

**IN THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA
APPELLATE DIVISION**

PATRICIO RODRIGUEZ,)	APPEAL CASE NO. P2-2001
)	
Appellant,)	
)	
v.)	
)	
BANK OF THE FEDERATED)	
STATES OF MICRONESIA,)	
)	
Appellee.)	
_____)	

OPINION

Argued: October 25, 2002
Decided: February 18, 2003

BEFORE:

Hon. Martin G. Yinug, Associate Justice, FSM Supreme Court
Hon. Dennis K. Yamase, Associate Justice, FSM Supreme Court
Hon. Keske S. Marar, Temporary Justice, FSM Supreme Court*

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

APPEARANCES:

For the Appellant:	Scott Garvey, Esq. Micronesian Legal Services Corporation P.O. Box 129 Kolonias, Pohnpei FM 96941
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For the Appellee:	Stephen V. Finnen, Esq. Saimon & Associates P.O. Box 1450 Kolonias, Pohnpei FM 96941
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COURT'S OPINION

DENNIS K. YAMASE, Associate Justice:

This is an appeal from an FSM Supreme Court trial division post-judgment finding of contempt of court for failure to comply with an order in aid of judgment. The appellant, Patricio Rodriguez (“Rodriguez”), contends that the trial court: (1) violated Article IV, Section 13 of the Constitution of the Federated States of Micronesia when it sentenced him to serve 60 days in jail pursuant to 6 F.S.M.C. 1412; (2) violated Article IV, Section 10 of the FSM Constitution when it ordered him to seek immediate employment and report to his judgment creditor under threat of contempt; (3) violated 53 F.S.M.C. 604 when it ordered him to pay \$65.00 per month to the Bank of the Federated States of Micronesia (“Bank”) after he presented evidence that his only source of income was Social Security retirement benefits; and (4) erred by holding that he was in civil contempt based on its conclusion that he had the ability to comply with the court’s April 25, 2000 order and that he had failed to demonstrate that he could not comply with the order.

We uphold in part, and vacate and remand in part the order of the trial court. We hold that the trial court did not err in finding Rodriguez in contempt based on its conclusion that he had the ability to comply with the April 25, 2000 order and that he had failed to demonstrate that he could not comply with the order. We also hold that the trial court did not violate 53 F.S.M.C. 604 in ordering Rodriguez to pay \$65.00 per month to the Bank after he had presented evidence that his only source of income was Social Security retirement benefits. We further hold that the trial court’s contempt order did not violate Rodriguez’s constitutional right against imprisonment for debt. Finally, we hold that the trial court’s order that Rodriguez seek immediate employment is not in violation of the constitutional prohibition on involuntary servitude, but that where Rodriguez has

submitted evidence that he is unable to work, the trial court must make a finding on Rodriguez's fitness to work before ordering him to seek immediate employment.

Accordingly, we vacate those parts of the trial court's contempt order requiring Rodriguez to seek immediate employment and remand for the limited purpose of allowing the trial court the opportunity to make a finding on the fitness to work issue. We uphold the remainder of the order.

I. BACKGROUND

The defendant below, Patricio Rodriguez, borrowed \$7,761.02 from the Bank of the FSM as a consumer loan at an interest rate of 15% per annum. On February 20, 1996, Rodriguez executed a promissory note agreeing to make monthly payments of \$377.01 over a period of 23 months and then a final payment of \$376.96 for payment on the loan.

On February 17, 1997, the Bank filed a complaint against Rodriguez seeking \$5,749.51, plus interest at the rate of 15% per annum and post-judgment interest of 9% per annum for the nonpayment of the promissory note. On April 7, 1997, the parties stipulated to a judgment in favor of the Bank in the amount of \$5,749.51, plus interest at the rate of 15% per annum from October 25, 1996 to the entry of the judgment, plus post-judgment interest of 9% per annum.

On March 7, 2000, the Bank filed a motion for order in aid of judgment. After a hearing on April 19, 2000, the trial court entered an order in aid of judgment in favor of the Bank on April 25, 2000, which provided that Rodriguez would make monthly payments of \$65.00 until the amount of the parties' stipulated judgment was paid in full. On August 18, 2000, after having received only one payment of \$65.00 from Rodriguez, the Bank filed a motion for order to show cause against Rodriguez based on his alleged failure to comply with the trial court's April 25, 2000 order.

On February 22, 2001, the trial court held a show cause hearing in which Rodriguez appeared

and testified. On May 21, 2001, the trial court found Rodriguez in contempt of the April 25, 2000 order pursuant to 6 F.S.M.C. 1412. The court ordered Rodriguez: (1) committed to Pohnpei State jail for 60 days, but it suspended the entire sentence upon the condition that Rodriguez pay the Bank \$65.00 per month commencing June 1, 2001, and continue such payments until he satisfies the balance; (2) if unemployed, to seek employment immediately and to report to the Bank once he obtains such employment; and (3) to pay the Bank \$127.50 for attorneys' fees. The trial court warned Rodriguez that his failure to comply with the order would permit the Bank to seek reinstatement of the jail sentence.

Rodriguez responded to the trial court's May 21, 2001 order by noticing this appeal on June 27, 2001, and requesting an automatic stay of his jail sentence pending appeal. On July 16, 2001, the trial court issued a stay of Rodriguez's jail term pending this appeal.

II. ISSUES

The issues presented are as follows:

1. Did the trial court err when it ruled that Rodriguez was in civil contempt based on its finding that he had the ability to comply with the April 25, 2000 order in aid of judgment and that he failed to demonstrate that he could not comply with the order?

2. Did the trial court's May 21, 2001 order compelling Rodriguez to pay \$65.00 per month to the Bank, after Rodriguez presented evidence that his only source of income was Social Security retirement benefits, violate the susceptibility of benefits provision of 53 F.S.M.C. 604?

