

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.

* * * *

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

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* * * *

HEADNOTES

Appellate Review – Dismissal

The threshold determination of subject-matter jurisdiction may be raised at any time by a party or by the court. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

Appellate Review – Decisions Reviewable

The general rule is that appellate review of a trial court is limited to final orders and judgments. A policy of judicial economy dictates against piecemeal appeals. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

Appellate Review – Decisions Reviewable – Interlocutory

Absent one of the limited exceptions to the final order or judgment rule found in Appellate Rule 4(a)(1)(B) through (E) applying, the appellate division does not have subject-matter jurisdiction over an interlocutory appeal. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

Appellate Review – Decisions Reviewable – Interlocutory

The FSM appellate division may hear appeals in civil cases from all final decisions of the FSM Supreme Court trial division and from interlocutory orders involving injunctions, receivers and receiverships, decrees determining parties' rights and liabilities in admiralty cases and any other civil case in which an appeal is permitted by law. Permission may also be sought for an interlocutory appeal pursuant to Rule 5(a). Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

Appellate Review – Decisions Reviewable – Interlocutory

FSM Appellate Rule 5(a), which provides another vehicle for overcoming the jurisdictional impediment regarding an interlocutory appeal, is unavailable when the required certification from the trial court, setting forth why an interlocutory appeal should be allowed, is not present. Certification under Appellate Rule 5(a) requires the trial court's prescribed statement why an interlocutory appeal should be permitted. The determination to certify an order under Rule 5(a) lies within the trial court's discretion. Even then, a second exercise of discretion by the appellate division is required before the appeal may proceed. It is only in exceptional circumstances that the trial court should certify an interlocutory appeal. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

Appellate Review – Decisions Reviewable – Interlocutory

For the appellate division to have jurisdiction over an appeal under Rule 5(a), the trial court must certify the question and the appellate court must thereafter grant permission to go forward. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

Appellate Review – Decisions Reviewable – Final Decision Defined

The well-established general rule is that only final decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

Appellate Review – Decisions Reviewable

Generally, an appeal from a trial judge's ruling is to be taken only after completion of all trial proceedings. Salomon v. Mendiola, 20 FSM R. 357, 360 (App. 2016).

Appellate Review – Decisions Reviewable – Interlocutory

Appeals are not permitted when the appeal is over issues involving steps moving toward a final order into which the interlocutory orders will merge. The purpose of limiting appeals to those from final decisions, is to combine in one appellate review all stages of the proceeding if and when a final judgment or order results. This advances the policy of judicial economy, which dictates against piecemeal appeals from the same civil action. Salomon v. Mendiola, 20 FSM R. 357, 361 (App. 2016).

Appellate Review – Decisions Reviewable – Interlocutory

An appeal from a trial court order partially dismissing claims is premature when the interlocutory ruling leaves the remaining claims undisturbed. Only when a final decision is entered in the matter, does it ripen, in terms of an action which can properly be appealed. Salomon v. Mendiola, 20 FSM R. 357, 361 (App. 2016).

Appellate Review – Decisions Reviewable – Collateral Order

The requirements for a collateral order doctrine appeal are that the order appealed from must: 1) conclusively determine the disputed question; 2) resolve an important issue completely separate from the merits of the action; and 3) be effectively unreviewable on appeal from a final judgment. Salomon v. Mendiola, 20 FSM R. 357, 361 (App. 2016).

Appellate Review – Decisions Reviewable

The appeal of a trial court order partially dismissing claims was brought prematurely and was not ripe for review and also is not reviewable under the collateral order doctrine when it did not conclusively determine the rights and liabilities in the underlying multi-claim action, involving multiple parties; when the relevant order speaks directly to the action's merits and found the dismissed claims to be unsupported by the facts pled in the complaint; and when a dismissal at this juncture would not preclude appellants from lodging an appeal once a final decision is entered. Salomon v. Mendiola, 20 FSM R. 357, 361 (App. 2016).

* * * *

COURT'S OPINION

DENNIS K. YAMASE, Chief Justice:

BACKGROUND

On September 4, 2015, Appellants filed a Notice of Appeal, from an August 31, 2015 Order Partially Dismissing Claims, issued by the trial division in Civil Action No. 2014-023 (which had been consolidated with Civil Action No. 2014-021). The subject trial court order dismissed four of the claims lodged against the Appellees, as well as the causes of action brought against two of the named defendants in an individual capacity. As the caption of the August 31st Order Partially Dismissing Claims implies, the remaining claims were left intact and the consolidated civil action is pending.

On September 18, 2015, Appellees filed a Motion to Dismiss Appeal; predicated upon a claim that a final decision was not made and therefore the appellate division lacked subject matter jurisdiction. On November 16, 2015, Appellants' Opposition to [the] Motion to Dismiss Appeal was filed and Appellees' Reply thereto, on November 23, 2015. In addition, Appellees concurrently filed an Opposition to [Appellants' third] Motion to Enlarge. Notwithstanding, the court notes this particular filing by Appellees is rendered moot, given the fact that Appellants' Opposition had been filed one week prior.

I. FINAL DECISION

The threshold determination of subject matter jurisdiction may be raised at any time by a party or the court. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 419 (App. 2009). Under FSM Appellate Rule 4(a), the appellate division can only entertain appeals from final decisions of the trial division. "The general rule is that appellate review of a trial court is limited to final orders and judgments. A policy of judicial economy dictates against piecemeal appeals." Santos v. Bank of Hawaii, 9 FSM R. 285, 287 (App. 1999).

