

FILED

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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

IN THE MATTER OF THE DEPARTMENT OF AGRICULTURE,
Petitioner-Appellee,

v.

THE GUAM CIVIL SERVICE COMMISSION,
Respondent-Appellee,

and

PATRICIA ROJAS,
Real Party in Interest-Appellant.

Supreme Court Case No.: CVA13-007
Superior Court Case No.: SP0168-03

OPINION

Cite as: 2013 Guam 31

Appeal from the Superior Court of Guam
Argued and submitted on October 22, 2013
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

TORRES, J.:

[1] Real Party in Interest-Appellant Patricia Rojas appeals from the Superior Court's decision and order requiring Respondent-Appellee Civil Service Commission ("the CSC" or "the commission") to vacate its March 18, 2003 decision and enter a judgment dismissing Rojas's appeal with the CSC. For the reasons set forth below, we affirm the Superior Court's order that the CSC vacate its judgment and dismiss Rojas's appeal.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] The majority of the facts relevant to this appeal are provided in the factual and procedural background of *In re Dep't of Agric. v. Civil Serv. Comm'n (Rojas)*, 2009 Guam 19 ¶¶ 3-6. All that is necessary to reiterate in the present appeal is that: Rojas filed an adverse employment appeal with the CSC beyond the 20-day statutory deadline provided in 4 GCA § 4406;¹ the CSC dismissed this appeal with prejudice as untimely; and more than two years later, the CSC reversed itself and ordered a judgment in favor of Rojas without giving any basis of jurisdiction for hearing the untimely appeal. In this new judgment, the CSC failed to resolve the issue of damages but explicitly stated that damages would be determined after an additional meeting.

¹ Title 4 Guam Code Annotated § 4406 provides in relevant part:

An employee in the classified service who is dismissed, demoted or suspended shall be given immediate notice of the action, together with a specific statement of the charges upon which such action is based in the manner required by Article 2 of this Chapter. . . .

. . . .

The employee within twenty (20) days of effective date of the action, may appeal to the Commission or appropriate entity by filing that person's written answer to the charges against the employee, regardless whether the employee has tendered any resignations, which shall have no effect upon the employee's appeal rights.

4 GCA § 4406 (2005).

Although the meeting took place as ordered, months passed without the CSC resolving the issue of damages. During this time period, the CSC adopted a general resolution that it would no longer award back pay and attorneys' fees to employees whose appeals were successful. The Department of Agriculture ("DOA") filed a writ of mandamus to compel the CSC to vacate its judgment, but the Superior Court denied the writ. DOA appealed to this court.

[3] In our 2009 opinion on DOA's appeal, we could not ascertain from the record a reasoned jurisdictional basis to support the CSC's reconsideration of its initial dismissal of Rojas's untimely appeal. We stressed that the CSC's lack of a reasoned basis for reconsideration was inherently arbitrary and capricious. Finding no basis for jurisdiction, we directed the Superior Court to:

order the CSC to vacate the Judgment or demonstrate its jurisdictional basis for granting the motion for reconsideration. If a basis for jurisdiction can be shown, we instruct the court to order the CSC to issue a new judgment that finally determines the question of Rojas' damages.

Id. ¶ 34. Thereafter, the Superior Court issued an alternative writ of mandamus ordering the CSC to vacate its decision or demonstrate a jurisdictional basis for hearing Rojas's appeal.

[4] Following the Superior Court's alternative writ of mandamus, Rojas submitted a brief accompanied by declarations of fact seeking to establish a reasoned basis for the CSC's assertion of jurisdiction. Through its counsel, the CSC joined in Rojas's brief.²

[5] In the two years since the Superior Court issued its writ of mandamus, there is no record of the commissioners of the CSC considering the writ of mandamus, voting on whether or not it had jurisdiction, and, if it voted in favor of jurisdiction, issuing a reasoned basis for its

² Because of the CSC's failure to comply with the Superior Court's mandate in this case, the content of Rojas's briefing to the Superior Court or this court is not relevant to our disposition.

jurisdiction. Instead, the extent of the CSC's involvement after it was ordered to demonstrate jurisdiction was to simply join, through counsel, Rojas's brief.

II. JURISDICTION

[6] This court has jurisdiction over this appeal pursuant to the following statutes: 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 113-22 (2013)); 7 GCA §§ 3107, 3108(a), and 25102(a) (2005).

