

motion, an adverse party may not rest upon the mere allegations or denials in her pleading, but her response, by affidavits or as otherwise provided in Rule 56, must set forth specific facts showing that there is a genuine issue for trial. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 579 (Pon. 2002); Bank of the FSM v. Hebel, 10 FSM R. 279, 282 (Pon. 2001). If she does not so respond, summary judgment, if appropriate, will be entered against her. Suldan, 10 FSM R. at 579 (Pon. 2002); Hebel, 10 FSM R. at 282.

Jacob did not so respond. There is thus no genuine issue of material fact about Jacob's treatment in jail. Carlos is therefore entitled, as a matter of law, to summary judgment on Jacob's claims against him for not only her arrest and her confinement in Pohnpei jail but also for the conditions of her confinement there.

III. CONCLUSION

Accordingly, Lucas Carlos's summary judgment motion is granted. This summary judgment is partial in that it applies to only one defendant - Lucas Carlos.

There being no just cause for delay, the clerk is directed to enter judgment in his favor. FSM Civ. R. 54(b). Costs to be borne by the parties.

Since Jacob was without counsel until recently, the court hereby sets the following schedule: 1) all discovery requests shall be made by November 15, 2016; 2) discovery must be completed by December 15, 2016; and 3) all pretrial motions must be filed by January 13, 2017.

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FSM SUPREME COURT TRIAL DIVISION

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|----------------------------------|---|----------------------------|
| FRITZ EDWARD HARTMANN, |) | CIVIL ACTION NO. 2016-1001 |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | |
| |) | |
| DEPARTMENT OF JUSTICE, FEDERATED |) | |
| STATES OF MICRONESIA, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

Dennis K. Yamase
Chief Justice

Hearing: July 5, 2016
Decided: September 19, 2016

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Hartmann v. Department of Justice
20 FSM R. 619 (Chk. 2016)

APPEARANCES:

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HEADNOTES

Citizenship

A person's parentage will make him an FSM citizen because a person born of parents one or both of whom are FSM citizens is an FSM citizen and national by birth. Hartmann v. Department of Justice, 20 FSM R. 619, 621 (Chk. 2016).

Citizenship

An FSM passport usually has a five-year duration. Hartmann v. Department of Justice, 20 FSM R. 619, 623 (Chk. 2016).

Citizenship

A nineteen-year-old with one FSM citizen parent, despite any claim he may have had to another country's citizenship and passport, would unquestionably be an FSM citizen entitled to an FSM passport, even if he also held a another country's passport since he would not lose his FSM citizenship and become an FSM national instead until he turns twenty-one. Hartmann v. Department of Justice, 20 FSM R. 619, 623 (Chk. 2016).

Citizenship; Statutes – Presumptions

A statutory rebuttable presumption that an FSM passport-holder that has had his or her passport renewed twice in a row, has renounced the citizenship of another nation and that he or she is solely an FSM citizen, has been overcome when a person has conceded that he has not formally renounced any claim he may have to U.S. citizenship and does not wish to do so now. Hartmann v. Department of Justice, 20 FSM R. 619, 623 (Chk. 2016).

Citizenship

A naturalization applicant, who is an FSM national, must submit a declaration on "Form I" showing the applicant's intent to become an FSM citizen and attach various documents, including proof of renunciation of foreign citizenship. The Division of Immigration then reviews and investigates all the documents' authenticity and conducts a criminal background check of the applicant. After that, the applicant undergoes the indigenous language examination. All the supporting documents are then forwarded to the President's office, which sends a letter to the applicant inviting the applicant to a naturalization ceremony, where the applicant will take the oath of citizenship ("Form II"). The last step includes the filing with the Department of Justice the Federated States of Micronesia Certification of Naturalization ("Form III"). Once all these steps are successfully completed, the FSM national applicant becomes an FSM citizen. Hartmann v. Department of Justice, 20 FSM R. 619, 624 (Chk. 2016).

