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IN THE

Supreme Court

OF THE

Commonwealth of the Northern Mariana Islands

TEODORO I. ALBIA, ET AL.,
Plaintiffs-Appellants,

v.

GEORGE C. DUENAS AND COMMONWEALTH SECURITY SERVICES, INC.,
Defendants-Appellees.

Supreme Court No. 2021-SCC-0017-CIV

OPINION

Cite as: 2022 MP 3

Decided April 14, 2022

JUSTICE JOHN A. MANGLOÑA
ASSOCIATE JUSTICE PERRY B. INOS
JUSTICE PRO TEMPORE F. PHILIP CARBULLIDO

Superior Court Civil Action No. 18-0062
Associate Judge Wesley M. Bogdan, Presiding

MANGLOÑA, J.:

¶ 1 Plaintiffs-Appellants Teodoro I. Albia, et al. ("Albia"), appeal the trial court's order which denied their motion for substitution of parties and dismissed this case for being outside the statute of limitations. We REVERSE in part, AFFIRM in part, and REMAND for proceedings consistent with this opinion.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 In 1996, the United States District Court for the Northern Mariana Islands issued a $373,384.44 judgment for unpaid wages and liquidated damages in favor of Albia and ten other plaintiffs against their employer, Commonwealth Security Services and George C. Duenas. That judgment, however, remained unpaid for over twenty years, even until Duenas' death in 2017.

¶ 3 After Duenas passed away, Albia filed the 1996 judgment with the NMI Superior Court and moved for a writ of execution ordering enforcement of the balance. Before obtaining a ruling, Albia filed a separate probate action for Duenas' estate, in which he claims to be due the 1996 judgment as an estate creditor. The Superior Court denied Albia's motion for a writ of execution, noting failure to provide proof of service, which would have been impossible given Duenas' death. Albia then moved to substitute the estate of Duenas as defendant in lieu of Duenas himself. The Superior Court also denied that motion and dismissed the case for being outside the statute of limitations. This appeal followed.

II. JURISDICTION

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

III. STANDARDS OF REVIEW

¶ 5 This appeal raises two issues. The first is whether the Superior Court erred in holding that the twenty-year statute of limitations found in 7 CMC §2502(a)(1) required it to dismiss the case. The second issue is whether the Superior Court erred in denying Albia's Motion for Substitution. Both issues present questions of law subject to review de novo. *See New Shintani Corp. v. Quitugua*, 2011 MP 9 ¶ 8; *Gov't of Guam v. O'Keefe*, 2018 Guam 4 ¶ 10; *Ishimatsu v. Royal Crown Ins. Corp.*, 2012 MP 17 ¶ 27.

IV. DISCUSSION

¶ 6 The first issue is whether this case constitutes an "action upon a judgment" barred by the twenty-year statute of limitations. 7 CMC § 2502(a)(1). The statute provides in relevant part:

> (a) The following actions shall be commenced only within 20 years after the cause of action accrues:
>
> (1) Actions upon a judgment.

¶ 7 This appeal requires us to determine the meaning of Section 2502(a)(1). The primary basis for statutory interpretation is the plain language of the statute itself. *Office of the Pub. Auditor v. GPPC, Inc.*, 2021 MP 13 ¶ 15. However, if the meaning is unclear, our objective is to ascertain and give effect to the intent of the legislature. *Id*. Moreover, statutory language should be construed to be consistent with the common law; words that have a well-defined meaning at common law are presumed to have the same meaning in statutes dealing with similar subject matter. *Moser v. State*, 544 P.2d 424, 426 (Nev. 1975); *Harvey v. Care Initiatives, Inc.*, 634 N.W.2d 681, 685 (Iowa 2001). Finally, statutes are to be interpreted *in pari materia*, whereby the meaning and application of specific statutory language is determined by looking to statutes which relate to the same person or thing and which have a purpose similar to that of the statute being construed. *Commonwealth v. Camacho*, 2002 MP 14 ¶ 21 n.6.