III. STANDARD OF REVIEW

[7] Whether the CSC had jurisdiction over a particular matter is an issue of statutory interpretation reviewed *de novo*. *Guam Fed'n of Teachers v. Gov't of Guam*, 2013 Guam 14 ¶ 24. “[T]he interpretation by an appellate court of its own mandate is properly considered a question of law, reviewable *de novo*.” *Town House Dep't Stores, Inc. v. Ahn*, 2003 Guam 6 ¶ 17 (quoting *Laitram Corp. v. NEC Corp.*, 115 F.3d 947, 950 (Fed. Cir.1997)). We review the Superior Court's actions on remand for an abuse of discretion. *Id.*

IV. ANALYSIS

[8] It is well established that “on the remand of a case after appeal, it is the duty of the lower court, or the agency from which appeal is taken, to comply with the mandate of the court and to obey the directions therein without variation and without departing from such directions” *Mefford v. Gardner*, 383 F.2d 748, 758 (6th Cir. 1967); *see also Sullivan v. Hudson*, 490 U.S. 877, 886 (1989) (“[d]eviation from the court's remand order in the subsequent administrative proceedings is itself legal error, subject to reversal on further judicial review.”). Furthermore, “if the cause is remanded with specific directions, further proceedings in the trial court or agency from which appeal is taken must be in substantial compliance with such directions; and if the

cause is remanded for a specified purpose, any proceedings inconsistent therewith is error” *Mefford*, 383 F.2d at 758.

[9] Our 2009 holding—as properly relayed by the Superior Court’s writ of mandamus—required the commissioners of the CSC to reexamine Rojas’s case and take one of two paths. *Rojas*, 2009 Guam 19 ¶ 34. First, the commissioners of the CSC could vacate the previous judgment and dismiss Rojas’s appeal. *Id.* Second, if the commissioners of the CSC could demonstrate a reasoned basis for exercising jurisdiction over Rojas’s appeal, they were ordered to do so and then to issue a new judgment finally determining any damages amount owed to Rojas. *Id.* The writ of mandamus unambiguously required one of these two outcomes—either Rojas’ appeal would be dismissed or there would be a new judgment determining damages. RA, tab 85 at 1 (Alternative Writ Mand., Nov. 28, 2011). In either case, the CSC’s statutorily prescribed procedure that “[t]he affirmative vote of four (4) members shall be required for *any action of the Commission*[.]” 4 GCA § 4402 (2005) (emphasis added), clearly established the means by which the CSC was to respond to the Superior Court’s writ of mandamus. Years later, neither of these outcomes has come to pass; instead of complying with the procedures ordered by this court and in the manner required by statute, Rojas filed a brief arguing jurisdiction in the Superior Court, which the CSC simply joined through counsel. RA, tab 88 at 1 (Rojas’s Br. re: CSC’s Reasoned Basis for Asserting Jurisdiction over Rojas’s Appeal, Jan. 4, 2012); RA, tab 87 at 1 (Resp’t’s Joinder in Real Party in Interest’s Br., Jan. 4, 2012).

[10] Nothing in this court’s 2009 opinion, in the Superior Court’s writ of mandamus, or 4 GCA § 4402 provided for or allowed Rojas, rather than the CSC acting through its commissioners, to present arguments for the CSC’s jurisdiction. In its most recent decision and order, the Superior Court found that Rojas tried to introduce new facts and evidence to support

her argument for equitable tolling that had not been properly admitted before the CSC. RA, tab 98 at 4 (Dec. & Order re: Basis for Jurisdiction, Oct. 5, 2012). This type of belated factual presentation—regarding events that occurred over a decade and a half ago—is exactly what we sought to avoid by ordering a reasoned legal basis from the CSC regarding how it had exercised jurisdiction on the facts then known to the commission.

[11] The CSC was ordered to vacate its Judgment or provide a jurisdictional basis for hearing Rojas's appeal, and it did not do so. Accordingly, we are compelled to affirm the Superior Court's order that the CSC vacate its 2003 judgment and dismiss Rojas's appeal.³

V. CONCLUSION

[12] Because the CSC has failed to comply with this court's 2009 opinion and the Superior Court's subsequent writ of mandamus, we **AFFIRM** the Superior Court's order that the CSC vacate its 2003 judgment and dismiss Rojas's appeal.

Original Signed: **Katherine A. Maraman**
By

Original Signed: **Robert J. Torres**
By

KATHERINE A. MARAMAN

ROBERT J. TORRES

Associate Justice

Associate Justice

I do hereby certify that this is a full true and correct copy of the original on file in the office of the clerk of the Supreme Court of Guam.

DEC 31 2013

Original Signed: **F. Philip Carbullido**
By

By: **Charmene I. Santos**
Deputy Clerk
Supreme Court of Guam

F. PHILIP CARBULLIDO
Chief Justice

³ Though this court may, in a future case, examine the effect of the Supreme Court's decision in *Henderson v. Shinseki*, 131 S. Ct. 1197 (2011), on determining whether particular statutory filing deadlines are jurisdictional or mere claims processing rules subject to equitable tolling, we decline to do so in this case where the CSC failed to abide by the Superior Court's writ of mandamus. *Henderson* was decided eight years after the CSC reconsidered Rojas's appeal, so, to the extent that the opinion changed the law in this area, *see, e.g.*, Real Party in Interest-Appellant's Reply Br. at 5 (Aug. 14, 2013) ("intervening changes in law . . . in the United States Supreme Court, have occurred since the Amended Opinion . . ."), it clearly had not done so at the time the CSC determined without explanation that it had jurisdiction over Rojas's appeal.