Citizenship

An FSM national applicant for naturalization must first renounce, and prove that he or she has renounced, his or her other citizenship, but apparently can still be denied FSM citizenship (if the applicant has been convicted of a felony or does not pass the indigenous language test). Hartmann v. Department of Justice, 20 FSM R. 619, 624 (Chk. 2016).

Civil Procedure – Dismissal – Before Responsive Pleading; Civil Procedure – Summary Judgment

When a party in support of or in opposition to a Rule 12 motion to dismiss submits matters outside the pleadings and the court does not exclude those matters, the motion will be treated as one for summary judgment and will be disposed of as provided in Rule 56, once all parties have been given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. Hartmann v. Department of Justice, 20 FSM R. 619, 624 (Chk. 2016).

* * * *

COURT'S OPINION

DENNIS K. YAMASE, Chief Justice:

On July 5, 2016, this came before the court on the respondent's Motion to Dismiss, filed February 29, 2016, and the petitioner's Opposition to Motion to Dismiss, filed March 21, 2016. After hearing the parties' presentations, the court requested further briefing on the effect of FSM Public Law No. 19-91, enacted in June 2016, and also ordered the Federated States of Micronesia to include with its briefing the statute or authority that provides for the naturalization of FSM nationals.

On July 19, Fritz Edward Hartmann filed his brief on Public Law No. 19-91, and on July 29, 2016, the defendant filed its Brief for Federated States of Micronesia on Naturalization. The court then considered the matter submitted for its decision.

I. BACKGROUND

Fritz Edward Hartmann was born on January 2, 1983, on Guam, a United States territory, to an FSM citizen Chuukese father and a U.S. citizen mother. His parentage made him an FSM citizen because "[a] person born of parents one or both of whom are citizens of the Federated States of Micronesia is a citizen and national of the Federated States by birth." FSM Const. art. III, § 2; *see also* 7 F.S.M.C. 202(2)(b). Based on this citizenship, he obtained an FSM passport, which he renewed more than once. Hartmann has never sought or held a U.S. passport. His last FSM passport (No. M105657) was issued October 30, 2007. It expired October 29, 2012.

On January 12, 2016, Hartmann filed an application to renew his FSM passport. By letter dated January 21, 2016, the FSM Department of Justice rejected his application because he had been born on Guam and had one U.S. citizen parent, he was required by law, within three years of his eighteenth birthday, to register with the President or his designee his intent to remain an FSM citizen. The FSM Immigration and Labor Officer in Charge informed Hartmann that since he had not done so and he was 32 years old, he was no longer an FSM citizen but was instead an FSM national and by law, 50 F.S.M.C. 202,¹ only FSM citizens, but not FSM nationals, were issued FSM passports. He further informed Hartmann that if Hartmann wished to become an FSM citizen, he would have to undergo the

¹ "No passport shall be granted to any person other than a citizen of the Federated States of Micronesia." 50 F.S.M.C. 202.

naturalization procedure for FSM nationals.

In a reply letter, Hartmann, through counsel, questioned on what basis FSM Labor and Immigration determined that he was another country's citizen, asserted that he was a citizen of the FSM (because of his father) and of nowhere else, that he had never had a U.S. passport, and that if they did not renew his FSM passport, he would have to take the matter to court. His passport was not renewed. This suit followed.

II. PARTIES' POSITIONS

On February 11, 2016, Hartmann filed a verified Complaint for Declaratory Relief. Hartmann seeks a declaration that he is an FSM citizen; an order requiring the Department of Justice to issue him a passport forthwith; and his attorney's fees.

On February 29, 2016, the Department filed its motion to dismiss. It contends that Hartmann's request that the court declare him an FSM citizen should be denied because Hartmann is not an FSM citizen and is therefore not entitled to an FSM passport. For the contention that Hartmann is not a citizen, the Department relies on FSM Constitution Article III, section 3, which reads:

A citizen of the Federated States of Micronesia who is recognized as a citizen of another nation shall, within 3 years of his 18th birthday, . . . register his intent to remain a citizen of the Federated States and renounce his citizenship of another nation. If he fails to comply with this Section, he becomes a national of the Federated States of Micronesia.

