IN THE

# Supreme Court

OF THE

# Commonwealth of the Northern Mariana Islands

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**IN RE JOHN SABLAN PANGELINAN,**
*Petitioner.*

**Supreme Court No. 2021-SCC-0019-PET**

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**ORDER DISMISSING APPEALS AND STAYING PETITION FOR WRIT OF MANDAMUS OR PROHIBITION**

**Cite as: 2021 MP 11**

Decided December 3, 2021

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CHIEF JUSTICE ALEXANDRO C. CASTRO
ASSOCIATE JUSTICE PERRY B. INOS
JUSTICE PRO TEMPORE ROBERT J. TORRES, JR.

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Superior Court Civil Action No. 17-0067
Judge Joseph N. Camacho, Presiding

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PER CURIAM:

¶ 1 Petitioner John S. Pangelinan ("Pangelinan") petitions the Court for a writ of mandamus directing the trial court to hear multiple motions he has filed or, in the alternative, for a writ of prohibition preventing the trial court from denying Pangelinan the ability to schedule a hearing for his motions at a date and time of his choice. He argues the court erred in finding that filing a notice of appeal in the Superior Court divests the trial court of jurisdiction. He claims the trial court is divested of jurisdiction only when the notice of appeal is transmitted and docketed in the Supreme Court. Because the judgments and orders appealed from are not final orders that dispose of all the parties' claims, the trial court never lost jurisdiction. For the following reasons, we STAY the petition and sua sponte DISMISS Pangelinan's pending appeals.

## I. FACTS AND PROCEDURAL HISTORY

¶ 2 This case arose out of a probate proceeding. Shortly before passing away, Pangelinan's cousin had begun the process of leasing his land to a developer. The decedent's widow and administratrix of the estate attempted to finalize the transaction, but Pangelinan claimed in the probate he was entitled to the land in fee simple and to the lease payment. The court ruled that he was not an heir and, thus, lacked standing in the probate proceeding, which we affirmed. *In re Estate of Pangelinan*, 2020 MP 19 ¶ 13.

¶ 3 The decedent's widow and her daughter ("Respondents") sued him for his conduct during the probate proceeding on claims of abuse of process and tortious interference with contract. Pangelinan filed counterclaims which the court dismissed through summary judgment. In a bifurcated proceeding, the court found Pangelinan liable on both claims and then ordered Respondents to file their request for damages.

¶ 4 Just before Respondents filed their request for damages, he appealed the judgment on liability in June 2020.[1] The court did not proceed with the damages part of the trial because it determined filing the notice of appeal had divested it of jurisdiction. We dismissed the June 2020 appeal in February 2021, holding the

[1] The June 2020 appeal also challenged many other decisions. They include: December 23, 2019 Order After December 2, 2019 Motions Hearing, July 2019 Motion Denied, August 2019 Motions Denied, October 2019 Motion Denied; December 12, 2019 Order After December 12, 2019 Bench Trial; August 15, 2019 Order After July 16, 2019 Hearing; February 1, 2019 Order Granting Motion To Set Aside Entry Of Default As [Respondents] Did Not Engage In Culpable Conduct That Led To The Default On The Counterclaim, And [Respondents] Have A Meritorious Defense, And [Pangelinan] Will Not Be Prejudiced; April 5, 2018 Order Denying [Pangelinan]'s Demand for Default Judgment As The Clerk of Court Did Not Make an Entry of Default; and April 5, 2018 Order Dismissing Defendant's Counterclaims Of Quiet Title As Barred By Res Judicata; and Abuse or Process Since the Underlying Litigation Is Still Pending; And Libel As Libel Cannot Arise Out Of Court Filings.

judgment being appealed was not a final judgment because the damages remained undetermined. *Pangelinan v. Pangelinan*, 2021 MP 10 ¶ 8.

¶ 5 Following the dismissal, Pangelinan filed two notices of appeal. The April 2021 appeal, captioned "Amended Notice of Appeal," appeals the same issues as the June 2020 appeal, which we dismissed. The April 2021 appeal also challenges an order taking off calendar a hearing on a motion to make him post an appeal bond.

¶ 6 Pangelinan filed another notice of appeal in June 2021. This appeal raises the same issues found in the dismissed June 2020 appeal and the pending April 2021 appeal. It also challenges the decision that the court could not hear motions because the April 2021 appeal divested the court of jurisdiction. From April through August 2021, Pangelinan filed numerous motions with the Superior Court.[2]

¶ 7 The court has consistently declined to hear the motions on the grounds that the appeals divested it of jurisdiction relying on this Court's holding in *Ogumuro v. Yoon*, 2017 MP 8. In *Yoon* we held that "[]the filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the [trial] court, of its control over those aspects of the case involved in the appeal." *Id*. ¶ 6 (quoting *Lizama v. Kintz*, 2002 MP 18 ¶ 5).