3. Did the trial court's May 21, 2001 order sentencing Rodriguez to 60 days in jail pursuant to 6 F.S.M.C. 1412 violate the prohibition against imprisonment for debt found in Article IV, Section 13 of the FSM Constitution?

4. Did the trial court's May 21, 2001 order compelling Rodriguez to seek immediate employment and report to the Bank once he obtained such employment under threat of contempt violate the prohibition against involuntary servitude found in Article IV, Section 10 of the FSM Constitution?

III. DISCUSSION

1. Rodriguez's Ability to Comply with April 25, 2000 Order

Rodriguez contends that the trial court erred when it held him in civil contempt based on its findings that he had the ability to comply with the April 25, 2000 order in aid of judgment and that he had failed to demonstrate that he could not comply with the order.

A. Standard of Review and Applicable Law

Before a trial court can hold a defendant in civil contempt of court for violating an order in aid of judgment on a debt, it must find that the alleged contemnor both knew of the court order and had the ability to comply with that order. Hadley v. Bank of Hawaii, 7 FSM Intrm. 449, 452-53 (App. 1996).

This court has traditionally placed the burden on the movant to show that the debtor has the ability to comply. This has been deemed reasonable in light of the fact that in the FSM debtors usually appear *pro se* and creditors do not. Once this burden has been met, it is then the debtor's burden to show that he no longer has the ability to comply through no fault of his own despite his exercise of due diligence. Id. at 449, 452-53 (App. 1996).

The statutory remedy for violations of an order in aid of judgment, 6 F.S.M.C. 1412, provides:

If any debtor fails without good cause to comply with any order in aid of judgment

made under this chapter, he *may be adjudged in contempt* as a civil matter, after notice to show cause why he should not be so adjudged and an opportunity to be heard thereon, and upon such adjudication shall be committed to jail until he complies with the order or is released by the Court or serves a period fixed by the Court of not more than six months in jail, whichever happens first. (Emphasis added.)¹

The inability of a judgment debtor to comply with an order in aid of judgment without fault on his part after his exercise of due diligence constitutes “good cause” within the meaning of 6 F.S.M.C. 1412. Hadley, 7 FSM Intrm. at 452-53.

A finding that a judgment debtor is in civil contempt under 6 F.S.M.C. 1412 will be set aside on appeal only if it is clearly erroneous. Id. at 452. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. The reviewing court will set aside a finding of fact only where there is no credible evidence in the record to support that finding, in part because the trial court had the opportunity to view the witnesses and the manner of their testimony. If, upon viewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court’s finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Id. at 452.

B. Knowledge of the Order

In its May 21, 2001 order, which held Rodriguez in contempt, the trial court found that Rodriguez knew he was obligated to make monthly payments of \$65.00 to the Bank. That finding was based upon the fact that he was in court when the order in aid of judgment was issued. Also when specifically asked by his counsel, “You understand that you do have a judgment against you

¹ The source for this section is TT Code 1966 § 292; TT Code 1970, 8 TTC 58; TT Code 1980, 8 TTC 58.

from the Bank in this case, is that right?” Rodriguez replied, “Yes”. Transcript at 15 (February 22, 2001). The trial court’s finding that Rodriguez knew of the court order is not disputed by Rodriguez.

C. Present Ability to Comply with Order

The trial court also found that Rodriguez still had the ability to comply with the April 25, 2000 order in aid of judgment, which stated:

“Based upon the testimony presented, the Court finds that Patricio *Rodriguez has the ability to pay \$65.00 per month* directly to the Bank of the Federated States of Micronesia, Pohnpei branch, commencing May 1, 2000, to *fulfill his obligations to pay off this judgment in the fastest manner possible, while still retaining sufficient funds for his needs and those of his dependents.*” Order at 1 (Apr. 25, 2000) (Emphasis added.).

Under the Hadley test, the Bank had the burden of proving that Rodriguez had the present ability to comply. The trial court concluded that this burden had been met, as it specifically stated that “defendant knew of and had the ability to comply with the April 25, 2001 Order” Order at 4 (May 21, 2001). The trial court also noted that at the April 19, 2000 hearing, Rodriguez was specifically found to have the ability to pay \$65.00 per month to the Bank.

The record indicates that Rodriguez was receiving around \$424.00² per month in Social Security retirement benefits and that there had been no significant change in his general circumstances since the April 19, 2000 hearing.³ The record shows that Rodriguez was specifically questioned on matters relating to his income and expenses at the order to show cause hearing held on February 22, 2001. This questioning indicated that there had been no reduction in his Social Security retirement

² It is not clear whether Mr. Rodriguez receives \$424.00 or \$427.00 monthly, as it is stated differently in the record. Transcript at 7, 14 (Feb. 22, 2001).

³ Numerous questions were framed in such a way as to compare the current circumstances of Rodriguez to his circumstances at the April 19, 2000 hearing. Testimony from the April 19, 2000 hearing was not made a part of the record on appeal.

benefits⁴, that he was suffering from the same illness he had during the April 19, 2000 hearing⁵, and that there had been no change in the amount of children he was supporting.⁶

Rodriguez was also questioned regarding his basic living expenses with regard to food, power, water, and telephone. There was no testimony from Rodriguez of any specific increases in these expenses and he was unable to supply specific figures for such things as the average monthly expenses for supporting his children,⁷ the average monthly food costs for his family,⁸ or his monthly payments for power,⁹ even though he was specifically asked about these expenses.

There was testimony from Rodriguez that he owed money for power and that his telephone had been disconnected, but again he supplied no specific dollar amounts that he owed for power, nor

⁴ Rodriguez was asked by the court, “In answer to a question by the plaintiff, you said that there was a change in the amount of the social security benefit, what did you mean?” Rodriguez replied, “Maybe my hearing it was not correct, I would like to explain that there is no decrease.” Transcript at 18-19 (Feb. 22, 2001).

