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IN THE

Supreme Court

OF THE

Commonwealth of the Northern Mariana Islands

ANTONIA DLG VILLAGOMEZ, ET. AL.,
Plaintiffs-Appellants,

v.

MARIANAS INSURANCE CO., LTD.,
Defendant-Appellee.

Supreme Court Nos. 2021-SCC-0003-CIV, 2021-SCC-0004-CIV

SLIP OPINION

Cite as: 2021 MP 12

Decided December 22, 2021

CHIEF JUSTICE ALEXANDRO C. CASTRO
ASSOCIATE JUSTICE JOHN A. MANGLOÑA
JUSTICE PRO TEMPORE JOSEPH N. CAMACHO

Superior Court Civil Action Nos. 04-0070-CV / 02-0015-CV
Judge Wesley M. Bogdan, Presiding

MANGLOÑA, J.:

¶ 1 Plaintiffs Antonia Deleon Guerrero Villagomez, Edward Manibusan, et. al., appeal two trial court orders.[1] The first denied Plaintiffs' request to issue judgment *nunc pro tunc*. The second granted Defendant-Appellee Marianas Insurance Co.'s ("MICO's") motion to dismiss for lack of prosecution. For the following reasons, we AFFIRM both of the court's orders.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 The facts underlying this legal action are straightforward, even if the legal proceedings are not. In 1999, MICO issued an insurance policy on an automobile to Edward Manibusan. Subsequently, a third party drove Manibusan's automobile without the latter's express permission. While driving, he collided with a vehicle containing Villagomez, who was injured.

¶ 3 This single car accident spurred nearly twenty years of disjointed and inconsistent litigation. In 2002, Villagomez filed a personal injury lawsuit, Civil Action No. 02-0015 ("2002 lawsuit"), naming Manibusan and MICO as Defendants. The trial court determined that the driver was covered by the insurance policy, and MICO appealed this ruling. *See Villagomez v. Marianas Ins. Co.*, 2006 MP 21; *Villagomez v. Marianas Ins. Co.*, 2013 MP 6 ¶ 5.

¶ 4 While the appeal was pending, Villagomez and Manibusan began settlement negotiations. They decided to assign all causes of action against MICO to Villagomez, who also agreed not to execute any excess portion of the judgment against Manibusan. In February of 2004, Villagomez and Manibusan joined as Plaintiffs and filed a new, separate lawsuit against MICO, Civil Action No. 04-0070 ("2004 lawsuit"), asserting bad faith and several other causes of action. After filing this new suit, the parties stipulated to suspend the proceedings in the 2004 lawsuit pending resolution of MICO's appeal in the 2002 lawsuit.

¶ 5 This Court dismissed MICO's appeal in the 2002 lawsuit, finding that MICO had failed to appeal from a final judgment. *Villagomez,* 2006 MP 21 ¶¶ 7-8. This freed the 2002 lawsuit to continue to a trial on the merits. *See id*. ¶ 9 ("this Court is still free to revisit these arguments after a trial on the merits."). However, no action was taken in this case for nearly three years.

¶ 6 MICO then moved for summary judgment, contending that the bad faith claims were not ripe for adjudication since no judgment had been entered in the 2002 lawsuit. Villagomez properly filed briefing in opposition to this motion, but, before the court could rule, Villagomez and Manibusan, apparently intent on

[1] There are seven individuals litigating as Plaintiffs in these consolidated cases. For the sake of brevity, this opinion uses "Villagomez" or "Villagomez's" as shorthand to refer to all Plaintiffs.

curing the ripeness issue, entered into a settlement agreement regarding the 2002 lawsuit. MICO challenged the settlement, but the trial court determined that Manibusan remained a Defendant in the 2002 lawsuit and therefore was able to enter into a settlement with Villagomez without MICO's consent.