¶ 8 Pangelinan now asks for a writ of mandamus ordering the trial court to hear his motions or, in the alternative, for a writ of prohibition preventing it from denying him the ability to set a hearing at a date and time of his choice.

## II. JURISDICTION

¶ 9 We have original jurisdiction to issue writs of mandamus and prohibition. NMI CONST. art. IV, § 3.

## III. DISCUSSION

### *A. Extraordinary Writs*

¶ 10 Writs of mandamus and prohibition are extraordinary remedies used only when other relief is unavailable. *NMHC v. Techur*, 2020 MP 18 ¶ 7. When deciding whether to grant such writs, we look to the *Tenorio v. Superior Ct.* factors. 1 NMI 1 (1989).[3]

¶ 11 Pangelinan does not disagree with our holding in *Yoon*. Rather, he presents a question about timing: does jurisdiction transfer from the trial court to the Supreme Court when the notice of appeal is filed in the trial court or when transmitted and docketed in the Supreme Court? First, however, we again address

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[2] In several motions, Pangelinan claimed he could schedule a hearing at a time and date of his choice. NMI Rules of Civil Procedure 6, 7, and 78, which he invokes numerous times, do not grant parties the power to self-declare the date and time of hearings, as Pangelinan seemingly believes.

[3] Because we stay the Petition rather than grant or deny it, we do not at this stage perform a formal *Tenorio* analysis.

the threshold question of whether the orders being appealed are appealable, as we did in February.

*B. Appellate Jurisdiction*

¶ 12 The April and June 2021 appeals are not materially different than the June 2020 appeal we recently dismissed because the decisions and orders being appealed are not immediately appealable. Our jurisdiction extends over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3. As we explained when we dismissed the June 2020 appeal, the trial court's judgment only establishes Pangelinan's liability, and it has yet to determine the damages portion of Respondents' claims. *Pangelinan*, 2021 MP 10 ¶ 3. Therefore, we determined that we did not have jurisdiction to hear his appeal. *Id*. ¶ 8. Generally, an order that merely establishes liability without determining the amount of recovery is not final. *Lucky v. Tokai*, 3 NMI 79, 86 (1992); *Liberty Mut. Ins. Co. v. Wetzel*, 424 U.S. 737, 743 (1976). A limited exception to this is when the determination of damages will be mechanical and uncontroversial. *Parks v. Pavkovic*, 753 F.2d 1397, 1401 (7th Cir. 1985). The determination of damages will be neither mechanical nor uncontroversial because there will have to be a "substantive, contested hearing." *Pangelinan*, 2021 MP 10 ¶ 7. Similarly, other orders and decisions in the pending appeals are not final because they do not "end[] the litigation on the merits and leave[] nothing for the [trial] court to do but execute the judgment." *Chan v. Chan*, 2003 MP 5 ¶ 13 (quoting *Tanki v. S.N.E. Saipan Co*., 4 NMI 69, 70 (1993)). In other words, judgment is final if it "adjudicate[s] all claims of all parties." *Bowie v. Apex Constr. Inc.*, 2020 MP 5 ¶ 17. Here, the orders and decisions being appealed do not adjudicate all claims of the parties.

¶ 13 Appeals of unappealable orders do not divest trial courts of jurisdiction. *See, e.g. Yaeger v. Vance*, 513 P.2d 688, 690 (Ariz. Ct. App. 1973) ("Since the order attempted to be appealed from was not appealable, the trial court did not err by continuing with its jurisdiction."); *State v. Lobato*, 134 P.3d 122, 129 (N.M. Ct. App. 2006) ("Where a non[appealable] order is improperly appealed, the trial court is not divested of jurisdiction."); *Breuer v. Flynn*, 496 A.2d 695, 700 (Md. Ct. App. 1985) ("[Where] nonappealable interlocutory orders were appealed to [the appellate] court, the [trial] court was not divested of its jurisdiction to proceed with the trial of the case and resolve the issues before it.").

¶ 14 When a notice of appeal is filed, the court must look past the caption to determine whether it concerns appealable matters. Appeals which deal with appealable decisions divest the trial court of jurisdiction over the matters on appeal. But if the appeal concerns unappealable interlocutory orders, the trial court is not divested of jurisdiction.

