question in a comity analysis is whether there is in fact a true conflict between domestic and foreign law. When there is a conflict, a court performs a tripartite analysis that considers the interests of the domestic sovereign, the interests of the foreign sovereign, and the mutual interests of all nations in a smoothly functioning international legal regime. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

Choice of Law; Debtors' and Creditors' Rights – Orders in Aid of Judgment

There is no true conflict between the U.S. statutes exempting U.S. military retirement benefits and U.S. social security benefits and the FSM exempt property statute because the U.S. statutes provide exemptions from judgments rendered and enforced in the U.S., and the FSM statute provides what property is exempt from judgments rendered and enforced in the FSM. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

Appellate Review – Standard – Civil Cases – Abuse of Discretion; Debtors' and Creditors' Rights – Orders in Aid of Judgment

A trial court did not abuse its discretion in applying only FSM, and not U.S., statutory law in determining whether property is exempt from legal process in the FSM. Dison v. Bank of Hawaii, 19 FSM R. 157, 162 (App. 2013).

* * * *

COURT'S OPINION

MARTIN G. YINUG, Chief Justice:

This appeal is from the trial division's Order in Aid of Judgment that required judgment-debtor William Dison to make monthly payments of \$446.88 to judgment-creditor Bank of Hawaii toward the satisfaction of the bank's \$25,067.58 judgment against him and that denied Dison's claim that his income from United States military retirement benefits and from United States social security benefits should be exempt from legal process to satisfy money judgments. We affirm the trial court. Our reasons follow.

I. BACKGROUND

The bank obtained a judgment against Dison on June 9, 2009. The bank moved for an order in aid of judgment. On September 19, 2011, the trial court heard the bank's motion and sought and later considered supplemental briefing on certain legal issues.

On January 20, 2012, the trial court ruled that not only was Dison financially able to make \$446.88 monthly payments but also that the United States statutes exempting U.S. military benefits, 11 U.S.C. § 522,¹ and U.S. social security benefits, 42 U.S.C. § 407, from execution or garnishment had no force and effect outside of U.S. territory and that the judicial enforcement in the FSM of FSM judgments is governed by FSM law and under the FSM exemption statute, 6 F.S.M.C. 1415, U.S. military retirement benefits and U.S. Social Security benefits are not property that qualifies as exempt. Bank of Hawaii v. Dison, 18 FSM Intrm. 161, 164 (Pon. 2012). Dison timely appealed.

¹ Actually this statute, 11 U.S.C. § 522(10), exempts veterans' and social security benefits from inclusion in a bankruptcy estate. U.S. veterans' benefits are exempt and nonassignable under 38 U.S.C. § 5301.

II. ISSUE PRESENTED

Dison asserts that the trial court erred because it should have considered and could have invoked the principle of comity and recognized the United States statutory exemptions on execution and order in aid of judgment proceedings for United States military retirement benefits and for United States Social Security benefits. Dison contends that, if the trial court had used a comity analysis, it could have recognized these exemptions for the special group of persons who have served in the United States armed forces and who receive both of these U.S. benefits. Dison asks that we remand the case with instructions that the trial court should consider the comity principle more carefully with the potential of making the U.S. statutory exemptions applicable in the FSM only to those FSM citizens receiving both U.S. military retirement and U.S. social security benefits. Dison does not ask us to rule that the trial court was required to invoke comity. He only asks that the trial court be required to consider comity.

III. STANDARD OF REVIEW

The standard for appellate review of decisions involving comity can be either the abuse of discretion standard or *de novo* review depending on the nature of the comity involved. See Diorinou v. Mezitis, 237 F.3d 133, 138-40 (2d Cir. 2001); Bird v. Glacier Elec. Coop., Inc., 255 F.3d 1136, 1140-41 (9th Cir. 2001) (*de novo* review required when due process violation in obtaining foreign court judgment alleged). The comity involved in this case is reviewed under an abuse of discretion standard. A trial court's abuse of discretion occurs when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence on which the court could rationally have based its decision. FSM Dev. Bank v. Adams, 14 FSM Intrm. 234, 246 (App. 2006); Kosrae Island Credit Union v. Palik, 10 FSM Intrm. 134, 138 (App. 2001); Jano v. King, 5 FSM Intrm. 326, 330 (App. 1992).