¶ 8 Here, the statute does not contain a definition of the term "action" and no prior opinion of this Court has interpreted this provision. However, Section 2502(a)(1) is far from the only provision in the Commonwealth Code dealing with legal proceedings to enforce pre-existing judgments. In 1994, the legislature adopted the Uniform Enforcement of Foreign Judgments Act ("Uniform Act"), a model law approved by the American Bar Association and the National Conference of Commissioners on Uniform State Laws in 1964. *See* 7 CMC § 4401.[1]

¶ 9 The Uniform Act permits a person who holds a judgment from a court of the United States or any other court entitled to full faith and credit to pursue enforcement in our judicial system. Under this Act, the judgment holder must file a copy of the foreign judgment with the Superior Court and provide an affidavit setting forth the name and last known post office address of the judgment debtor and creditor. 7 CMC §§ 4403–4404. The judgment is then treated as having the same effect and as being subject to the same procedures and defenses as a judgment of the NMI courts.

¶ 10 The Uniform Act specifically states that judgment holders need not bring an "action" to enforce judgments; instead, compliance with its provisions will enable a court to rule on enforcement of a foreign judgment. The Act provides that "[t]he right of a judgment creditor to bring an action to enforce its judgment *instead of* proceeding under this chapter remains unimpaired." 7 CMC § 4407 (emphasis added). While it does not define the term "action," Section 4407 means that holders of foreign judgments have multiple options under NMI law to enforce those judgments. A judgment holder may *either* seek a judicial decree by acting on the notice and filing provisions of the Uniform Act *or* by bringing an "action" seeking enforcement. Thus, pursuing enforcement only under the

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[1] As of April 2022, the Uniform Enforcement of Foreign Judgments Act has been adopted by 48 states. *1964 Enforcement of Foreign Judgments Act*, UNIF. L.COMM'N, https://www.uniformlaws.org/committees/community-home?CommunityKey=e70884d0-db03-414d-b19a-f617bf3e25a3 (last visited Apr. 5, 2022).

Uniform Act does not constitute an "action" on a judgment. 7 CMC §§ 4401–4408.

¶ 11 Here, Albia pursued enforcement of the 1996 Judgment under the Uniform Act. Albia began proceedings by filing a copy of the judgment, as required by statute. 7 CMC § 4403. Since Albia sought enforcement solely under the procedures of the Uniform Act, this case does not constitute an "action" on the 1996 Judgment.

¶ 12 Under the principle of *in pari materia*, we conclude that the term "action" has the same meaning in 7 CMC § 2502(a)(1) as in 7 CMC § 4407. Therefore, since this case is not an "action" on a judgment, it does not fall within the twenty-year limitations period.

¶ 13 Our conclusion parallels that taken by most states and follows common law practice. Many states have statutes that, like 7 CMC § 2502(a)(1), establish time limitations on "actions" brought to enforce judgments. The vast majority of state supreme courts have held that the limitations period is not triggered when a judgment holder only moves for execution or files a foreign judgment with the state court. *Morrissey v. Morrissey*, 713 A.2d 614, 619 n.13 (Pa. 1998).

¶ 14 For instance, Alaska Statute § 09.10.040(a) states "[a] person may not bring an action upon a judgment or decree of a court of the United States . . . unless the action is commenced within 10 years." The Alaska Supreme Court has held this provision governs "only proceedings commenced by the filing of a complaint." *State ex rel. Inman v. Dean*, 902 P.2d 1321, 1323 (Alaska 1995). Critically, the court also held that executions on judgments are not "actions" for the statute of limitations. *Id*. at 1324.

¶ 15 Likewise, Pennsylvania law provides: "the following actions and proceedings must be commenced within four years . . . (5) *An action upon a judgment* or decree of any court of the United States or of any state." 42 Pa. C.S. § 5525 (emphasis added). The Pennsylvania Supreme Court has noted the distinction between proceedings to enforce a judgment and actions upon a judgment, concluding that enforcement proceedings are not subject to the four-year statute of limitations. *Morrissey*, 713 A.2d at 619. *Morrissey* states that "[t]he fundamental distinction between actions upon judgments and enforcement proceedings is recognized in a majority of jurisdictions." *Id*. at n.13.