¶ 15 We understand that a choice to proceed despite a notice of appeal carries some risk. If the trial court elects to go forward and we later find that the appeal did divest it of jurisdiction, its decisions made since the appeal would be invalid. Thus, if an appeal's validity is uncertain, the trial court "may decline to act further until the purported appellee obtains dismissal of the appeal." *Ruby v. Sec'y of*

*U.S. Navy*, 365 F.2d 385, 389 (9th Cir. 1966) (*en banc*). Because of our precedent, the court adopted a cautious approach and determined it lost jurisdiction.

¶ 16 But here, there is no uncertainty as to the invalidity of the appeals. We dismissed the June 2020 appeal because the determination of damages would require a contested hearing. There was no final judgment which could be appealed. While the subsequent appeals tack on additional court decisions, they continue to appeal the exact same decisions which we already said were unappealable when we dismissed Pangelinan's appeal in February. There was no final judgment then, and there is still no final judgment now. None of the issues that the appeals raise are appealable interlocutory orders and so they can be appealed only after a final judgment.[4] The April and June 2021 appeals were therefore prematurely filed and they clearly did not divest the trial court of jurisdiction.

*C. Divesting of Jurisdiction*

¶ 17 Although unnecessary to decide this Petition, we address the question of when appeals divest the trial court of jurisdiction to provide guidance in future proceedings. Whether trial courts are divested of jurisdiction upon the moment of filing an appeal or when the appeal is transmitted to and docketed with this Court raises a fine point of timing which we have not addressed before.

¶ 18 We begin our analysis with the following excerpt from *Yoon*:

> A trial court and a court of appeals should not attempt to assert jurisdiction over a case simultaneously. *Smith v. Lujan*, 588 F.2d 1304, 1307 (9th Cir. 1979). "[T]he filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the [trial] court, of its control over those aspects of the case involved in the appeal." *Lizama*, 2002 MP 18 ¶ 5 (citation and internal quotation marks omitted). "Put simply, it is usually the situation that once a case has been

[4] Generally, interlocutory order cannot be appealed, "unless expressly permitted by statute, rule, constitutional provision or other recognized common law doctrine." *Friends of Marpi v. Commonwealth*, 2012 MP 9 ¶ 1. For example, 8 CMC § 2206 allows, "some interlocutory appeals of orders made by the Superior Court while sitting in probate." *Id.* ¶ 7. In addition, this Court recognized the collateral order doctrine in *Commonwealth v. Hasinto*, 1 NMI 377 (1990). "Under the 'collateral order' doctrine, an appeal may be taken from an order which is collateral to the principal litigation as long as any decision on appeal will not affect the underlying merits of the case." *Pac. Amusement, Inc. v. Villanueva*, 2005 MP 11 ¶ 18 (citing *Hasinto*, 1 NMI at 384 n.6.). Thus, "[t]o come within the collateral order exception to the final judgment rule, the order sought to be appealed must: (1) have conclusively determined the disputed questions; (2) have resolved an important issue completely separate from the merits of the action; and (3) be effectively unreviewable on appeal from a final judgment." *Id*. ¶ 19 (citing *Hasinto*, 1 NMI at 384 n.6.).

> appealed, the trial court's work is finished until instructed to act by the appellate court." *Id*.
> *Ogumuro v. Yoon*, 2017 MP 8 ¶ 6.

The quotes from *Lizama* originally came from *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982). When interpreting language, "[a] basic principle of construction is that [it] must be given its plain meaning. We do this unless there is evidence that a contrary meaning was intended or if the interpretation defies common sense or leads to absurd results." *In the Matter of a Petition for Certified Question*, 2020 MP 2 ¶ 13 (citation and internal quotation marks omitted). *Griggs* makes no mention of docketing. It states, "the filing of a notice of appeal is an event of jurisdictional significance." *Griggs*, 459 U.S. at 58. "Filing" is the gerund form of "file," which means, "to deliver a legal document to the court clerk or record custodian for placement into the official record." Black's Law Dictionary 550 (9th ed. 2010). "Filing" does not include a secondary step of transmittal. Therefore, the plain meaning of *Griggs* is that delivering the notice of appeal to the trial court's clerk marks the moment when the trial court is divested of jurisdiction.

¶ 19 In previously interpreting *Griggs*, we have not read into its plain language any further requirement of appeals having to be docketed with this Court before the trial court is divested of jurisdiction. Pangelinan presents no persuasive argument as to why the plain meaning of *Griggs* should not be applied.

¶ 20 He cites as support NMI Rule of Civil Procedure 60(a), which allows trial courts to correct clerical errors arising from oversight or omission in a judgment, order, or other parts of the record on its own and without notice. The rule also specifies that after an appeal has been docketed with us, the trial court needs our leave to rectify clerical errors. Pangelinan argues this shows that docketing is when the trial court is divested of jurisdiction.