Absent one of the limited exceptions to the final order or judgment rule of the appellate rules, in FSM Appellate Rule 4(a)(1)(B) through (E) applying, the appellate division does not have subject matter jurisdiction over an interlocutory appeal. "The FSM appellate division may hear appeals in civil cases from all final decisions of the FSM Supreme Court trial division and from interlocutory orders involving injunctions, receivers and receiverships, decrees determining parties' rights and liabilities in admiralty cases and any other civil case in which an appeal is permitted by law. Permission may also be sought for an interlocutory appeal pursuant to Rule 5(a)." Chuuk v. Davis, 9 FSM R. 471, 473 (App. 2000). There is no indication, that an interlocutory appeal of the instant trial court order constitutes one of the aforementioned specific exclusionary matters permitted by the appellate rules.

Furthermore, FSM Appellate Rule 5(a), which provides another vehicle for overcoming the jurisdictional impediment regarding an interlocutory appeal, is similarly unavailable, as the required certification from the trial court, setting forth why an interlocutory appeal should be allowed, is not present.

Certification under Appellate Rule 5(a) requires a prescribed statement from the trial court[,] why an interlocutory appeal should be permitted. The determination to certify an order under Rule 5(a) lies within the trial court's discretion. Even then, a second exercise of discretion by the appellate division is required before the appeal may proceed It is only in exceptional circumstances[,] that the trial court should certify an interlocutory appeal. In sum, for the appellate division to have jurisdiction over an appeal under Rule 5(a), the trial court must certify the question and the appellate court must thereafter grant permission to go forward.

Amayo v. MJ Co., 13 FSM R. 259, 263 (Pon. 2005) (citations omitted).

The trial court Order Partially Dismissing Claims, granted a FSM Civil Rule 12(b)(6) motion to dismiss and resulted in only a portion of appellants' claims falling by the wayside; not the case *in toto*. "The well-established general rule is that only final decisions may be appealed. A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Heirs of George v. Heirs of Tosie, 15 FSM R. 560, 562 (App. 2008). Accordingly, appellants' residual claims are not only viable, but moving forward, as the case is currently in a pretrial posture, with respect to these unresolved claims. "Generally, an appeal from a ruling of a trial judge is to be taken only after completion of all trial proceedings." In re Main, 4 FSM R. 255,

257 (App. 1990).

As succinctly stated in FSM Dev. Bank v. Adams, 12 FSM R. 456 (App. 2004),

appeals are not permitted when the appeal is over issues involving steps moving toward a final order[,] into which the interlocutory orders will merge. The purpose of limiting appeals to those from final decisions[,] is to combine in one appellate review all stages of the proceeding[,] if and when a final judgment or order results. This advances the policy of judicial economy[,] which dictates against piecemeal appeals from the same civil action.

Id. at 461. Hence, Appellants' present appeal from the trial court's order Partially Dismissing Claims is premature, as this interlocutory ruling leaves the remaining claims undisturbed and only when a final decision is entered in this matter, does it ripen, in terms of an action which can properly be appealed.

II. COLLATERAL ORDER DOCTRINE

Appellants alternatively contend, that assuming *arguendo* no final decision has been rendered, the collateral order doctrine is applicable and thereby permits the subject appeal. In Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949), the United States Supreme Court recognized the need for immediate appeals under specifically tailored circumstances, when it opined: "in that small class which finally determine claims of right separable from and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Id.* at 546, 69 S. Ct. at 1225-26, 93 L. Ed. at 1536.

This jurisdiction adopted the parameters of the collateral order doctrine, as set forth in Cohen, which were posited in the conjunctive. The requirements for a collateral order doctrine appeal are that the order appealed from "must: (1) conclusively determine the disputed question; (2) resolve an important issue completely separate from the merits of the action; and (3) be effectively unreviewable on appeal from a final judgment." Adams, 12 FSM R. at 461.

Appellants maintain that the trial court order partially dismissing claims runs afoul of *inter alia*, the FSM's predisposition for notice pleading and as such, the dismissed claims effectively deprive complainants of the ability to proceed upon their claims. The trial court order in issue, however, did not conclusively determine the rights and liabilities in the underlying multi-claim action, involving multiple parties, since the case is ongoing.

The instant appeal is brought prematurely and therefore not ripe for review. Williander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005). Furthermore, the relevant order speaks directly to the merits of the action and found the dismissed claims to be unsupported by the facts depicted within the complaint. Finally, the non-reviewability prong, is similarly not met, since a dismissal at this juncture would not preclude appellants from lodging an appeal once a final decision is entered. Heirs of George, 15 FSM R. at 562-63.

III. CONCLUSION

The trial court order partially dismissing claims did not constitute a final decision and therefore this court lacks subject matter jurisdiction. In addition, the collateral order doctrine espoused by appellants, is unavailable, as the order appealed from did not conclusively determine the aggregate rights and liabilities of the parties; dismissed certain claims, finding the factual underpinning failed to

substantiate the merit of same and the gravamen of the appeal at bar is amenable for review in the wake of a final decision.

Accordingly, the court HEREBY GRANTS Appellees' Motion to Dismiss Appeal.

* * * *

FSM SUPREME COURT TRIAL DIVISION

JEANIVE NETH, a minor through BURDENCIO ANDREAS, next of kin,)	CIVIL ACTION NO. 2013-006
)	
Plaintiff,)	
)	
vs.)	
)	
FEDERATED STATES OF MICRONESIA SOCIAL SECURITY ADMINISTRATION,)	
)	
Defendant.)	

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Beauleen Carl-Worswick
Associate Justice

Hearing: July 22, 2015
Decided: May 18, 2016

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* * * *

HEADNOTES

Social Security

Social Security regulations allow wage earners to adopt after their 55th birthday under extremely limited circumstances. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 365 n.1 (Pon. 2016).

Civil Procedure – Summary Judgment – Grounds

Under FSM Civil Rule 56, a motion for summary judgment will be granted if the pleadings,