We review any issues of law *de novo*. *E.g.*, Simina v. Kimeuo, 16 FSM Intrm. 616, 619 (App. 2009).

IV. ANALYSIS

A. Parties' Positions

1. Dison's

Dison contends that, using the principle of comity, the trial court could have adopted a rule of law that FSM citizens who have served in the United States military and who have qualified for and receive U.S. military retirement benefits and U.S. social security benefits would receive and maintain those benefits in the FSM as property exempt from assignment, execution, garnishment, or other legal process to collect debts just as those benefits are exempt if they were received and held in the United States. Dison argues that since U.S. law was introduced into the region before the FSM became independent, the court should have given some special consideration to the U.S. statutory exemptions. He contends that this was within the trial court's discretion and that public policy allows the FSM court to adopt such exemptions as a matter of comity – respect of one sovereign for another. Dison argues that because of the FSM's "special relationship" with the U.S. and because of the increasing numbers of FSM citizens serving in and retiring from the U.S. military, the trial court should have considered exercising its discretion to exempt Dison's U.S. retirement benefits from legal process. Dison argues that the FSM social security non-assignment of benefits statute is similar enough to the U.S. statute that it would be reasonable to enforce the U.S. exemption for the U.S. social security and veterans' benefits in the FSM.

2. *The Bank's*

The bank asserts that Dison should not now be able to claim that his veteran's benefits are income exempt from repayment since, when Dison borrowed the money from the bank, he listed on his loan application that his military retirement benefits were his sole source of income and since the bank, relying on this representation, lent him \$18,263. The bank contends that it is Congress's role to determine what property is exempt from legal process and that the court cannot legislate in Congress's place.

B. *Whether Discretion Was Abused*

Dison is correct that if this case had been filed in a U.S. jurisdiction, the U.S. statutory exemptions would have barred the bank, a U.S. corporation, from obtaining the type of order in aid of judgment that the trial court granted because Dison's benefits would have been statutorily exempt. Dison contends that the funds "mere crossing in to the FSM" should not change their nature. Nonetheless, Dison acknowledges that the FSM social security non-assignment of benefits statute, 53 F.S.M.C. 604, is not as broad as the U.S. statute and does not bar legal process such as orders in aid of judgment from reaching FSM social security benefits. See Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 379 (App. 2003).

Congress enacted an exemption statute, 6 F.S.M.C. 1415. Dison's benefits are not exempt from legal process under this statute. Courts cannot broaden statutes beyond their original meaning. Nena v. Kosrae, 14 FSM Intrm. 73, 82 (App. 2006); Rodriguez, 11 FSM Intrm. at 378. Nor do courts have the power to amend a statute. See People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM Intrm. 478, 479 (Yap 2011); Tipingeni v. Chuuk, 14 FSM Intrm. 539, 542 n.1 (Chk. 2007); FSM v. Kana Maru No. 1, 14 FSM Intrm. 365, 367 n.1 (Chk. 2006); FSM v. Wainit, 12 FSM Intrm. 376, 383 (Chk. 2004).

The separation-of-powers doctrine enshrined in the Constitution, FSM v. Udot Municipality, 12 FSM Intrm. 29, 48 (App. 2003), bars the FSM Supreme Court from legislating.² The court has the ultimate responsibility in interpreting the law and in deciding what the law is, Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM Intrm. 181, 187 (Pon. 2010); Suldan v. FSM (II), 1 FSM Intrm. 339, 343 (Pon. 1983), and it has the ability to set aside any statute to the extent that the statute violates the Constitution, Udot Municipality, 12 FSM Intrm. at 47.

