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Eperiam v. FSM
20 FSM R. 351 (Pon. 2016)

FSM SUPREME COURT TRIAL DIVISION

BRENDA HADLEY EPERIAM,)
)
 Plaintiff,)
)
 vs.)
)
 GOVERNMENT OF THE FEDERATED)
 STATES OF MICRONESIA,)
)
 Defendant.)
 _____)

CIVIL ACTION NO. 2015-006

ORDER

Beauleen Carl-Worswick
Associate Justice

Hearing: January 8, 2016
Decided: March 23, 2016

APPEARANCES:

For the Plaintiff: Salomon M. Saimon, Esq.
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Kolonias, Pohnpei FM 96941

For the Defendant: Joses R. Gallen, Esq. (motion)
Clayton M. Lawrence, Esq. (argued)
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HEADNOTES

Civil Procedure – Dismissal; Jurisdiction

Whenever it appears by suggestion of the parties or otherwise, including being raised as an affirmative defense in the answer, that the court lacks jurisdiction of the subject matter the court must dismiss the action. Eperiam v. FSM, 20 FSM R. 351, 354 & n.1 (Pon. 2016).

Civil Procedure – Dismissal – Before Responsive Pleading

Taking as true the facts alleged by the party asserting the claim sought to be dismissed and viewing these facts and the inferences to be drawn therefrom in the light most favorable to the party opposing the motion, the court may not grant a motion to dismiss unless it appears to a certainty that no relief could be granted under any state of facts which could be proved in support of the claim. A

court evaluates a motion to dismiss only on whether a plaintiff's claim has been adequately stated in the complaint, and does not resolve the facts or merits of the case. Eperiam v. FSM, 20 FSM R. 351, 354 (Pon. 2016).

Public Officers and Employees

The National Public Service System Act created a system of personnel administration based on merit principles and accepted personnel methods governing the classification of positions and the employment, conduct, movement, and separation of public officers and employees. Eperiam v. FSM, 20 FSM R. 351, 354 (Pon. 2016).

Administrative Law – Exhaustion of Remedies; Administrative Law – Judicial Review; Public Officers and Employees

The FSM Supreme Court cannot entertain Public Service System disputes until all administrative remedies have been exhausted, and, without a final decision, the court has no authority to hear the dispute. Eperiam v. FSM, 20 FSM R. 351, 355 (Pon. 2016).

Administrative Law – Exhaustion of Remedies

Exhaustion of remedies is the doctrine that, if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. The doctrine's purpose is to maintain comity between the courts and administrative agencies and to ensure that the courts will not be burdened by cases in which judicial relief is unnecessary. Eperiam v. FSM, 20 FSM R. 351, 355 (Pon. 2016).

Administrative Law – Exhaustion of Remedies

Exhaustion of remedies means that one must follow whatever procedures are in place to seek reconsideration of an agency's allegedly erroneous decision (within the agency itself) or to seek reversal of the decision at the administrative level (often by the executive body overseeing the agency) before bringing the dispute to the judiciary's attention. Eperiam v. FSM, 20 FSM R. 351, 355 (Pon. 2016).

Administrative Law – Exhaustion of Remedies

When a complaint has been filed and it appears that the plaintiff may not have exhausted his administrative remedies, the court may, in its discretion, stay the matter to allow the plaintiff to first pursue his administrative remedies and if he remains aggrieved, the court can then lift the stay and allow the litigation to proceed. Preferably, however, the court will dismiss the petition without prejudice, allowing the plaintiff to refile so that the pleadings might accurately reflect the administrative deficiency. Eperiam v. FSM, 20 FSM R. 351, 355 (Pon. 2016).

Administrative Law; Public Officers and Employees

A former employee may still pursue a grievance through the public service system administrative procedure if the grievance arose while the employee was a public service system member, especially if the grievance was pending at the time the employee left the public service system since access to the administrative procedure is not precluded even though the aggrieved party is no longer a public service system employee. Eperiam v. FSM, 20 FSM R. 351, 355 (Pon. 2016).

Public Officers and Employees

A permanent employee is an employee who has been appointed to a position in the public service who has successfully completed a probation period. Eperiam v. FSM, 20 FSM R. 351, 355 n.2 (Pon. 2016).

Administrative Law – Exhaustion of Remedies; Public Officers and Employees – Termination

An aggrieved employee is entitled to the administrative process regardless of his or her current

employment status if it emerges from an employment dispute that was existing at the time the employee left, or if the termination itself is the reason that the person left the public service system. Eperiam v. FSM, 20 FSM R. 351, 356 (Pon. 2016).

Administrative Law

An administrative body has no more license to deny jurisdiction than to usurp it. Eperiam v. FSM, 20 FSM R. 351, 356 (Pon. 2016).