⁵ Rodriguez was asked by the court, “During the hearing in April, you told the Court you had illness, is that the same illness that you described today?” He replied, “Yes.” *Id.* at 19 (Feb. 22, 2001).

⁶ Rodriguez was asked by the court, “Also in April, during the hearing, you told the Court you had eight children under your care. Has there been any increase or reduction in the number of children or does it stay the same as eight, since April?” He replied, “Still the same because the daughter whom I adopted the children from has already been married and have other kids that are staying with their mother on their own.” Transcript at 19 (Feb. 22, 2001).

⁷ Rodriguez was asked by the counsel for the Bank how much it costs to support his children, “Mr. Rodriguez, what is a typical expense for a month that you pay – for a month, what do you normally pay in a month?” Rodriguez replied, “Mostly for what is good for the living expenses and myself and what we live off.” *Id.* at 8.

⁸ Rodriguez was asked by the counsel for the Bank, “How much is average food cost that you pay to your family every month, rough estimate?” Rodriguez replied, “I’d like to beg your pardon on this matter because I – this is not something that I do. It’s my wife who takes care of that.” *Id.* at 9.

⁹ Rodriguez was asked by the counsel for the Bank, “How much, sir, do you pay a month on power?” He replied, “I’d like to apologize because I do not know exactly how much I pay a month, but I am – it’s also shown in PUC that I am one of those debtors at PUC.” *Id.* at 9.

details on the circumstances of his telephone being disconnected.

Rodriguez was also asked whether he had any other expenses, aside from power, water, telephone, and food. He mentioned the expenses of taking care of his children, again without specific figures.¹⁰ He did not mention any other additional expenses, other than the basic expenses that had already been discussed.

Rodriguez also testified regarding his illness. There was testimony that he has a heart ailment that required the installation of a pace maker. Rodriguez testified that he is on medication, but that the costs of the medication do not come from his household income.¹¹ There was testimony that he had not paid for the medical fees and costs of his prior treatment, but that those may have been paid by the Pohnpei State government.¹² There was also testimony that Rodriguez was scheduled to receive medical treatment in the Philippines and that his plane ticket would be covered through the sale of some items belonging to him, specifically mentioned was a boat.

Based on the line of questioning and the record, the trial court concluded that Rodriguez had

¹⁰ Rodriguez was asked by the counsel for the Bank, “Mr. Rodriguez, from my notes and just some of your testimony, you stated that you have power expenses that you sometimes pay; you have telephone expense that you don’t pay; water that you pay; and food; are there any other expenses besides the four that you stated?” He replied, “I would like to state that all of those that has to do with taking care of the kids, for instance, clothing and others that are for the kids are taken care – or my wife would understand and I believe that these are also some of the things that are included in the expenses.” Transcript at 9-10 (Feb. 22, 2001).

¹¹ Rodriguez was asked by his counsel, “Are any of the costs of the medication come from your household income?” He replied, “No”. *Id.* at 14.

¹² Rodriguez was asked by the counsel for the Bank, “Mr. Rodriguez, who pays for your medical bill in the Philippines to install the pace maker?” He replied, “I could not really say because I know I asked the – my representative at the Legislature and also with the Governor for some assistance and I was told that they were going to look and get money to pay for it. But I paid my way there.” Counsel for the Bank continued, “So in other words, Mr. Rodriguez, are you saying that you are not paying for your medical fees and costs – excuse me, fees for the Philippine referral?” He replied, “Truthfully, I myself, I did not pay. Maybe it could be shown at the State whether they’re paying for this.” *Id.* at 12.

the ability to comply with the April 25, 2000 order in aid of judgment. We cannot conclude here that there was no credible evidence in the record to support the trial court's finding and that it was clearly erroneous. The record indicates that Rodriguez's general situation had not changed from the April 19, 2000 hearing and there was no testimony by Rodriguez indicating any increases in his basic living expenses or of any new expenses which would support a finding that he could no longer meet the \$65.00 monthly payments required by the April 25, 2000 order. Due to this, we are not left with the definite and firm conviction that a mistake has been made by the trial court on this finding.

D. Noncompliance with Order Despite Reasonable Efforts to Comply

The trial court further found that Rodriguez had the ability to comply with the April 25, 2000 order, but wilfully failed to do so. The trial court stated: "The Court is of the opinion that defendant has not established that his inability to comply with the April 25, 2000 Order was due entirely to his inability to render obedience. Defendant has failed to demonstrate that he has made in good faith 'all reasonable efforts to comply' with that order." Order at 4 (May 21, 2001).

We examine the record for evidence that demonstrates that Rodriguez made all reasonable efforts to comply with the April 25, 2000 order. Under the Hadley test, the burden to show this fell upon Rodriguez. The record shows that Rodriguez had made only one monthly payment of \$65.00 and this payment was made by other family members while he was on medical referral in the Philippines. There is nothing else in the record showing any effort by Rodriguez to meet and make the monthly payments as ordered by the trial court.

As noted above, Rodriguez did not provide any specific figures indicating how much he paid per month for food, power, and expenses for his dependent children even though he was specifically asked about this. He could not say how much he was in debt for power, nor did he provide specifics

surrounding the disconnection of his telephone. Additionally, he gave no testimony regarding increases in his basic expenses, nor did he bring up any additional expenses which might have explained why he could not meet the monthly payments to the Bank.

In sum, Rodriguez demonstrated a consistent lack of knowledge regarding his family's basic living expenses, and we find nothing in the record showing that any effort was made by Rodriguez to make the payments under the April 25, 2000 order. We therefore conclude that the trial court's finding that Rodriguez had failed to meet his burden of demonstrating that he had in good faith made all reasonable efforts to make the required \$65.00 per month payments was supported by the record and was not clearly erroneous.