¶ 16 New Hampshire adopts the same approach. Section 508:5 of the New Hampshire Revised Statutes provides: "[a]ctions of debt upon judgments . . . may be brought within 20 years after the cause of action accrued, and not afterward." Interpreting this language, the New Hampshire Supreme Court has explicitly held that a writ of execution does not constitute an action of debt upon a judgment. *McBurney v. Shaw*, 804 A.2 467, 469-71 (N.H. 2002) ("Execution and the process of levy is not an action of debt upon a judgment . . . [w]e reject the plaintiff's argument that an execution lien is governed by the limitation period for actions of debt upon a judgment. As we have explained, there is a difference

between an action of debt upon a judgment and a writ of execution.") (internal citations omitted).

¶ 17 Even California, which has not adopted the Uniform Act, also draws the same distinction between enforcement proceedings and actions on judgments. The California Code provides that "an action upon a judgment or decree of any court of the United States or of any state within the United States" must be brought "[w]ithin 10 years." Cal. Code Civ. Proc. § 337.5. A separate statutory provision states that "upon the expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property . . . [a]ll enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease." Cal. Code Civ. Proc. § 683.020. The California Court of Appeals, when ruling on these provisions, has held that they evince a clear distinction between actions on judgments and other enforcement proceedings, such as writs. In *Green v. Ziss*, the court held that "upon the expiration of 10 years after the date of entry of a money judgment . . . the judgment may not be enforced. The judgment creditor may [however] be able to bring an action on the judgment." 7 Cal. Rptr. 2d 406, 407-08 (Cal. App. 1992).

¶ 18 Finally, a Vermont statute provides: "[a]ctions on judgments and actions for the renewal or revival of judgments shall be brought by filing a new and independent action on the judgment within eight years after the rendition of the judgment, and not after." 12 V.S.A. § 506. The highest court of Vermont has held that a writ of execution does not fall under this statute of limitations. *See Koerber v. Middlesex College*, 383 A.2d 1054, 1055 (Vt. 1978) ("a civil action on a judgment . . . is a new and independent action, and not merely a means of enforcing a judgment, as is a writ of execution.").

¶ 19 The distinction between actions on judgments and proceedings to enforce judgments has longstanding historical roots. At common law, every judgment granted to creditors two distinct rights of recovery. *See id.*; *see also* 47 Am. Jur. 2d Judgments § 722. The first right is for a *new and independent* cause of action; in other words, the creditor can bring a fresh lawsuit against the judgment debtor to recover on the judgment. 47 Am. Jur. 2d Judgments § 722 (emphasis added). This independent action would then result in the entry of a new judgment. *Id*. The second right is for the creditor to move for execution of the initial judgment. *Id*. This is "inherent[ly] distinct" from an action on the judgment, since it is not an original cause of action. *Id*. We hold that an "action" on a judgment is the first right; it lies only where the judgment holder commences a civil action in the Superior Court by filing a complaint that names the judgment debtor as the defendant. *See* NMI R. CIV. P. 3 ("A civil action is commenced by filing a complaint with the Superior Court."). The twenty-year statute of limitations in 7 CMC § 2502(a)(1) applies to this new independent lawsuit to enforce the judgment. It does not apply when the creditor moves for execution of the initial judgment pursuant to the Uniform Act.

¶ 20 Since the Superior Court should not have dismissed this case under the statute of limitations, we must also decide whether Albia's Motion for

Substitution of Parties under Rule 25(a)(1) of the Rules of Civil Procedure was properly denied. Since the trial court's ruling rests on interpreting the language of that rule, review is de novo. *See Ishimatsu v. Royal Crown Ins. Corp.*, 2012 MP 17 ¶ 27.