¶ 7 Having reached a settlement with Manibusan, Villagomez moved for a voluntary dismissal of the 2002 lawsuit, contending that all matters in controversy had been fully resolved. Dismissal was granted, effectively curing the ripeness issue regarding the 2004 lawsuit by serving as a final judgment in the 2002 lawsuit. *See Villagomez*, 2013 MP 6 ¶ 7. We subsequently upheld the dismissal of the 2002 lawsuit in May of 2013.

¶ 8 With the 2004 lawsuit now ripe and ready, MICO moved for summary judgment, which was granted on all claims except for a breach of contract claim. Subsequently, however, the pace of litigation slowed dramatically: despite the fact that Villagomez still had a live breach of contract claim, nothing was submitted to the court until November 2015 when Villagomez requested a mandatory mediation conference. Then, in January of 2016, Villagomez filed a Motion for Reconsideration, which was later stipulated to by MICO, of the 2011 partial summary judgment in MICO's favor.

¶ 9 After more than three years without a ruling on the Motion for Reconsideration, Villagomez moved for a Status Conference. In this motion, Villagomez again asserted that the 2016 Motion for Reconsideration had been filed and was awaiting a court order. Without any further action, MICO moved to dismiss the 2004 lawsuit for lack of prosecution.

¶ 10 Next, Villagomez attempted to revive the 2002 lawsuit, which had been inactive since dismissed in June of 2011. In early 2020, Villagomez filed a new motion in the 2002 lawsuit requesting the trial court to issue judgment *nunc pro tunc*—to sign and issue the 2010 settlement agreement.

¶ 11 The trial court then set out to end both cases. With respect to the 2004 lawsuit, it granted MICO's Motion to Dismiss for Lack of Prosecution and simultaneously denied the 2016 motion for reconsideration. With respect to the 2002 lawsuit, it denied the motion to issue a judgment *nunc pro tunc*. Villagomez now challenges both rulings.

II. JURISDICTION

¶ 12 We have appellate jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3.

III. STANDARDS OF REVIEW

¶ 13 This appeal raises two issues. The first is whether the trial court erred in denying the motion to issue a judgment *nunc pro tunc* in the 2002 lawsuit. Where the trial court exercises its equitable power to correct or not to correct a clerical mistake, the applicable standard of appellate review is abuse of discretion. *See Commonwealth v. Laniyo*, 2012 MP 1 ¶ 17.

¶ 14 The second issue is whether the trial court erred in granting MICO's Motion to Dismiss for Lack of Prosecution in the 2004 lawsuit. In considering dismissal for failure to prosecute under NMI Rule of Civil Procedure 41(b), CNMI courts decide based on five factors. *Su Yue Min v. Feng Hua Enter.*, 2017 MP 3 ¶ 20. The factors are: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." *Id.*; *Wabol v. Villacrusis*, 2000 MP 18 ¶ 19. Dismissal for failure to prosecute is reviewed for abuse of discretion. *See id*. In the context of Rule 41(b) dismissals, an exercise of discretion should not be disturbed unless there is a definite and firm conviction that the trial court committed a clear error of judgment. *Id.*

IV. DISCUSSION

¶ 15 *Nunc pro tunc* judgments are equitable remedies that conform the case record to what was actually ordered. *In Sik Chang v. Norita*, 2006 MP 2 ¶ 20; *see also Laniyo*, 2012 MP 1 ¶ 17. A *nunc pro tunc* order may only be used to conform the record to what actually happened; it cannot change the record in any other fashion. *In Sik Chang*, 2006 MP 2 ¶ 22. Our law distinguishes between "clerical" and "judicial" errors. *Id.* A clerical mistake is one where the record does not match the actual proceedings. *Id.* By contrast, a judicial mistake is a misstatement of law or fact that occurred during the proceedings. *Id.* A *nunc pro tunc* order may only be used to correct clerical mistakes. *Id*. Villagomez contends that the lack of a judicial signature on the May 2010 Stipulated Judgment ("Stipulated Judgment"), which incorporated the Settlement Agreement, constitutes a clerical error that the trial court should have corrected *nunc pro tunc*.