For the aforementioned reasons, we uphold the trial court's findings that Rodriguez had the ability to comply with the April 25, 2000 order and that he had failed to demonstrate that he could not comply with the order.

2. *Susceptibility of Social Security benefits under 53 F.S.M.C. 604*

Rodriguez contends that his rights under 53 F.S.M.C. 604 were violated when the trial court ordered him to pay \$65.00 per month to the Bank after he presented evidence that his only source of income was Social Security retirement benefits.

A. *Standard of Review and Applicable Law*

This is an issue on the application of a statutory provision, and thus, an issue of law that we review *de novo* on appeal. Nanpei v. Kihara, 7 FSM Intrm. 319, 323-24 (App. 1995).

The provision at issue, F.S.M.C., Title 53, Section 604 states:

“The *benefits*, the employees and employer contributions, and the securities in the several funds from all taxes presently or hereinafter levied *shall not be subject to execution, attachment, or garnishment and shall be nonassignable* except as specifically provided in this

subtitle.” (Emphasis added.)¹³

B. Statutory Interpretation

The statutory provision set forth above is very specific and provides that Social Security benefits shall not be subject to execution, attachment, or garnishment and shall not be assignable except as provided in the FSM Social Security Act.

Both execution¹⁴ and attachment¹⁵ are legal processes carried out by writ. Likewise,

¹³ The source of this section is PL 2-74, § 104.

¹⁴ 6 F.S.M.C. 1407 states:

“Every court, at the request of the party recovering any civil judgment in that court for the payment of money, shall issue a writ of execution against the personal property of that party against whom the judgment has been rendered, except as provided in section 1415 of this chapter.”

¹⁵ 6 F.S.M.C. 1405 states:

(1) Writs of attachment may be issued only by the Trial Division of the High Court for special cause shown, supported by statement under oath. Such writs when so issued shall authorize and require the chief of police, any policeman, or other person named therein, to attach and safely keep so much of the personal property of the person against whom the writ is issued as will be sufficient to satisfy the demand set forth in the action, including interest and costs. The chief of police, policeman, or other person named in the writ shall not attach any personal property which is exempt from attachment, nor any kinds or types of personal property which the Court may specify in the writ.

(2) Debts payable to the defendant may be similarly attached by special order issued by the Trial Division of the High Court, which shall exempt from the attachment so much of any salary or wages as the Court deems necessary for the support of the person against whom the order is issued or his dependents.

garnishment is carried out by writ issued pursuant to 4 F.S.M.C. 117¹⁶, 6 F.S.M.C. 1404¹⁷, and 6 F.S.M.C. 1405 (See Footnote 15). Bank of Guam v. Elwise, 4 FSM Intrm. 150 (Pon. 1989).

The plain meaning of a statutory provision must be given effect whenever possible. Setik v. FSM, 5 FSM Intrm. 407, 410 (App. 1992). Courts should not broaden statutes beyond the meaning of the law as written. Joy Enterprises, Inc. v. Pohnpei Utilities Corp., 8 FSM Intrm. 306, 310 (Pon. 1998).

In this case, none of the three methods specifically listed in 53 F.S.M.C. 604 for enforcing a judgment has been applied to Rodriguez's Social Security retirement benefits, nor has an assignment been made of such benefits.

Rodriguez's Social Security retirement benefits are received by him and have not been subjected to any sort of direct levy, allotment or garnishment, nor is there any execution, attachment, or assignment of these benefits. These Social Security retirement benefits may be commingled with any other income Rodriguez may have available to him, and from these funds he may meet his living expenses and any of his other obligations. The trial court's April 25, 2000 order in aid of judgment

¹⁶ 4 F.S.M.C. 117 states:

The Supreme Court and each division thereof shall have power to issue all writs and other process, make rules and orders, and do all acts, not inconsistent with law or with the rules of procedure and evidence established by the Chief Justice, as may be necessary for the administration of justice, and, without limiting the generality of the foregoing, may grant bail, accept and cause forfeit of security therefor, make orders for the attendance of witnesses with or without documents, and make orders for the disposal of exhibits.

¹⁷ 6 F.S.M.C. 1404 states:

Enforcement of judgment may also be effected, if the Trial Division of the High Court deems justice requires and so orders by the appointment of a receiver, or receivers, by taking possession of property and disposing of it in accordance with the orders of the Court, or by a civil action on the judgment, or in any other manner known to American common law or common in courts in the United States.

does not require that payment of the \$65.00 per month come from any particular source of income.

C. Comparison with United States Statute

Rodriguez points to the United States Social Security statute, 42 USCS § 407(b), which states in pertinent part: “no benefits or other rights under these [social security and retirement] programs can be made subject to execution, levy, attachment, garnishment *or other legal processes . . .*” See 42 USCS § 407(b) (Emphasis added.).

The role of the court in this case is to construe the relevant statute as the legislature intended. Legislative intent is determined, first and foremost, by the wording of the statute. The text of the statute is considered the best evidence of legislative intent or will. Thus, we must give effect to the plain meaning of a statutory provision whenever possible. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM Intrm. 129, 131 (App. 1997).

We observe here that 53 F.S.M.C. 604 does not contain the broader language of, “or other legal processes” and therefore cannot be interpreted in a manner which is identical to the United States statute.¹⁸ The FSM provision is more restrictive than the United States provision, as it protects Social Security benefits specifically from execution, attachment, garnishment, and assignment. It does not protect such benefits from legal processes not specifically enumerated.