Dison asks that the trial court be required to consider making his U.S. retirement benefits exempt property, in effect amending the FSM exemption statute to include property that the statute does not include. We conclude that that would broaden the exemption statute beyond its original meaning and would be an unconstitutional judicial encroachment on Congress's power to legislate and to make public policy through legislation.

If the trial court had taken the large step of making U.S. military retirement and U.S. social security benefits paid to FSM citizens in the FSM exempt from all legal process, the next logical step for a court to take would be for it to make the smaller step of exempting all U.S. social security as well as all U.S. military benefits paid to any FSM resident. That would be a further judicial encroachment

² Articles IX, X, and XI of the Constitution provide each branch of the national government with its own specific powers and this structure provides for each branch's independence in a system of checks and balances wherein no one branch may encroach upon another's domain. FSM v. Udot Municipality, 12 FSM Intrm. 29, 48 (App. 2003).

on Congress's power to enact laws and set public policy. Those social security recipients would then (along with veterans such as Dison) have greater judicial protection than Congress has legislated for persons (regardless of citizenship) who receive FSM social security benefits. Whether foreign retirement benefits (military pensions or social security) should carry equal or greater protection from legal process than FSM social security benefits is a public policy decision to be made by the people's elected representatives in Congress, not by the unelected court.

We therefore affirm the trial court because, if the trial court, for any reason, had ruled Dison's U.S. military retirement pay and U.S. social security benefits were exempt from legal process, the trial court would have exercised power that the court does not have.

C. Comity

Even if we were to consider the comity principle, Dison would still be unable to obtain the relief he seeks.

Comity is a recognition which one nation extends within its own territory to the legislative, executive, or judicial acts of another, and it is not a rule of law, but one of practice, convenience, and expediency. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM Intrm. 430, 431 (Pon. 1994). "Every nation [must] . . . be the final judge for itself, not only of the nature and extent of the duty, but of the occasions on which it may be justly demanded." Hilton v. Guyot, 159 U.S. 113, 165, 16 S. Ct. 139, 144, 40 L. Ed. 95, 109 (1895) (quoting Story, Conflict of Laws §§ 33-38). Under principles of comity, courts will enforce foreign judgments, but not when the foreign court lacked jurisdiction, or where enforcement of the foreign judgment would violate a public policy, or where granting comity would result in prejudice to the forum's citizens. Sado, 6 FSM Intrm. at 432.

Comity analysis involves the balancing of three interests and a threshold question. "[T]he threshold question in a comity analysis is whether there is in fact a true conflict between domestic and foreign law." Societe Nationale Industrielle Aeropostale v. United States Dist. Ct., 482 U.S. 522, 555, 107 S. Ct. 2542, 2562, 96 L. Ed. 2d 461, 491 (1987) (Blackmun, J., concurring in part and dissenting in part). When there is a conflict, a court "performs a tripartite analysis" that considers the interests of the domestic sovereign, the interests of the foreign sovereign, and "the mutual interests of all nations in a smoothly functioning international legal regime." *Id.*

There is no true conflict between the U.S. statutes exempting U.S. military retirement benefits, 38 U.S.C. § 5301, and U.S. social security benefits, 42 U.S.C. § 407, and the FSM exempt property statute, 6 F.S.M.C. 1415. The U.S. statutes provide exemptions from judgments rendered and enforced in the U.S. The FSM statute provides what property is exempt from judgments rendered and enforced in the FSM. The comity analysis, if performed, would end there. The trial court correctly applied FSM statutes to property present in the FSM's sovereign territory.

Dison calls those FSM citizens, who reside in the FSM and collect U.S. military retirement and U.S. social security benefits, a special group of people. If Congress wants special treatment for that group, it can create exemptions for them by statute.

V. CONCLUSION

Accordingly, we affirm the trial court. Dison seeks a change in the law and in public policy and that change can only be made by Congress. The trial court did not abuse its discretion in applying only FSM, and not U.S., statutory law in determining whether property is exempt from legal process in the FSM. The appellee is entitled to tax its appellate costs. FSM App. R. 39(a).