¶ 16 Even if Villagomez is correct that the empty signature line is a clerical error, the trial court still did not abuse its discretion in concluding that *nunc pro tunc* relief should be denied. *Nunc pro tunc* relief is an exercise of equitable power. *Laniyo*, 2012 MP 1 ¶ 17. We have never yet described in detail the factors that should be used to evaluate requests to amend clerical errors. However, when discussing equitable relief more broadly, we have stated that trial courts are to "weigh the equities" in order to "fashion a decree to meet the requirements of the situation and to conserve the equities of the parties." *Manglona v. Baza*, 2012 MP 4 ¶ 40. Similarly, as stated by the D.C. Circuit Court of Appeals, "a *nunc pro tunc* order should be granted or refused, as justice may require, in view of the circumstances of the particular case." *Weil v. Markowitz*, 829 F.2d 166, 175 (D.C. Cir. 1987). Accordingly, we conclude that the trial court should consider the

totality of the circumstances when deciding whether to correct a clerical mistake, with the aim of maximizing justice.

¶ 17 We find the following approaches from other jurisdictions to be illustrative of the specific factors to weigh when determining whether *nunc pro tunc* relief would maximize justice in light of all the relevant circumstances. The Supreme Court of Iowa has instructed the trial judges of the state to determine whether the alleged mistake is an "evident" mistake. *See McVay v. Kenneth E. Montz Implement Co.*, 287 N.W.2d 149, 151 (Iowa 1980).[2] Where the record as issued by the trial court is "so unusual as to be startling" or is of the type "easily made and overlooked," such as an error in name or date, a finding of evident mistake is more likely. *Id.* A conclusion that a mistake is evident weighs in favor of granting relief. In addition, and highly relevant for the case at hand, the *McVay* court required judges to consider the length of time between when the error was made and when relief was sought. *See id.* Generally, the longer this length of time, the less willing a court should be to grant reformation of the record. Additionally, courts have made prejudice to the party not requesting relief a factor in the analysis. In *Ward v. Lupinacci*, the Idaho Court of Appeals concluded that judgment on a verdict should be entered *nunc pro tunc* as requested by plaintiffs. 111 Idaho 40, 43 (Idaho Ct. App. 1986). As part of the basis for its holding, the court noted that no "unfair prejudice" had been shown by the defendants. *Id.* Likewise, we conclude that the trial court should consider whether the party not requesting *nunc pro tunc* relief would be unfairly prejudiced by that relief.

¶ 18 In its ruling denying *nunc pro tunc* relief, the trial court acted within its discretion. It noted that Villagomez, without an adequate explanation, had let six and one half years pass before bringing the request to issue judgment. Moreover, the subsequent record of proceedings demonstrates that the court was aware of the Stipulated Judgment and treated it as if it had been approved. For example, in a November 2010 Order, the trial court stated that the Stipulated Judgment and Order was filed on May 21, 2010. Likewise, in a June 2011 Order, the trial court quoted from the Settlement Agreement, referenced again the date of that agreement as May 21, 2010, and even stated "the Court did allow the parties to enter into a Stipulated Judgment." Thus, the lack of a signature—if an error—was not a material error because it did not compromise subsequent proceedings. That is, the trial court acknowledged the Stipulated Judgment and treated it as if it had been approved. For these reasons, we will not disturb the *nunc pro tunc* ruling.

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[2] In *McVay*, the Iowa Supreme Court also held that the trial judge's *nunc pro tunc* order was void because the party not requesting relief was not provided with notice and a hearing. In the present case, MICO was aware of Villagomez's *nunc pro tunc* motion. At this time, we do not need to address whether a judge's *nunc pro tunc* order could be void due to a lack of notice and a hearing.

¶ 19 The second issue in this appeal is whether the trial court erred in dismissing the 2004 lawsuit for failure to prosecute. In considering dismissal for failure to prosecute under NMI Rule of Civil Procedure 41(b), we employ a five-factor test. *Su Yue Min*, 2017 MP 3 ¶ 20. Under this body of law, a trial court presented with a motion to dismiss for failure to prosecute is to consider: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." *Id.* (quoting *Wabol*, 2000 MP 18 ¶ 19).