D. Policy of Social Security Act Advanced

Section 602 of the FSM Social Security Act provides that:

¹⁸ As an example of how the statute has been interpreted in the United States, the Supreme Court of Oklahoma specifically held that a proceeding to force repayment of contractual debt through contempt citation constituted “legal process” within the meaning of the statute exempting social security benefits from certain types of creditor remedies, and as debtor had no source of income other than social security and disability benefits, it was error to order satisfaction of creditor’s judgment by installment payments. First Nat. Bank and Trust Co. v. Arles, 816 P.2d 537 (Okl. 1991).

“The purpose of this subtitle is to effect economy and efficiency in the fields of government and business by providing a means whereby employees may be *ensured a measure of security in their old age and given an opportunity for leisure without hardship and complete loss of income*, and, further, to provide survivors’ insurance for wage earners and their dependents.” (Emphasis added.)

The procedures followed by the trial court and its specific findings in its April 25, 2000 order in aid of judgment indicate that the trial court’s actions were in accordance with the policies set forth in 53 F.S.M.C. 604. The trial court specifically found that Rodriguez could make the payments of \$65.00 per month to the Bank “while still retaining sufficient funds for his needs and those of his dependents.” Order at 1 (April 25, 2000).

We hold that in this case there is no violation of the susceptibility of benefits rule as set forth in 53 F.S.M.C. 604, where there has been no execution, attachment, garnishment, or assignment of Rodriguez’s Social Security retirement benefits and where the trial court specifically found that Rodriguez would have sufficient funds for his and his dependent’s basic support.

3. Prohibition on Imprisonment for Debt Under FSM Const. Article IV, Section 13

A. Ripeness Issue

We first address the issue of ripeness¹⁹ raised by the Bank. The Bank contends that the trial court did not actually impose the jail sentence, but merely stated that it would entertain a motion from the Bank to impose the sentence if Rodriguez did not begin making payments. We find that the trial court imposed a specific sentence and specific conditions that must be met for Rodriguez to avoid imposition of that sentence. We further recognize that the finding of contempt is final and appealable

¹⁹ Rule 4(a) of the FSM Rules of Appellate Procedure states that appeals may be taken in civil cases “from all *final decisions* of the trial divisions of the Federated States of Micronesia Supreme Court.” (Emphasis added.)

pursuant to 4 F.S.M.C. 119(3),²⁰ and that the legality of the specific sanction of imprisonment should be reviewed at the same time in the interest of judicial economy. We therefore hold that this issue is ripe for appellate review.

B. Constitutional Provision; History and Intent

Rodriguez contends that the trial court violated Article IV, Section 13, of the FSM Constitution when it sentenced him to serve 60 days in jail²¹ pursuant to 6 F.S.M.C. 1412.

The constitutionality of imprisonment resulting from a contempt order that sanctions a debtor for violating an order in aid of judgment presents an issue of first impression for this court.

Article IV, Section 13 of the FSM Constitution states: “Imprisonment for debt is prohibited.” In interpreting a constitutional provision, a court must initially analyze the actual words of the constitution. If those words are clear and permit only one possible result, then the court should go no further. Tafunsak v. Kosrae, 7 FSM Intrm. 344, 347 (App. 1995) (interpreting Kosrae State Constitution).

While Article IV, Section 13 is simply stated, the word “debt” is subject to various definitions. Since this provision is not clear and does not permit only one possible result, we should next consult the Journal of the Constitutional Convention to ascertain the intent of the framers in drafting this

²⁰ 4 F.S.M.C. 119(3) states:

(3) Any adjudication of contempt is subject to appeal to the Appellate Division of the Supreme Court. Any punishment of contempt may be stayed pending appeal, but a punishment of imprisonment shall be stayed on appeal automatically, unless the Court finds that a stay of imprisonment will cause an immediate obstruction of justice, which finding must be supported by written findings of fact. A denial of a stay of imprisonment is subject to review.

²¹ The trial court suspended the entire sentence upon the condition that defendant pay \$65.00 per month to plaintiff beginning June 1, 2001 and continuing until the balance of the loan is fully paid. Order at 4 (May 21, 2001).

language. Tafunsak v. Kosrae, 7 FSM Intrm. 344, 347 (App. 1995); Robert v. Mori, 6 FSM Intrm. 394, 397 (App. 1994).

The Journal of the Constitutional Convention in SCREP No. 57, II J. of Micro. Con. Con. 884-885 provides some insight into the intent of the framers on this constitutional provision. During the Constitutional Convention, the Committee on Civil Liberties described Comm. Pro. No. 34 regarding imprisonment for debt in SCREP. No. 57 (page 882 to 883 of Volume II). This standing committee report provides, in pertinent part:

The intent of this section is to bar imprisonment for honest failure to pay contractual debts. The Committee is of the opinion that it is *unfair to imprison a person simply because of his economic misfortune and inability to pay his debt*. If failure of payment, however, is *tainted by fraud or concealment of assets to evade contractual obligations, the prohibition of this section is inapplicable*.

The term “debt” means an obligation in the proper and popular sense, involving a debtor-creditor relationship and debts which arise out of contract. Accordingly, the bar on imprisonment does not apply to imprisonment incident to, and arising from, the commission of an intentional or malicious wrong. Nor is imprisonment barred where the “debt” is in the nature of a penalty imposed for violation of a state penal law or for penalty for violation of municipal ordinances, or for fines and costs in criminal proceedings.

