

FSM SUPREME COURT APPELLATE DIVISION

FEDERATED STATES OF MICRONESIA,)	APPEAL CASE NO. Y1-2017
)	(Civil Action No. 2013-3001)
Appellant/Cross-Appellee,)	
)	
vs.)	
)	
KUO RONG 113, a long line fishing vessel,)	
HUNG YAO CHANG (Captain of the fishing)	
vessel), SYU BEI-JING (Permit holder), and LUEN)	
THAI FISHING VENTURE, LTD., (Company),)	
)	
Appellee/Cross-Appellants.)	
_____)	

ORDER DENYING PETITION FOR REHEARING

Decided: August 20, 2020

BEFORE:

Hon. Dennis K. Yamase, Chief Justice, FSM Supreme Court
Hon. Beaulen Carl-Worswick, Associate Justice, FSM Supreme Court
Hon. Chang B. William, Specially Assigned Justice, FSM Supreme Court*

*Chief Justice, Kosrae State Court, Tofol, Kosrae

APPEARANCE:

For the Appellant:	Lori J. Williams, Esq. Assistant Attorney General FSM Department of Justice P.O. Box PS-105 Palikir, Pohnpei FM 96941
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HEADNOTES

Appellate Review

An appellate opinion and the judgment serve different functions and are not designed to mirror each other. FSM v. Kuo Rong 113, 23 FSM R. 8, 10 (App. 2020).

Appellate Review – Decisions Reviewable

Generally, an appeal from a trial judge's ruling is to be taken only after completion of all trial proceedings, upon issuance of a final judgment. FSM v. Kuo Rong 113, 23 FSM R. 8, 10 (App. 2020).

Appellate Review – Decisions Reviewable; Courts

Conducting trials de novo and making findings of fact is normally the province of the trial court and not of the appellate division, which is generally unsuited for such inquiries. FSM v. Kuo Rong 113, 23 FSM R. 8, 10 (App. 2020).

Appellate Review – Rehearing

The appellate court will not impose a \$400,000 judgment on the appellees when that would require the appellate court to make factual findings, which is the province of the trial court. It is for the trial court to determine the amount of the final judgment, regardless of the practical import of the appellate court's opinion and consequent judgment. FSM v. Kuo Rong 113, 23 FSM R. 8, 10-11 (App. 2020).

Appellate Review – Rehearing

The appellate court will summarily deny a petition for rehearing when it has carefully reviewed the matter and determined that it has neither overlooked nor misapprehended any point of law or fact. FSM v. Kuo Rong 113, 23 FSM R. 8, 11 (App. 2020).

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COURT'S OPINION

DENNIS K. YAMASE, Chief Justice:

I. BACKGROUND

The Opinion in this matter was entered on March 23, 2020, with Judgment being issued on July 8, 2020. The Court entered an Order Granting Motion for Enlargement of Time on July 28, 2020. On August 5, the Appellant/Cross-Appellee, Federated States of Micronesia ("Appellant"), timely filed its Petition for Re-Hearing to Correct Clerical Errors in the July 8, 2020 Judgment.

II. FACTS

The Conclusion of this Court's Opinion provides, in pertinent part, as follows:

Based on the foregoing we reverse the trial court's June 28, 2017 judgment in Civil Action No. 2013-3001, vacate its order of penalties, and remand the matter to Trial Court (No. 2) with instructions to reinstate it on the court's trial calendar for further proceedings consistent with our opinion.

[FSM v. Kuo Rong 113, 22 FSM R. 515, 528 (App. 2020)] (emphasis added).

The Court's Judgment provides, in pertinent part, as follows:

On consideration whereof, it is now hereby ordered and adjudged by this court that *the June 28, 2017 Judgment ordering penalties against the Defendants-Appellees Kuo Rong 113, a long line fishing vessel, Hung Yao Chang (Captain of the fishing vessel), Syu Bei-Jing (Permit holder), and Luen Thai Fishing Venture, Ltd., (Company) issued by the Supreme Court of the Federated States of Micronesia trial division, Yap venue, in this cause be, and hereby is, reversed*

(emphasis added).

III. DISCUSSION

The Appellant argues that the Judgment, as drafted, is inconsistent with the Opinion "to the extent that it changes the outcome of the case." Pet. for Reh'g to Correct Clerical Errors in the July 8, 2020 J. at 2 ("Pet. for Reh'g").

The Appellant further contends as follows:

The FSM submits that the above-referenced clerical error¹ has resulted in the Appellees not owing any money to the FSM, an outcome that is very different from the outcome that would result if the Judgment is corrected to reflect the conclusions in the Opinion issued by this Court on March 23, 2020. Specifically, if the trial court's June 28, 2017 judgment is reversed, and the order of penalties is vacated and the matter is remanded and reinstated on the trial calendar of Trial Court No. 2, *for further proceedings consistent with the March 23, 2020 Opinion of this Court*, then the Appellees would owe the FSM \$400,000.

Pet. for Reh'g at 2 (emphasis added).

Appellant's argument is unclear. The Opinion and the Judgment serve different functions and are not designed to mirror each other.

The Appellant's concerns are likely addressed in the Mandate, issued herewith, which includes the language desired by the Appellant: "you are HEREBY ORDERED to reinstate the matter on the court's trial calendar *for further proceedings consistent with our Opinion.*"

Appellant confuses the roles of the FSM Supreme Court's Trial and Appellate Divisions.

Generally, an appeal from a ruling of a trial judge is to be taken only after completion of all trial proceedings, upon issuance of a final judgment. In re Main, 4 FSM R. 255, 257 (App. 1990).

Conducting trials *de novo* and making findings of fact is normally the province of the trial court and not of the appellate division, which is generally unsuited for such inquiries. Moroni v. Secretary of Resources & Dev., 6 FSM R. 137, 138 (App. 1993).

Essentially, Appellant contends that this court should impose judgment of \$400,000 against the Appellees.

¹ Bolded for reference purposes.

However, that would require this Court to make factual findings, which is the province of the trial court. In re Extradition of Jano, 6 FSM R. 23, 24 (App. 1993).

It is for the trial court to determine the amount of the final judgment, regardless of the practical import of this court's Opinion and consequent Judgment. Accordingly, the matter should remain with the trial court for further proceedings.

IV. CONCLUSION

We have carefully reviewed this matter and determined that we have neither overlooked nor misapprehended any point of law or fact and therefore summarily deny the Petition for Re-Hearing. Stephen v. Chuuk, 17 FSM R. 496, 499 (App. 2011); Berman v. Pohnpei, 17 FSM R. 464, 465 (App. 2011).

THEREFORE, the Appellant's Petition for Re-Hearing to Correct Clerical Error in the July 8, 2020 Judgment is HEREBY DENIED.

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