¶ 20 The public's interest in expeditious resolution of litigation always favors dismissal. *Su Yue Min*, 2017 MP 3 ¶ 22 (quoting *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)). In its decision, the trial court identified a bevy of federal cases that were dismissed for failure to prosecute when plaintiffs delayed from time periods ranging from as little as two months to as long as four years. *See, e.g.*, *Moneymaker v. CoBen (In re Eisen)*, 31 F.3d 1447, 1452 (9th Cir. 1994) (holding that a four-year delay, without adequate explanation, was clearly unreasonable); *Wade v. City of Los Angeles*, 2013 U.S. Dist. LEXIS 12804 *1-2 (C.D. Cal. Jan. 29, 2013) (dismissing action for failure to prosecute where plaintiff took no action for almost two months); *Bautista v. Concentrated Emp. Program of Dep't of Lab.*, 459 F.2d 1019 (9th Cir. 1972) (affirming dismissal where plaintiffs took no action for over one year). Villagomez simply cannot blame the exceedingly leisurely pace of this lawsuit on the trial court judges. Villagomez's stipulated Motion for Reconsideration had been pending for over three years before a status conference was requested. The court did not abuse its discretion in concluding that this factor weighed in favor of dismissal.

¶ 21 As with the first factor, the court did not abuse its discretion in concluding that its need to manage its docket weighed in favor of dismissal. We have held that great deference to the concerns of the trial court is particularly relevant with regard to this factor, since it is best situated to decide when delays constitute an interference with docket management. *Su Yue Min*, 2017 MP 3 ¶ 23 (quoting *Ash v. Cvetkov*, 739 F.2d 493, 496 (9th Cir. 1984)). In its Order, the trial court stated that examining and researching the issues presented by this case has consumed a substantial amount of time and required it to seek out physical files—a rare practice these days—that were submitted to the court before the era of digitized filings. Moreover, it noted that familiarizing itself again with a nearly twenty-year-old case has adversely impacted its ability to handle more current litigation. Judicial administration often requires such complexities, and we do not relieve the trial court of its duty to familiarize itself with case records. Nevertheless, the trial court acted reasonably here in finding that these docket management concerns weighed in favor of dismissal, particularly when viewed in light of all the circumstances raised by Villagomez's lax prosecution of the case.

¶ 22 The trial court also acted appropriately by weighing the third factor in favor of dismissal. As noted by MICO, this Court has previously held that unreasonable delay creates a rebuttable presumption of prejudice. *Su Yue Min*, 2017 MP 3 ¶ 23. NMI law does not impose an affirmative duty on a defendant to demonstrate prejudice; rather, prejudice is presumed as long as the delay is "unreasonable." *Id.* (quoting *Anderson v. Air W., Inc.*, 542 F.2d 522, 524 (9th Cir. 1976). In its analysis, the trial court noted that three parties to the original lawsuit—Julia Villagomez Garrido, Daniel Villagomez, and Rosario Villagomez—have passed away. These losses of evidence and memory constituted prejudice to MICO, whose ability to prepare a defense if this action were to proceed to trial would be severely hampered as a result of Villagomez's delay in prosecuting the matter. This analysis was well within the court's discretion. Villagomez failed to rebut this presumption. Here, the trial court sensibly found that the delay in prosecuting an action that commenced in 2004 was unreasonable and that, consequently, MICO suffered prejudice.

