

III. CONCLUSION

THEREFORE, the Renewed Motion to Withdraw as Counsel is hereby GRANTED IN PART for Yalmer Helgenberger only. Jack shall continue to represent Marlene Helgenberger until substitute counsel is found, or otherwise released by this court.

* * * *

CHUUK STATE SUPREME COURT APPELLATE DIVISION

SEINAS SIMINA,)	CSSC APPEAL NO. 01-2014
)	
Appellant,)	
)	
vs.)	
)	
CHUUK STATE ELECTION COMMISSION)	
and EXECUTIVE DIRECTOR OF CHUUK)	
STATE ELECTION COMMISSION,)	
)	
Appellees,)	
)	
MATAICHY PWECHAN,)	
)	
Real Party in Interest.)	
_____)	

ORDER DISMISSING APPEAL

Decided: October 23, 2014

BEFORE:

Hon. Jayson Robert, Associate Justice, Presiding
Hon. Brian Dickson, Temporary Justice*
Hon. Bethwell O'Sonis, Temporary Justice**

*Legislative Counsel, Weno, Chuuk; **Directing Attorney, FSM Public Defender, Weno, Chuuk

APPEARANCES:

For the Appellant: Ben Enlet
P.O. Box 1650
Weno, Chuuk FM 96942

For the Appellees: Sabino S. Asor, Esq.
Chuuk Attorney General
Office of the Attorney General
P.O. Box 1050
Weno, Chuuk FM 96942

Simina v. Chuuk State Election Comm'n
19 FSM R. 587 (Chk. S. Ct. App. 2014)

For the Real Party in Interest: Jack Fritz, Esq.
P.O. Box 788
Weno, Chuuk FM 96942

* * * *

HEADNOTES

Elections – Conduct

Whether an individual is entitled to be placed on the ballot is left solely in the hands of the Chuuk State Election Commission and is beyond the Chuuk State Supreme Court's jurisdiction. Simina v. Chuuk State Election Comm'n, 19 FSM R. 587, 589 (Chk. S. Ct. App. 2014).

Elections – Conduct

No law (including the Nema Constitution) prevents the Chuuk State Election Commission from determining whether an individual should be placed on the Nema Municipality General Election ballot. Simina v. Chuuk State Election Comm'n, 19 FSM R. 587, 589 (Chk. S. Ct. App. 2014).

Elections – Contests

The Chuuk State Supreme Court appellate division has jurisdiction of election matters as provided for in Sections 130 through 139, of the Election Law of 1996. Simina v. Chuuk State Election Comm'n, 19 FSM R. 587, 589 (Chk. S. Ct. App. 2014).

* * * *

COURT'S OPINION

PER CURIAM:

On October 3, 2014, Appellant Seinas Simina ("Appellant") filed an "Appeal Complaint for Declaratory, TRO, and Preliminary Injunctive Reliefs"¹ ("Complaint") against Appellees Chuuk State Election Commission and the Executive Director of the Chuuk State Election Commission. In his Complaint, Appellant raised several issues in response to Chuuk State Election Commission's ("Commission") decision in finding Mataichy Pwechan ("Pwechan") was a qualified candidate and that his name should be placed on the Nema Municipality General Election ballot; necessitating a re-election.

Upon review of the Complaint and applicable authorities, the Panel finds as follows.

I. RELEVANT BACKGROUND

On August 5, 2014, the Nema Municipality General Election was held pursuant to Nema Municipal Constitution, Article IV, Section I.

On August 14, 2014, Pwechan filed a complaint with the Commission, requesting that his name be placed on the Nema Municipality General Election ballot. Appellant's Compl., Ex. B. In his complaint, Pwechan states that he has served as Deputy Mayor for the Nema Municipality up to the

¹ Appellant filed a separate motion for temporary restraining order, which was heard and denied by the Panel at a hearing held on October 7, 2014. [Simina v. Chuuk State Election Comm'n, 19 FSM R. 572, 573 (Chk. S. Ct. App. 2014).]

Nema Municipality General Election held August 5, 2014. *Id.* He also alleges that the Nema Election Commissioner has refused to place his name on the ballot and is acting in violation of the election procedure and Nema Constitution.

A hearing on Pwechan's complaint was held by the Commission on August 19, 2014, and the Commission found in favor of Pwechan. Appellant's Compl., Ex. C. This result necessitated a re-election.

In response to the Commission's decision, the Appellant filed the instant appeal.

II. ANALYSIS

The crux of this appeal is whether the Chuuk State Election Commission's decision was proper. Specifically, the issue is whether Mataichy Pwechan's name should be placed on the Nema Municipality General Election ballot.

This Court has previously ruled that the issue of whether an individual is entitled to be placed on the ballot is left solely in the hands of the Chuuk State Election Commission and beyond this Court's jurisdiction. Hethon v. Os, 9 FSM Intrm. 534, 535 (Chk. S. Ct. Tr. 2000) (The issue of whether a person is entitled to have his name on the ballot is an election case, over which neither division of the Chuuk State Supreme Court has original jurisdiction, and which is placed solely in the hands of the Chuuk State Election Commission with the Chuuk State Supreme Court appellate division having jurisdiction only as provided in the Election Law of 1996.). In fact, Section 9 of the Chuuk State Election Law of 1996 states: "No person shall be placed on the ballot for election to any public office unless the Commission has determined after a thorough examination and investigation that said person possesses or meets the qualifications required by law and the Constitution for the office for which he seeks nomination." Chk. S.L. No. 3-95-36, § 9.

Furthermore, the Panel noted there is no law (including the Nema Constitution) which prevents the Commission from determining whether an individual should be placed on the Nema Municipality General Election ballot. See Chipen v. Chuuk State Election Comm'n, 8 FSM Intrm. 300n, 300o (Chk. S. Ct. App. 1998) (All provisions of the Chuuk State Election Law of 1996 apply to all elections in the State of Chuuk, including municipal and national elections whenever applicable unless otherwise specifically provided.). It should also be noted that the Appellate Division of the Chuuk State Supreme Court has jurisdiction of election matters as provided for in Sections 130 through 139, of the Election Law of 1996. Chk. S.L. No. 3-95-26, §§ 130-139; see David v. Uman Election Comm'r, 8 FSM Intrm. 300d, 300i (Chk. S. Ct. App. 1998) (the Chuuk State Supreme Court appellate division has no original jurisdiction to entertain an appeal directly from a municipal election commissioner.).

III. CONCLUSION

Based on the foregoing, the Panel lacks jurisdiction to hear this appeal. Accordingly, the relief sought by the Appellant is DENIED and the appeal is hereby DISMISSED.

* * * *