Additionally, imprisonment for failure to abide by decrees for the payment of money in alimony decrees is not imprisonment for debt. *Such imprisonment is for disobeying a binding command of the Court*. In nonpayment of alimony, however, the court, in enforcing its contempt orders, must be mindful of the intent of this section and the due process guarantee that the punishment shall be proportional to the offense. (Emphasis added).²²

C. Civil Contempt Under the Statute and Constitutional Analysis

The possibility of imprisonment faced by Rodriguez proceeds from the violation of an order in aid of judgment and a finding of Rodriguez to be in civil contempt. The imprisonment sanction is contained in the trial court’s May 21, 2001 order finding Rodriguez in contempt and is made pursuant

²² Signed by 10 of the 13 members of the Committee on Civil Liberties.

to 6 F.S.M.C. 1412. The order provides that, if Rodriguez purges his contempt, the sanction does not come into effect.

One of the questions which arises from the present case is whether the constitutional provision prohibiting imprisonment for debt places a restriction on the manner in which 6 F.S.M.C. 1412 is applied, because that statute includes imprisonment as one of the possible sanctions for violations of an order in aid of judgment. We hold that in this case it does not. As in the situation earlier cited in the Journal of the Constitutional Convention in SCREP No. 57, II J. of Micro. Con. Con. regarding payment decrees in alimony cases, the imprisonment here is for disobeying a binding command of the court.

The laws of the nation are presumed to be constitutional. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 374, 387 (Pon. 1998). Where possible, statutory provisions should be interpreted in such a way as to avoid any potential conflicts between the statute and the Constitution. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 76 (Pon. 1985).

The subject constitutional prohibition is a restriction on the courts against the enforcement of judgments of a certain character, and in this case, does not restrict the exercise of, the power of a court to enforce its lawful orders by imprisonment for contempt. Even where the violation of the order is for failure to make payments for the recovery of a judgment enforceable by an order in aid of judgment, if the order is one which the court could lawfully make, the imprisonment is not for failure to pay the debt, but failure to obey a lawful order of the court.

We also point out that this case involves civil, not criminal, contempt. 6 F.S.M.C. 1412. Civil contempt is not punishment for the failure to pay a debt. It is a prospective remedial measure designed to encourage, or even coerce, compliance with a lawful court order when the contemnor

has been found to have the ability to comply with that order.²³ Davis v. Kutta, 10 FSM Intrm. 125, 127 (Chk. 2001). A person sent to jail after being adjudged in civil contempt can get out of jail anytime he or she chooses merely by complying with the court order and thereby purging himself or herself of the contempt. 6 F.S.M.C. 1412 (upon an adjudication of civil contempt, the contemnor “shall be committed to jail until he complies with the order . . .”). Thus, the purpose of an adjudication of civil contempt is to secure compliance with a lawful court order when the contemnor has the ability to do so.

D. “Tainted by Fraud”

Additionally, the Constitutional Convention records indicate that the prohibition on imprisonment for debt is to bar imprisonment for honest failure to pay contractual debts. The finding of civil contempt in this case necessitates a finding that the defendant failed without good cause to comply. As discussed above, good cause is the inability of a judgment debtor to comply with an order in aid of judgment without fault on his part after his exercise of due diligence. Here the trial court found that Rodriguez wilfully failed to comply with the order in aid of judgment.

The word “wilful,” implies a purpose or willingness to commit the act, and although it does not require a criminal intent, it implies that the person knows what he is doing, intends to do what

²³ On the other hand, criminal contempt (available under 4 F.S.M.C. 119) is retrospective and is punishment for past wrongful conduct. Davis v. Kutta, 10 FSM Intrm. 125, 127 (Chk. 2001). It is not designed to secure compliance with a court order, but instead punishes the intentional violation of a lawful court order. Except for summary cases when the contempt is before a judge and is needed to maintain courtroom decorum, *see, e.g., In re Contempt of Skilling*, 8 FSM Intrm. 419, 424 (App. 1998); *In re Iriarte (II)*, 1 FSM Intrm. 255, 260 (Pon. 1983); *In re Iriarte (I)*, 1 FSM Intrm. 239, 250-51 (Pon. 1983), criminal contempt cases are normally prosecuted by the government, *see, e.g., FSM v. Cheida*, 7 FSM Intrm. 633, 637 (Chk. 1996), *aff’d*, 9 FSM Intrm. 183 (App. 1999); *In re Contempt of Cheida*, 7 FSM Intrm. 183 (App. 1995); *Alfons v. FSM*, 5 FSM Intrm. 402 (App. 1992), and not by an opposing party, *Damarlane v. Pohnpei Transp. Auth.*, 5 FSM Intrm. 62, 67 (Pon. 1991).

he is doing, and acts freely. A debtor who knows that he is under the order of the court to pay an amount certain, has the ability to pay the amount, and still refuses to pay it, acts against good morals and fair dealing. We find here that such a situation amounts to being “tainted by fraud” as it was cited to earlier in the Journal of the Constitutional Convention in SCREP No. 57, II J. of Micro. Con. Con., and is within the exceptions to the prohibition on imprisonment for debt.

D. United States Caselaw

While we acknowledge that in the United States many state constitutions have similar prohibitions against imprisonment for debt, we observe that courts in the United States have ruled differently on similar issues. We cite and discuss some similar United States cases generally supporting this court’s holding.

In Robbins v. Labar Transp. Corp., 599 F. Supp. 705, 707 (1984), a federal district judge in Illinois interpreted a provision of the Illinois Constitution which allows imprisonment for debt only if there is a “strong presumption of fraud,” *i.e.*, if the judgment debtor has the ability to pay but refuses to do so, or had the money and wrongfully disposed of it. The court noted that if it could not hold in contempt (and imprison as a sanction for contempt) an employer who had been ordered to make contributions to its employee trust fund, then the court would be powerless to require the prescribed payments to be made, and would have “lost the most effective sanction for its decree.” (Citation omitted). *Id.* at 708.