¶ 21 Rule 25(a)(1) provides: "If a *party* dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party." (emphasis added). The rule contemplates a situation in which an active party to litigation passes away during the lawsuit. In such a situation, a party may move to substitute a new litigant to replace the deceased party. For substitution to be possible, however, that deceased party must have been made party to the lawsuit before death. To permit "substitution" of a party who predeceased the lawsuit defies the plain text of the rule.

¶ 22 Other jurisdictions, ruling on motions for substitution under rules functionally identical to NMI Rule 25(a)(1), have reached the same conclusion. In an Ohio case, *Greenberg v. Heyman-Silbiger*, guardians of the plaintiff sued for breach of contract the day after the plaintiff's death. 78 N.E.3d 912, 914 (Ohio Ct. App. 2017). The defendant argued that the guardians had no authority to commence an action on the plaintiff's behalf. *Id.* at 914–15. The guardians then moved to substitute the plaintiff's estate as the proper plaintiff under Ohio's Rule 25(a)(1), and the trial court denied the motion, reasoning that since the plaintiff was already deceased before filing the complaint, no party could be substituted out. *Id*. at 915–16 The guardians abandoned this argument on appeal, but the Ohio Court of Appeals effectively affirmed the trial court's ruling in dicta, noting that "the [guardians] cannot escape the fact that [plaintiff] was never a live party when the action was initiated, and therefore Civ. R. 25(A) cannot operate to allow substitution." *Id*. at 918.

¶ 23 Federal courts at the district and circuit levels have reached the same conclusion. *See, e.g.*, *Lacy v. Tyson*, No. 1:07-cv-00381-LJO-GSA-PC, 2012 U.S. Dist. LEXIS 134932, at *4 (E.D. Cal. 2012) ("the substitution of parties cannot be ordered in conformance with Rule 25(a)(1) where the person for whom substitution is sought died prior to being named a party."); *Mizukami v. Buras*, 419 F.2d 1319, 1320 (5th Cir. 1969) (holding that rule allowing substitution for deceased party where claim is not extinguished by his death was not available to plaintiff in death suit where defendant predeceased filing of case); *Gabor v. Deshler*, No. 17-CV-01524-LHK, 2017 U.S. Dist. LEXIS 152263, at *35 (N.D. Cal. 2017) ("Rule 25(a) does not apply where the defendant died before the action was filed."); *Hammond v. Fed. Bureau of Prisons*, 740 F. Supp. 2d 105, 109–110 (D.C. 2010) (dismissing with prejudice claims against defendant and noting that substitution under Rule 25(a)(1) would not be possible because defendant died before being served with process).

¶ 24 We are not persuaded by Albia's argument that substitution should have been granted because Duenas was a party to the initial suit in the NMI District Court that culminated in the 1996 Judgment. Substitution under Rule 25(a)(1) requires the death of a "party." While Duenas was a part of the lawsuit before the

District Court, the rendering of a final judgment and the passage of time for an appeal terminated his status as a party to that case. Accordingly, when Duenas died in 2017, he was not a "party" to any case, and substitution would therefore be inappropriate.

¶ 25 Given the plain text of NMI Rule 25(a)(1) and the heavy weight of persuasive authority from other jurisdictions, we conclude that a motion for substitution of parties is futile and should be denied where the party for whom substitution is sought died before being named a party.

V. CONCLUSION

¶ 26 We conclude that dismissal under 7 CMC § 2502(a)(1) was improper, but that Albia's Motion for Substitution was correctly denied. Thus, the ruling is AFFIRMED in part and REVERSED in part, and we REMAND the case for proceedings consistent with this opinion.

SO ORDERED this 18th day of April, 2022.

/s/
JOHN A. MANGLOÑA
Associate Justice

/s/
PERRY B. INOS
Associate Justice

/s/
F. PHILIP CARBULLIDO
Justice Pro Tempore

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