Administrative Law – Exhaustion of Remedies; Public Officers and Employees – Termination

It is without jurisdictional significance that a person may, or may not be, covered under the Public Service System Act in her current employment position. It is enough that she indisputably was and that she properly began that grievance process and has the right to see it through to completion. Eperiam v. FSM, 20 FSM R. 351, 356 (Pon. 2016).

Civil Procedure – Declaratory Relief

A litigant may seek a declaratory judgment without first exhausting its administrative remedies. The test whether the court can render a declaratory judgment is whether there is a case or dispute within the meaning of article XI, section 6(b) of the Constitution. Eperiam v. FSM, 20 FSM R. 351, 356 (Pon. 2016).

Civil Procedure – Declaratory Relief

The grant of a declaratory judgment, like other forms of equitable relief, rests in the trial court's sound discretion exercised in the public interest. Eperiam v. FSM, 20 FSM R. 351, 356 (Pon. 2016).

Administrative Law – Judicial Review; Civil Procedure – Declaratory Relief; Public Officers and Employees

Declaratory judgment is the least intrusive judicial remedy. Usually it is enough that the courts advise the agency on the law and allow the agency the flexibility to determine how best to bring itself into compliance. Notably, under the arbitrary and capricious standard, as required by the Public Service System Act, the court must be very careful to fashion a relief so as not to inappropriately infringe on the function of the agency. Eperiam v. FSM, 20 FSM R. 351, 356 (Pon. 2016).

Administrative Law – Judicial Review; Civil Procedure – Declaratory Relief; Public Officers and Employees – Termination

When the plaintiff has in good faith requested the resumption of the administrative process and the agency has verbally denied that request, the court may grant relief to the extent that the plaintiff requests declaratory relief requiring the administrative proceedings' resumption, but to the extent that the plaintiff has requested further declaratory relief regarding the validity of her termination, or the legality of a settlement offer, the court cannot grant that relief because that determination is within the administrative agency's exclusive jurisdiction and it is inappropriate for the court to unnecessarily encroach on the administrative domain. Eperiam v. FSM, 20 FSM R. 351, 356-57 (Pon. 2016).

Civil Procedure – Dismissal – Before Responsive Pleading; Civil Procedure – Declaratory Relief

The court will grant partial declaratory relief requiring the resumption of the administrative proceedings, and will dismiss the plaintiff's petition with all counterclaims until the administrative remedies have been exhausted. If the plaintiff is not satisfied following the administrative proceedings' final decision, she may refile a petition in the court with new pleadings that reflect the administrative deficiency, but the court cannot grant further declaratory relief, and no common law causes of action can be heard. Eperiam v. FSM, 20 FSM R. 351, 357 (Pon. 2016).

COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

On February 6, 2015, the plaintiff, through attorney Salomon Saimon, filed a Summons and a Verified Petition for Declaratory Relief. On February 26, 2015, the defendant, through Assistant Attorney General Joses Gallen filed Answers, Affirmative Defenses and Counter Claims. On March 11, 2015, the defendant filed a Motion to Sever Damages Matters from Declaratory Relief Matter. On March 23, 2015, the plaintiff filed an Opposition to Plaintiff's Motion to Sever Claims. On January 8, 2016, the court held a preliminary hearing in this matter. The plaintiff was present in person and represented by her attorney Salomon Saimon (Saimon). The Government was represented by Assistant Attorney General Clayton Lawrence (Lawrence). At this hearing, the court heard arguments from both parties regarding the subject matter jurisdiction of this court. At the core of the debate is whether this employment dispute should be heard by the administrative body, as a petition for review, or by this court as a common law cause of action. Plaintiff asked for a declaratory judgment ordering the resumption of the administrative proceedings, as well as other relief, while the Government opposed.

Upon CONSIDERATION of the representations of the parties and of the file and record contained herein, the court GRANTS partial relief to the plaintiff, requiring the resumption of the administrative proceedings, based on the following conclusions of fact and law.

I. JURISDICTION

Pursuant to FSM Civil Rule 12(h)(3), "whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter the court shall dismiss the action."¹ "A motion to dismiss may not be granted unless it appears to a certainty that no relief could be granted under any state of facts which could be proved in support of the claim." Mailo v. Twum-Barimah, 2 FSM R. 265, 267 (Pon. 1986). "It is well established that the facts alleged by the party asserting the claim sought to be dismissed are to be taken as true and that these facts and the inferences to be drawn therefrom must be viewed by the Court in the light most favorable to the party opposing the motion to dismiss." *Id.* A court evaluates a motion to dismiss only on "whether a plaintiff's claim has been adequately stated in the complaint," and does not resolve the facts or merits of the case. Latte Motors, Inc., v. Hainrick, 7 FSM R. 190, 192 (Pon. 1995).