In Santibanez v. Wier McMahon & Co., 105 F.3d 234 (5th Cir. 1997), the appellant, Thompson, was alleged to have fraudulently caused a medical clinic to sustain nearly \$619,000 in losses. Thompson had failed to comply with a court order that required him to describe and value his assets, and had been held in contempt for that failure. He was ordered incarcerated indefinitely,

pending his full compliance with the original court order. In discussing Thompson's argument that his imprisonment violated a Texas constitutional prohibition on imprisonment for debt, the court noted that a contemnor cannot even raise such a defense unless he has demonstrated his inability to pay whatever he has been ordered to pay. *Id.* at 242.

In *State v. Campbell*, 929 P.2d 1175 (Wash. App. Div. 2 1997), the defendant was ordered but failed to pay court costs, restitution and a victim assessment as part of his underlying criminal conviction. At a show cause hearing to determine why he should not be held in contempt, the defendant testified that he earned \$700 per month and had expenses of \$500 per month. The trial court ordered him to serve 60 days in jail but suspended the jail time on the condition that he pay \$25 per month. The defendant appealed on the ground that he was being subjected to imprisonment for debt. The appellate court, citing earlier Washington cases, held that imprisonment based solely upon one's willful refusal to pay a debt would be acceptable unless the individual were unable to pay. The appellate court concluded:

“The [trial] court's determination as to the defendant's resources and ability to pay is essentially factual and should be reviewed under the clearly erroneous standard. (Citation omitted.) The evidence is minimally sufficient to support the trial court's finding that Campbell was able to make payment on his financial obligations. Thus, he does not face imprisonment for inability to pay, but only for contemptuous refusal to pay. Therefore . . . his constitutional claims fail.” 929 P.2d at 1178.

For all of the aforementioned reasons, we hold that the trial court did not violate Article IV, Section 13 of the Constitution when it sentenced Rodriguez to 60 days in jail for civil contempt based upon 6 F.S.M.C. 1412.

4. Prohibition on Involuntary Servitude Under FSM Const. Article IV, Section 10

Rodriguez contends that the trial court violated Article IV, Section 10 of the FSM

Constitution when it ordered him to seek immediate employment and report to his judgment creditor under threat of contempt. Additionally, he contends that the trial court erred in finding that he was even fit to work.

A. Constitutional Provision; History and Intent

Article IV, Section 10 of the FSM Constitution states: “Slavery and involuntary servitude are prohibited except to punish crime.”

This is our first opportunity to rule on whether requiring a debtor to seek employment, in a contempt order, amounts to involuntary servitude under our Constitution. We begin by noting that, while Article IV, Section 10 of the Constitution may have had its source in the Trust Territory Bill of Rights²⁴ and the Constitution of the United States,²⁵ it has particular meaning within the FSM’s historical context of forced labor by former foreign administering authorities. Some still-living citizens of this nation have experienced firsthand the evils of slavery and involuntary servitude. Article IV, Section 10 was meant to ban those types of atrocities forever.

While Article IV, Section 10 is simply stated, the words “involuntary servitude” are subject to various definitions. Since this provision is not clear and does not permit only one possible result, we consult the Journal of the Constitutional Convention to ascertain the intent of the framers in drafting this language. Tafunsak v. Kosrae, 7 FSM Intrm. 344, 347 (App. 1995); Robert v. Mori, 6 FSM Intrm. 394, 397 (App. 1994).

²⁴ The provision on slavery and involuntary servitude of the Trust Territory (TT) Bill of Rights was found in the 1980 TT Code at 1 TTC 2 and is part of the FSM Code at 1 F.S.M.C. 102 that states:

Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist in the Trust Territory.

²⁵ U.S. CONST. amend. XIII, § 1.

The Journal of the Constitutional Convention in SCREP No. 23, II J. of Micro. Con. Con. 803-04 provides some insight into the intent of the framers on this provision. During the Constitutional Convention, the Committee on Civil Liberties described Comm. Pro. No. 14 regarding the bill of rights in SCREP. No. 23 (pages 803 to 804 of Volume II). This standing committee report provides, in pertinent part:

“Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist in Micronesia.

While the term ‘servitude’ means the state of a person who is subjected, voluntarily or otherwise, to another person as his servant, only involuntary servitude is prohibited under this Section. Peonage, for example, is prohibited under this Section. As defined, peonage is a *condition of enforced servitude by which the servitor is compelled to labor in liquidation of some debt or obligation, either real or pretended, against his will.* (Peonage Cases, 123 F. 671 (1903).) For illustration purposes, if a district legislature enacts laws that impose criminal liability and a term of imprisonment on employees who abandon their employment, breach their contracts and exercise their legal right to enter employment of a similar nature with another, such statute runs counter to the prohibition of slavery and involuntary servitude. The clear intent of such a statute is the coercion of payment by means of criminal proceedings of a purely civil liability arising from breach of contract. Peonage Cases, 123 F. 671 (1903).

However, the determination of what constitutes ‘involuntary servitude’ or what is regarded as ‘badges of slavery’ shall be made in the context of well established Micronesian customs. There may be duties which the individual owes according to the customs of his community which may not constitute either slavery or involuntary servitude. Further, the determination of the balancing of the right embodied in this Section against strongly held and widely shared communal values is for the court to make on a case by case basis. (Emphasis added.)”

B. United States Interpretations, Caselaw, and Analysis

Another method for determining the meaning of a constitutional provision is to trace the language to its source. Where the language in the FSM Constitution and the United States Constitution is similar, it is appropriate to look to interpretations by United States courts, especially those in existence at the time of the Micronesian Constitutional Convention, as a guide to the intended meaning of the words employed in the Constitution. Paul v. Celestine, 4 FSM Intrm. 205,

208 (App. 1990). We find that the FSM and the United States²⁶ constitutional provisions on involuntary servitude are similar.