¶ 23 As to the fourth factor, the court correctly noted that resolution on the merits is generally the favored outcome in any lawsuit. *See Milne v. Po Tin*, 2001 MP 16 ¶ 23 (noting the "strong public policy" that favors addressing cases on their merits). However, this public policy interest can be outweighed by dilatory conduct on the part of a plaintiff. *Su Yue Min*, 2017 MP 3 ¶ 25 ("Though public policy favoring disposition on the merits does not favor dismissal, it may be outweighed by a party's dilatory conduct") (citing *Morris v. Morgan Stanley & Co.*, 942 F.2d 648, 652 (9th Cir. 1991)). In *Su Yue Min*, a party failed to make any substantive filings for nearly three years before the trial court granted dismissal for failure to prosecute. *Su Yue Min*, 2017 MP 3 ¶¶ 2–7. In *Morris v. Morgan Stanley & Co.*, plaintiffs "unnecessarily delayed" adjudication for almost two years before the trial court dismissed. 942 F.2d at 652.

¶ 24 Here, Villagomez failed to file any motion opposing the grant of summary judgment for over four years. By itself, that would have been sufficient under *Su Yue Min* and *Morris* to warrant dismissal for failure to prosecute. Likewise, while waiting for a ruling on the 2016 Motion to Reconsider, Villagomez did not do anything for nearly three and a half years. While it is true that the court's "inaction" is partly to blame for the lack of a ruling, Villagomez could have brought this inaction to the court's attention much more promptly. Ultimately, filing only one substantive motion in this case between 2016 and 2021, without a reasonable excuse, constitutes dilatory conduct. Accordingly, the trial court acted within its discretion in concluding that such conduct outweighed the public policy interest favoring resolution on the merits.

¶ 25 Once again, the trial court's determination that no less drastic sanction could suffice was within its discretion. We have held that dismissal for failure to prosecute is a harsh remedy and that, before granting dismissal, trial courts must examine less drastic alternatives. *Milne*, 2001 MP 16 ¶ 25. Such alternatives include, but are not limited to, conditional orders of dismissal, disciplinary action

directed at the erring attorney, monetary sanctions, and reprimands. *Id.* ¶ 26. However, a trial court is not required to engage in exhaustive analysis of every possible alterative; NMI law requires only "reasonable exploration of possible and meaningful alternatives." *Su Yue Min*, 2017 MP 3 ¶ 26 (quoting *Anderson*, 542 F.2d at 525). Dismissal is generally more appropriate where the delay can be attributed to the attorney—as opposed to the client—and where the delay was designed to benefit a strategic interest. *Milne* at ¶ 26.

¶ 26 The court considered the possibility of monetary sanctions. The court concluded that monetary sanctions would not suffice in this matter, since the delays have not only been an inconvenience but have actually diminished the court's ability to adjudicate the matter, since witnesses have died and evidence has become unavailable or less accessible. Monetary sanctions would not turn back the clock and restore this litigation to where it could have been had Villagomez acted more diligently. *See Windward Agency, Inc. v. Cologne Life Reinsurance Co.*, 353 F. Supp. 2d 538, 541 (E.D. Pa. 2003) (concluding that monetary sanctions would be inadequate where defendant had been prejudiced as a result of extended delays).

¶ 27 Villagomez fails to demonstrate how the court's analysis fell short of the requirement to engage in reasonable exploration of possible alternatives. They neither suggest any alternatives that the court failed to consider nor argue why such alternatives would have sufficed. In sum, this Court's analysis is once again deferential to the trial court's understanding of whether alternatives were available; the trial court acted reasonably when deciding that this fifth and final factor weighed in favor of dismissal. Moreover, we add that monetary sanctions would be not only inadequate but also inappropriate and unfair to present counsel. Villagomez has been represented by several different attorneys throughout the nearly twenty-year history of these cases, and blame for delays cannot be levied against any one of them—current counsel least of all.

V. CONCLUSION

¶ 28 The trial court did not abuse its discretion in refusing to grant *nunc pro tunc* relief in the 2002 lawsuit or in concluding that dismissal of the 2004 lawsuit for failure to prosecute was warranted. Therefore, we AFFIRM the dismissal of both the 2002 and 2004 lawsuits with prejudice.

SO ORDERED this 22nd day of December, 2021.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLOÑA
Associate Justice

/s/
JOSEPH N. CAMACHO
Justice Pro Tem

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NOTICE