The Department contends that since Hartmann was obviously a dual, FSM² and U.S.,³ citizen before he turned twenty-one and since there is no evidence that Hartmann ever renounced his U.S. citizenship, Hartmann lost his FSM citizenship when he turned twenty-one and is thus now an FSM national not entitled to an FSM passport.

Although Hartmann avers that he has never claimed any citizenship other than that of the FSM, he concedes that he has never formally renounced any claim to U.S. citizenship. During the July 5, 2016 hearing, Hartmann's counsel mentioned the upcoming March 2017 national referendum on whether to amend the Constitution to permit FSM persons to hold dual citizenship. He stated that Hartmann did not wish to pursue naturalization and renounce any claim to U.S. citizenship only to have the Constitution amended shortly thereafter to permit dual citizenship, which he would have given up any right to claim.

III. PUBLIC LAW No. 19-91

FSM Public Law No. 19-91 added the [new] last sentence to the current version of 7 F.S.M.C. 203 so that it now reads:

A citizen of the Federated States of Micronesia who is recognized as a citizen of another nation shall, within three years of his eighteenth birthday, or within three years

² "A person born of parents one or both of whom are citizens of the Federated States of Micronesia is a citizen and national of the Federated States by birth." FSM Const. art. III, § 2.

³ "All persons born in the island of Guam . . . are . . . citizens of the United States . . ." 8 U.S.C. § 1407(b).

Hartmann v. Department of Justice
20 FSM R. 619 (Chk. 2016)

of the effective date of the Constitution, whichever is later, register his intent to remain a citizen of the Federated States of Micronesia with the President or his designee in a manner and form prescribed by law or regulation and renounce his citizenship of another nation. If he fails to comply with this section, he becomes a national of the Federated States of Micronesia. A citizen who holds an FSM passport that has been renewed twice in a row is entitled to a rebuttable presumption that he has renounced the citizenship of another nation and that he is solely an FSM citizen.

Hartmann asserts that Public Law No. 19-91's amendment to 7 F.S.M.C. 203 appears tailor-made for him. He avers that he has renewed his FSM passport twice in a row since he turned eighteen.

The court notes that an FSM passport usually has a five-year duration. 50 F.S.M.C. 205(1).⁴ Thus, Hartmann's previous (to the 2007) passport would have been renewed some time in 2002 (or earlier). In 2002, Hartmann was only nineteen years old. At that time, despite any claim he may have had to another country's citizenship and passport, Hartmann would have unquestionably been an FSM citizen entitled to an FSM passport, even if he also held a U.S. passport (although there is no indication that he did.) He would not have lost his FSM citizenship and become an FSM national instead until January 2, 2004.

It is thus debatable whether the new 7 F.S.M.C. 203 could apply to Hartmann because he has renewed his FSM passport only once since he turned twenty-one – that is, since his citizenship could be questioned so that he would be in need of a presumption, rebuttable or otherwise, to show his entitlement to FSM citizenship.

However, since Hartmann has conceded, through his counsel's admission, that he has not formally renounced any claim he may have to U.S. citizenship and does not wish to do so now, it would seem that any presumption that might have been created by 7 F.S.M.C. 203 as amended, has been rebutted.

IV. NATURALIZATION

The Department contends that Hartmann's avenue of relief is to go through the naturalization process. Pursuant to statute:

A person may be naturalized as a citizen of the Federated States of Micronesia in a manner or form prescribed by law or regulation if the person:

(a) shall have lawfully resided within the Federated States of Micronesia, whether prior or subsequent to the effective date of the Constitution, for at least five years immediately preceding the date of filing his petition for naturalization;

(b) is a child or spouse of a citizen or is a national of the Federated States of Micronesia;

(c) upon naturalization, shall have renounced previous citizenship and allegiance

⁴ Section 205 of Title 50 originally read in its entirety: "A passport shall be valid for a period of five years from the date of issuance or renewal." In 1999, Public Law 10-140 made the duration period ten years. In 2004, Public Law No. 14-85 returned the passport duration to five years, allowing passports issued before its effective date to remain valid for ten years.

to any and all foreign powers and rulers, and taken an oath of allegiance in a manner and form prescribed by law or regulation;

(d) has competence in at least one of the indigenous languages of the Federated States of Micronesia evidenced by passing a language examination prepared and administered by the President or his designee; and

(e) has not been convicted of a felony as defined by the laws of the place where conviction took place.