Generally, under United States law, involuntary servitude has been described as follows:

The essence of involuntary servitude is that a worker is compelled by law or force to labor against his will for the benefit of another. He must have, or justifiably believe, that he has no way to avoid continued service or confinement; *servitude is not involuntary if the servant knows that he has a choice between continued service and freedom*, even though the master has led him to believe that the latter choice may entail dire consequences.

45 Am.Jur.2d *Involuntary Servitude* § 4, p. 931 (1969).

Absent a violation of a criminal statute, the court cannot compel a person to labor for the liquidation of a debt to another with the threat of punishment for failure to perform. *Id.*, § 10. Involuntary servitude thus has been held to encompass peonage, where a person is bound to the service of a particular employer until an obligation to that person is satisfied.

In the United States, a 1998 California court ruled that when a person claiming involuntary servitude is simply expected to seek and accept employment, if available, and is free to choose the type of employment and employer, and is also free to resign that employment if conditions are unsatisfactory or to accept other employment, none of the aspects of “involuntary servitude” are present. Moss v. Superior Court (Ortiz), 950 P.2d 59 (Cal. 1998).

An examination of the trial court’s May 21, 2001 order in the present case shows that Rodriguez was not directly ordered to labor for his debt. The trial court did not impute additional

²⁶ Section 1 of the Thirteenth Amendment of the United States Constitution provides:

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

income to Rodriguez, in calculating his ability to pay, and did not require him to perform any labor. The order stated that: “If defendant is presently unemployed, he is required to actively seek employment and be prepared at the next hearing to *present persuasive evidence of his attempts to find a job.*” Order at 4 (May 21, 2001) (Emphasis added.). The order further enumerated that: “(4) If defendant is presently unemployed, he is ordered to seek employment immediately and is ordered to report to plaintiff once he obtains employment.” *Id.* at 5.

In this case, Rodriguez is not being forced into labor for the purpose of paying off his debt to the Bank. This is not a situation in which the trial court ordered Rodriguez to do work for the Bank or some other party, and have the fruits of that labor directly channeled toward paying off his debt.

C. Fitness to Work

While we hold that, in this case, the trial court’s order to Rodriguez to seek immediate employment is not a violation of the constitutional prohibition on involuntary servitude, we must also address Rodriguez’s challenge that he was even capable of working. We hold that, in this particular case where Rodriguez had presented evidence that he was unable to work, the trial court must make specific findings as to whether Rodriguez was fit to work before ordering him to seek immediate employment.

We find the following in the record: (1) Rodriguez was 62 years old;²⁷ (2) he suffered from a serious heart ailment necessitating hospitalization, testing, and an operation for the insertion of a

²⁷ Transcript at 6 (Feb. 22, 2001).

pace maker in the Philippines;²⁸ (4) he had been to the Philippines for medical referral twice;²⁹ (5) his illness caused him occasional pain and shortness of breath;³⁰ (5) he had been spending more time in the hospital than at home;³¹ (6) at the time of the hearing on February 22, 2001 he was currently hospitalized, but was given special permission by his doctor to appear at the hearing for a limited time until he got back to the hospital;³² (7) at the hearing on February 22, 2001 he stated that he was being scheduled to go on medical referral again to the Philippines in the next month;³³ (8) he stated that he was unable to work.³⁴

We note that at 62 years old Rodriguez is already collecting a monthly old age benefit through the FSM Social Security program and is beyond the normal retirement age of 60 as set forth in the Pohnpei Pension Plan Act of 1993. Rodriguez was suffering from a very serious heart ailment necessitating multiple medical referrals to the Philippines where he had a pace maker installed. His illness caused him to suffer from pain and shortness of breath and he was instructed to go immediately to the hospital when that occurred. He testified that he was in the hospital more than at home. He

²⁸ Id. at 11.

²⁹ Id. at 13.

³⁰ Id. at 14.

³¹ Rodriguez was asked by his counsel, “While you’re in Pohnpei, could you tell the Court, over the last year, how many days that you spend in the hospital each month? He replied, “I’ve spent most of the time in the hospital, more than what I’ve spent out side of the hospital. I do not know exactly how many days, however, it will be shown at the records at the hospital. Whenever there is pain and shortness of breath, I have been told to immediately go to the hospital. So, therefore, most of the time I have been spending at the hospital. Id. at 14.

³² Id. at 4.

³³ Id. at 11.

³⁴ Id. at 7.

stated that he was going to undergo more time on medical referral in the Philippines.

While we hold that the trial court did not violate the involuntary servitude provision of the Constitution when it ordered Rodriguez to seek immediate employment, we also hold that where Rodriguez has presented evidence that he is unable to work, the trial court must make specific findings with regard to his fitness for work before it orders him to seek immediate employment. We, therefore, vacate item number (4) of the trial court's order and those parts of the order requiring Rodriguez to seek immediate employment and remand to the trial court for its findings on this issue.

IV. CONCLUSION

For all of the aforementioned reasons, we hold that the trial court did not err in finding Rodriguez in contempt based on his having the ability to comply with the April 25, 2000 order in aid of judgment and on his having failed to demonstrate that he could not comply with the order. We further hold that the trial court did not violate 53 F.S.M.C. 604 in ordering Rodriguez to pay \$65.00 per month to the Bank after he had presented evidence that his only source of income was Social Security retirement benefits. We also hold that the trial court's contempt order did not violate Rodriguez's constitutional right against imprisonment for debt.

On the involuntary servitude issue, we find that the trial court's order to Rodriguez to seek immediate employment was not unconstitutional, but that where Rodriguez has presented evidence that he is unable to work, the trial court must make specific findings as to his fitness to work before ordering him to seek immediate employment.

We therefore vacate item number (4) and the other parts of the order requiring Rodriguez to seek immediate employment and remand to the trial court on the issue of fitness to work. We uphold the remainder of the order.