Exhaustion of Remedies

The National Public Service System Act (PSSA), established by Congress under title 52, created "a system of personnel administration based on merit principles and accepted personnel methods governing the classification of positions and the employment, conduct, movement, and separation of public officers and employees." 52 F.S.M.C. 121. Pursuant to 52 F.S.M.C. 157, congress expressly limited the subject matter jurisdiction of this court:

Disciplinary actions taken in conformance with this subchapter shall in no case be subject to review in the Courts until the administrative remedies prescribed herein have been *exhausted*; nor shall they be subject to such review thereafter except on the grounds of violation of law or regulation or of denial of due process or of equal protection of the laws.

¹ Although neither party has filed a motion to dismiss pursuant to FSM Civil Rule 12(b), the defendants raised the lack of subject matter jurisdiction as an affirmative defense in the Answer.

Id. (emphasis added). This court cannot entertain PSSA disputes until all administrative remedies have been exhausted, and without a final decision this court has no authority to hear the dispute. See Suldan v. FSM, 1 FSM R. 201, 206 (Pon. 1982) ("the Act plainly manifests a Congressional intention that this Court should withhold action until the administrative steps have been completed").

The exhaustion of remedies is "[t]he doctrine that, if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. The doctrine's purpose is to maintain comity between the courts and administrative agencies and to ensure that the courts will not be burdened by cases in which judicial relief is unnecessary." BLACK'S LAW DICTIONARY 613 (8th ed. 1999). Generally stated, the "[e]xhaustion of remedies means that one must follow whatever procedures are in place to seek reconsideration of an agency's allegedly erroneous decision (within the agency itself) or to seek reversal of the decision at the administrative level (often by the executive body overseeing the agency) before bringing the dispute to the attention of the judiciary." Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 89 (Pon. 2003). "[W]hen a complaint has been filed and it appears that the plaintiff may not have exhausted his administrative remedies, the court may, in its discretion, stay the matter to allow the plaintiff to first pursue his administrative remedies and if he remains aggrieved, the court can then lift the stay and allow the litigation to proceed." Aunu v. Chuuk, 18 FSM R. 48, 50 (Chk. 2011). Preferably, however, the court will dismiss the petition without prejudice allowing the plaintiff to refile so that the pleadings might accurately reflect the administrative deficiency. See Aake v. Mori, 16 FSM R. 607, 609 (Chk. 2009) ("Any future litigation should be conducted on new and accurate pleadings").

Significantly, in Aake, the court concluded "that a former state employee may still pursue a grievance through the public service system administrative procedure if the grievance arose while the employee was a member of the public service system." *Id.* "Especially . . . if [the] grievance [was] pending at the time the employee left the public service system." *Id.* Ultimately, the court held that the PSSA does not preclude access to that administrative procedure "even though the aggrieved party is no longer a public service system employee." *Id.* Even though the Aake decision was based on the Chuuk State Public Service System, those findings apply equally well to the national PSSA.

In this case, it is not disputed that the plaintiff was employed by the Department of Health and Social Affairs as a Surveillance and Evaluation Officer for several years and on April 12, 2012, changed positions to become the Administrative Officer of that department. It is also not disputed that this is a permanent position covered by the PSSA and that the plaintiff was entitled to the administrative process at that time.² It is furthermore not disputed that on August 8, 2014, the plaintiff received a letter of termination, and on September 17, 2014, the FSM Personnel Office began an ad hoc committee hearing which was not finished because the parties entered into a settlement agreement during a break in the hearing. Thus, no final decision was ever rendered by that committee.

The current dispute emerges from that suspended process over the legal validity of the settlement agreement. The Government contends that the plaintiff accepted a verbal agreement to begin working as a contract employee, and in October, 2014, did in fact began working under it. Further, the Government contends that the plaintiff was paid and accepted back wages to fulfill any previous employment obligations. Ultimately, the Government argues that these actions took the plaintiff outside of the PSSA, and that she is no longer entitled to administrative proceedings as a result. The plaintiff responds that she did not understand that the settlement agreement had removed her from the PSSA and when she was properly informed of this material fact she refused to sign the written

² A permanent employee "means an employee who has been appointed to a position in the public service who has successfully completed a probation period." 52 F.S.M.C. 112(22).

contract.