¶ 21 We find this argument unconvincing. There is a substantial difference between letting a trial court deal with a minor procedural issue such as correcting a clerical error and asking simultaneously both the trial court and the Supreme Court to rule on the merits of a case, as he has done. We consider Rule of Civil Procedure 60(a) a limited exception whose existence helps show the general rule: after an appeal is filed, the trial court can deal with only procedural concerns, and after docketing, it needs our permission to handle even those matters.

¶ 22 A few cases explicitly discuss the precise issue of when an appeal divests the trial court of jurisdiction. In one such case, citing *Griggs*, the Court of Appeals for the Federal Circuit ruled that "when a notice of appeal is timely filed, a trial court is divested of jurisdiction at the time the notice is filed, not when the appeal is subsequently docketed by the appellate court." *Gilda Indus. v. United States*, 511 F.3d 1348, 1351 (Fed. Cir. 2008). The vast majority of other federal appellate decisions only cite the language from *Griggs* and are silent on the issue

of docketing.[5] This strongly suggests that the moment of docketing is not the key event which Pangelinan claims it to be. It appears only the Fourth Circuit has adopted the interpretation he proposes, and even there only in specific situations.[6]

¶ 23 "Because [the language in *Griggs*] is unambiguous, the court need only give legal effect to its plain grammatical meaning." *NMHC. v. BankPacific, Ltd.*, 2021 MP 7 ¶ 20. We see no compelling reason to go against the majority view as expressed in *Gilda Industries* that the notice of appeal's filing marks the transfer in jurisdiction from trial to appellate court. We hold that filing a proper notice of appeal with the trial court, not its transmittal to and docketing with this Court, is when the trial court is divested of jurisdiction.

¶ 24 Pangelinan's repeated attempts to appeal non-final orders despite our obvious lack of jurisdiction have stymied the proceedings. There is no need for further delay. We sua sponte DISMISS his appeals.[7] The Court will consider sanctions if Pangelinan files another appeal before the trial court issues a final judgment or appealable order.

## IV. CONCLUSION

¶ 25 For the foregoing reasons, we find it appropriate to STAY the petition for forty-five days to give the trial court the opportunity in the first instance to address whether it will proceed with the damages aspect of the abuse of process and interference with contract claims for which Pangelinan was found liable on May 21, 2020 and with the motions which the court did not hear because it mistakenly believed it had been divested of jurisdiction. We will consider the

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[5] *See, e.g., In re Transtexas Gas Corp.*, 303 F.3d 571, 578–79 (5th Cir. 2002); *Fort Gratiot Sanitary Landfill, Inc. v. Mich. Dep't of Nat. Res.*, 71 F.3d 1197, 1203 (6th Cir. 1995); *United States v. Brooks*, 145 F.3d 446, 456 (1st Cir. 1998); *Nat. Res. Def. Council, Inc. v. Sw. Marine Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001); *United States v. Diveroli*, 729 F.3d 1339, 1342–43 (11th Cir. 2013); *Venen v. Sweet*, 758 F.2d 117, 120 (3d Cir. 1985) ("As a general rule, the timely filing of a notice of appeal is an event of jurisdictional significance, immediately conferring jurisdiction on a Court of Appeals and divesting a district court of its control over those aspects of the case involved in the appeal."); *In re Jones*, 768 F.2d 923, 931 (7th Cir. 1985) (Posner, J., concurring) ("The purpose of the rule [against dual jurisdiction] is to keep the district court and the court of appeals out of each other's hair.").

[6] *Williams v. McKenzie*, 576 F.2d 566, 570 (4th Cir. 1978) ("We hold that on the facts of this particular case, and especially since the appeal was not docketed in this court at the time the district judge reopened the habeas hearing for the taking of additional testimony, that the entertainment of the F.R.C.P. 60(b)(2) motion was appropriate."). *See also Fobian v. Storage Tech. Corp.*, 164 F.3d 887, 891–92 (4th Cir. 1999) (citing *Williams* with approval); 16A Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 3949.1 (5th ed. 2021).

[7] Appellate courts can sua sponte dismiss appeals for lack of jurisdiction. *Spencer, White, & Prentis, Inc. of Conn. v. Pfizer Inc.*, 498 F.2d 358, 363 (2nd Cir. 1974); *Familian Nw., Inc. v. Cent. Pac. Boiler & Piping, Ltd.*, 714 P.2d 936, 937 (Haw. 1986).

Petition pursuant to CNMI Supreme Court Rule 21 after the conclusion of forty-five days.

SO ORDERED this 3rd day of December, 2021.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
PERRY B. INOS
Associate Justice

/s/
ROBERT J. TORRES, JR.
Justice Pro Tempore

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