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Young Sun Int'l Trading Co. v. Anson
20 FSM R. 563 (App. 2016)

FSM SUPREME COURT APPELLATE DIVISION

YOUNG SUN INTERNATIONAL TRADING CO.,)
)
 Petitioner,)
)
 vs.)
)
 ASSOCIATE JUSTICE MAYCELEEN JD ANSON,)
 Trial Division, Supreme Court, Federated)
 States of Micronesia,)
)
 Respondent.)
)

APPEAL CASE NO. P11-2016

ORDER DENYING PETITION

Ready E. Johnny
Associate Justice

Decided: August 8, 2016

APPEARANCE:

For the Petitioner: Joseph S. Phillip, Esq.
P.O. Box 464
Kolonias, Pohnpei FM 96941

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HEADNOTE

Courts – Recusal – Procedure; Mandamus and Prohibition – Procedure; Mandamus and Prohibition – When May Issue

When there are too many procedural deficiencies to overlook because the application for a writ of prohibition's certificate of service shows service only on the respondent judge at her office; because the real parties in interest were not served and were not named as real parties in interest in the application or in the case caption; because the petition does not contain a copy of the respondent judge's order denying her recusal, if there was a written order, or a transcript of the denial on the record if the denial was made orally; and because, although the relevant judicial disqualification statute requires that an application to disqualify a justice be accompanied by an affidavit stating the reasons for the belief that grounds for disqualification exist, no affidavit accompanied the petition although an "affidavit attached hereto" is mentioned in the application, the petition for a writ of prohibition will be denied without prejudice to any future application in which all of the procedural deficiencies have been cured. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 563, 564 (App. 2016).

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COURT'S OPINION

READY E. JOHNNY, Associate Justice:

On August 3, 2016, the Young Sun International Trading Company, filed its four-page Application for a Writ of Prohibition Pursuant to Rule 21(a) Rule[s] of Appellate Procedure. The petitioner seeks a writ of prohibition directed to Associate Justice Mayceleen JD Anson prohibiting her from presiding, as an FSM Supreme Court temporary justice, over FSM Supreme Court Civil Action No. 2016-014 because her father holds the traditional title of Wasahî Sokehs and is thus, in the petitioner's view, a member of the plaintiff in Civil Action No. 2016-014.

Appellate Rule 21 requires that:

Application for a writ . . . of prohibition directed to a judge or justice shall be made by filing a petition therefor with the clerk of the Supreme Court appellate division with proof of service on the respondent judge or justice and on all parties to the action in the trial court.

FSM App. R. 21(a). The application's certificate of service shows service only on the respondent judge at her office at the Pohnpei Supreme Court. The parties in Civil Action No. 2016-014 were not served. Nor were they named as real parties in interest in the application or in the case caption.

Appellate Rule 21 further requires that:

The petition shall contain a statement of the facts necessary to an understanding of the issues presented by the application; a statement of the issues presented and the relief sought; a statement of the reasons why the writ should issue; and copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition.

FSM App. R. 21(a). The present petition does not contain a copy of the respondent judge's order denying her recusal, if there was a written order, or a transcript of the denial on the record if the denial was made orally.

The relevant judicial disqualification statute, 4 F.S.M.C. 124(6), requires that an application to disqualify a justice, "be accompanied by an affidavit stating the reasons for the belief that grounds for disqualification exist." No affidavit accompanies the present petition although an "affidavit attached hereto" is mentioned on page three of the application.

As there are too many procedural deficiencies to overlook, see Halbert v. Manmaw, 20 FSM R. 245, 249 (App. 2015), I, as the remaining fulltime "remaining article XI, section 3 justice(s) of the Supreme Court appellate division," FSM App. R. 21(a), am of the opinion that the that the writ clearly should not be granted. Accordingly, the petition for a writ of prohibition is denied, FSM App. R. 21(b), without prejudice to any future application in which all of the procedural deficiencies have been cured.

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