7 F.S.M.C. 204(1). The Department states that, although no regulations have been promulgated, the process is that the naturalization applicant is to submit a declaration on "Form I" showing the FSM national's intent to become an FSM citizen and attach various documents, including proof of renunciation of foreign citizenship. The Division of Immigration then reviews and investigates all the documents' authenticity and conducts a criminal background check of the applicant. After that, the applicant undergoes the indigenous language examination. All the supporting documents are then forwarded to the President's office, which sends a letter to the applicant inviting the applicant to a naturalization ceremony, where the applicant will take the oath of citizenship ("Form II"). The last step includes the filing with the Department of Justice the Federated States of Micronesia Certification of Naturalization ("Form III"). Once all these steps are successfully completed, the FSM national applicant becomes an FSM citizen.

The court can see the danger here. The naturalization applicant must first renounce, and prove that he or she has renounced, his or her other citizenship, but apparently can still be denied FSM citizenship (if the applicant has been convicted of a felony or does not pass the indigenous language test). Under the present circumstances, that would leave the applicant as an FSM national with no right to an FSM passport or to a passport from any other country either, effectively denying the FSM national of any ability to travel.

That raises the question whether it might be unconstitutional to deny an FSM passport to an FSM national. Naturally, if any passports were issued to FSM nationals, those passports would need to be clearly marked as such so that the passport holder could not use that passport to exercise rights reserved only to FSM citizens.

V. SUMMARY JUDGMENT

When a party in support of or in opposition to a Rule 12 motion to dismiss submits matters outside the pleadings and the court does not exclude those matters, the motion will be treated as one for summary judgment and will be disposed of as provided in Rule 56, once all parties have been given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. Palasko v. Pohnpei, 20 FSM R. 90, 93 (Pon. 2015); Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009); Rudolph v. Louis Family, Inc., 13 FSM R. 118, 125 (Chk. 2005).

Since the court has not excluded the matters that were presented outside the pleadings, the court therefore treats the motion as one for summary judgment. The court concludes that Hartmann is not entitled to a declaration that he is an FSM citizen and thus to the renewal of his FSM passport on the ground he claims – that he is an FSM citizen. Fritz Edward Hartmann is an FSM national, not a citizen. The Department, however is not entitled to summary judgment because the parties have not had a reasonable opportunity to present all material made pertinent to the issue of whether an FSM national has a right to an FSM passport.

VI. CONCLUSION

Accordingly, the FSM Department of Justice is granted summary judgment on its motion that the court cannot grant Hartmann a declaratory judgment that he is an FSM citizen. The FSM Department of Justice is not granted summary judgment that Fritz Edward Hartmann cannot have his passport renewed. The parties will therefore have until October 31, 2016, to complete discovery and until November 22, 2016, to file and serve dispositive motions.

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FSM SUPREME COURT TRIAL DIVISION

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|---------------------------------|---|----------------------------|
| ATHANASIOS THALMAN, |) | CIVIL ACTION NO. 2015-3002 |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| FEDERATED STATES OF MICRONESIA |) | |
| SOCIAL SECURITY ADMINISTRATION, |) | |
| |) | |
| Defendant. |) | |

ORDER GRANTING SUMMARY JUDGMENT

Dennis K. Yamase
Chief Justice

Hearing: September 19, 2016
Decided: September 28, 2016

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HEADNOTES

Civil Procedure – Motions – Unopposed; Civil Procedure – Summary Judgment – Procedure

When an opposing party has not filed a response to a summary judgment motion, that party is deemed to have consented to the motion's grant, and the court may decline to hear oral argument from