Our case law supports the finding that an aggrieved employee is entitled to the administrative process regardless of his or her current employment status, if it emerges from an employment dispute that was existing at the time the employee left, or if the termination itself is the reason that the person left the public service system. The court furthermore notes that the settlement offer itself is a type of relief offered to the plaintiff, by the agency, and is therefore agency action within the jurisdiction of the administrative court.³ While the administrative agency is usually permitted to make the initial determination of its jurisdiction this court has the ability to review such decisions.⁴ Although the administrative agency has not issued a final written decision regarding its jurisdiction, the plaintiff has been orally denied access to the administrative process, and no such order is forthcoming. This court finds that further delay is wholly unnecessary; there is a material issue of fact in dispute, and the administrative body has no more license to deny jurisdiction than to usurp it.⁵ Thus, the parties must complete the administrative process, make factual determinations regarding termination of the plaintiff, as well as any necessary legal conclusions regarding the validity of the settlement agreement, and create a record for this court to review. The court highlights that it is without jurisdictional significance that plaintiff may, or may not be, covered under the PSSA in her current employment position. It is enough that she indisputably was. She properly began that grievance process and has the right to see it through to completion.

II. DECLARATORY RELIEF

Our court has held that a "litigant may seek a declaratory judgment without first exhausting its administrative remedies." Dorval Tankship Pty. Ltd. v. Dept. of Finance, 8 FSM R. 111, 115 (Chk. 1997). "The test whether the court can render a declaratory judgment is whether there is a case or dispute within the meaning of article XI, section 6(b) of the Constitution." *Id.* The granting of a declaratory judgment, like other forms of equitable relief, "rests in the sound discretion of the trial court exercised in the public interest." FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 590 (Pon. 2011). Declaratory judgment is the least intrusive judicial remedy and . . . [u]sually it is enough that the courts advise the agency on the law and allow the agency the flexibility to determine how best to bring itself into compliance." 33 CHARLES ALAN WRIGHT & CHARLES H. KOCH, JR., FEDERAL PRACTICE AND PROCEDURE § 8312, at 90 (2006). Notably, under the arbitrary and capricious standard, as required by the PSSA, the court must be very careful to fashion a relief so as not to inappropriately infringe on the function of the agency.

This is an actual dispute, between two parties over an employment grievance and this Court has the discretion to offer declaratory relief in this case. The plaintiff has in good faith requested the resumption of the administrative process and that request has been verbally denied by the agency. To the extent that the plaintiff requests declaratory relief requiring the resumption of the administrative proceedings, that relief is therefore granted. However, to the extent that the plaintiff has requested

³ Pursuant to 17 F.S.M.C. 101(2), agency action is defined as "the whole or part of an agency regulation, order, decision, license, sanction, relief, or the equivalent or denial thereof, or a failure to act."

⁴ Pursuant to 17 F.S.M.C. 112, "[a]n aggrieved party may obtain a review of any final judgment of the Trial Division of the Supreme Court under this chapter by appeal to the Appellate Division of the Supreme Court. Any decision refusing jurisdiction is final and accordingly appealable.

⁵ "We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404, 5 L. Ed. 257, 291 (1821).

further declaratory relief regarding the validity of her termination, or the legality of the settlement offer, the court cannot grant that relief. That is a determination that is within the exclusive jurisdiction of the administrative agency and it is inappropriate for this Court to unnecessarily encroach on the administrative domain.

III. CONCLUSION

The court grants partial declaratory relief to the plaintiff, requiring the resumption of the administrative proceedings. Furthermore, the court dismisses this petition with all counterclaims until the administrative remedies have been exhausted. It furthermore bears repeating that no common law causes of action can be heard as the subject matter jurisdiction of this court has been removed. If the plaintiff is not satisfied following the final decision of the administrative proceedings, she may refile a petition with new pleadings that reflect the administrative deficiency in this court. The court, however, cannot grant further declaratory relief, as requested and, finally, the request for attorney's fees is denied, at this time.

It is therefore ORDERED that both the petition and the counterclaim are hereby dismissed without prejudice, based on a lack of subject matter jurisdiction, and that the administrative process shall resume within thirty (30) days.

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FSM SUPREME COURT APPELLATE DIVISION

BERYSIN SALOMON and NANCY SALOMON,)
)
 Appellants,)
)
 vs.)
)
 ANNA MENDIOLA, SIHNA LAWRENCE,)
 JOHN SOHL, and FSM DEVELOPMENT BANK,)
)
 Appellees.)
 _____)

APPEAL CASE NO. P5-2015
(Consolidated with P1-2014)

ORDER DISMISSING APPEAL

Decided: April 8, 2016

Hon. Dennis K. Yamase, Chief Justice
Hon. Camillo Noket, Temporary Justice*
Hon. Aliksa B. Aliksa, Temporary Justice**

*Chief Justice, Chuuk State Supreme Court, Weno, Chuuk

**Chief Justice, Kosrae State Court, Tofol, Kosrae