



IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS



E-FILED
CNMI SUPERIOR COURT
E-filed: Feb 12 2025 02:08PM
Clerk Review: Feb 12 2025 02:08PM
Filing ID: 75622043
Case Number: 24-0131-CV
N/A

ANN MAUREEN S. ATTAO,

Plaintiff,

vs.

COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,

Defendant.

CIVIL ACTION NO. 24-0131

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION

I. INTRODUCTION

THIS MATTER came before the Court on February 4, 2025, at 9:00 a.m., in Courtroom 217A, at the Superior Court, Guma' Hustisia, Susupe, Saipan, Commonwealth of the Northern Mariana Islands ("Commonwealth"), for a hearing on Plaintiff's Motion for Reconsideration. Ann Maureen S. Attao ("Plaintiff") was represented by Stephen Woodruff. The Commonwealth ("Defendant")¹ was represented by Assistant Attorney General Alison Nelson.

Plaintiff motioned for the Court to reconsider a December 30, 2024 Order Granting Defendants' Motion to Substitute; Granting in Part and Denying in Part Defendants' Motion to Dismiss. Based on a review of the parties' filings, oral arguments, and applicable law, Plaintiff's Motion for Reconsideration is hereby **DENIED**.

/// /// /// /// /// ///

¹ Plaintiff initially pled her Complaint against seven (7) total defendants. The Court's December 30, 2024 Order dismissed all defendants except the Commonwealth. Courts amend case captions to excise dismissed defendants. *See, e.g., Niman v. Mont. Univ. Sys.*, 718 F. Supp. 3d 1319 (Mont. Dist. Ct. 2024). The case caption of this Order, therefore, reflects the current state of the case.

This Order also refers to former defendants Francisco D. Cabrera and Edward M. Deleon Guerrero in their official capacities as "OC Defendants" and in their individual capacities as "IC Defendants." However, this reflects the state of the matter at the time of the Court's prior Order. Cabrera and Deleon Guerrero are no longer named defendants in this matter in their individual or official capacities.

By Order of the Court, Judge TERESA KIM-TENORIO

II. BACKGROUND

1
2 On November 8, 2021, the Department of Commerce (“Commerce”) hired Plaintiff as a Clerk
3 Typist III in the Workers’ Compensation Division, under the supervision of Francisco D. Cabrera
4 (“Cabrera”). Plaintiff’s contract was to end September 30, 2022. However, Plaintiff “suffers from
5 diabetes, diabetic neuropathy, high cholesterol, asthma and anxiety.” *See* Complaint, 4 ¶ 13.
6 Plaintiff’s medical needs caused frequent absences from work.

7 Plaintiff accrued one hundred eight (108) hours of leave without pay in almost five (5) months
8 with Commerce, between January 2, 2022, and May 26, 2022. *See id.*, 4 ¶ 16. This included seventy-
9 six (76) hours for diabetic medical care, twenty-four (24) hours for jury duty, four (4) hours for “car
10 trouble,” and four (4) hours to attend a funeral. *See id.* 4 ¶ 18. Plaintiff’s leave requests were approved
11 when filed.

12 On May 26, 2022, Plaintiff received a “Notice of Termination for Cause” letter (“Letter”),
13 signed by Edward M. Deleon Guerrero (“Deleon Guerrero”). The Letter cited Plaintiff’s one hundred
14 eight (108) hours of leave without pay as cause for her termination. *See id.*, 4 ¶ 16. Plaintiff claims
15 the termination was actually “a political assessment by the incumbent Governor [Torres] and his
16 political allies, including Defendant [Deleon] Guerrero, based on Plaintiff’s family name, that she
17 could not be counted upon to support the Governor’s reelection.” *See id.*, 6 ¶ 24. The Letter stated
18 that the termination was “final” and “not appealable.” *See id.*, 5 ¶ 20.

19 On June 6, 2022, Plaintiff consulted with counsel and issued a letter to Deleon Guerrero,
20 objecting to the termination notice and asking that it be withdrawn. Plaintiff’s letter evoked the
21 protections of the Americans with Disabilities Act (“ADA”). On June 7, 2022, Deleon Guerrero
22 responded to Plaintiff by letter, stating that her termination was final and that her last day of
23 employment was to be June 10, 2022. *See id.*, 5-6 ¶¶ 21-23.
24
25

1 Plaintiff appealed the termination to the Commonwealth Civil Service Commission
2 (“CCSC”). The CCSC refused to consider Plaintiff’s request. Plaintiff claims this violated her due
3 process rights. *See id.*, 5 ¶ 27. On July 20, 2022, Plaintiff filed a discrimination charge with the
4 federal Equal Employment Opportunity Commission (“EEOC”). *See id.*, 6 ¶ 29. On March 5, 2024,
5 EEOC issued Plaintiff a “right to sue” letter. *See id.*, 6 ¶ 30. On June 3, 2024, Plaintiff filed her
6 Complaint, alleging, *inter alia*, Discrimination on the basis of disability in violation of the ADA.
7 The Complaint listed six (6) causes of action against seven (7) total defendants:

- 8 i. *Unlawful Discrimination on Account of Disability* in violation of 42 U.S.C. § 12112:
9 Plaintiff seeks declaratory and injunctive relief against Deleon Guerrero (in his individual
10 and official capacities), Cabrera (in his individual and official capacities), the CCSC,
11 Commerce, and the Commonwealth.
12
- 13 ii. *Back Wages* pursuant to 42 U.S.C. §§ 1983, 12112: Plaintiff seeks damages for the period
14 of alleged wrongful termination, between June 10, 2022 and September 30, 2022.
15 Plaintiff seeks relief against Deleon Guerrero (in his individual and official capacities),
16 Cabrera (in his individual and official capacities), the CCSC, Commerce, and the
17 Commonwealth.
18
- 19 iii. *Due Process Violation*: Plaintiff seeks damages against the CCSC for allegedly violating
20 her due process rights by declining to review her termination appeal.
- 21 iv. *Breach of Contract*: Plaintiff seeks damages against Commerce and the Commonwealth
22 for allegedly breaching her employment contract.
- 23 v. *Tortious Interference with Contract*: Plaintiff seeks damages against Deleon Guerrero (in
24 his individual and official capacities), and Cabrera (in his individual and official
25 capacities) for allegedly interfering with her employment contract.

1 vi. *Intentional Infliction of Emotional Distress*: Plaintiff seeks damages against Deleon
2 Guerrero (in his individual and official capacities), and Cabrera (in his individual and
3 official capacities) for the alleged emotional distress caused by Plaintiff’s termination.

4 On October 4, 2024, the seven (7) defendants collectively filed Motions to Substitute and to Dismiss.
5 On December 30, 2024, the Court issued its Order Granting Defendants’ Motion to Substitute;
6 Granting in Part and Denying in Part Defendants’ Motion to Dismiss. This Order substituted the
7 Commonwealth in place of the IC Defendants in Plaintiff’s fifth and sixth causes of action. The
8 Order further dismissed all named defendants except the Commonwealth.

9 On January 14, 2025, Plaintiff filed a Motion for Reconsideration, alleging clear error and
10 manifest injustice in the Court’s December 30, 2024 Order. Plaintiff argued that the Court applied
11 improper service standards in dismissing the OC Defendants. Plaintiff further argued that the Court
12 improperly certified the scope of the IC Defendants’ employment. Defendant (now solely the
13 Commonwealth) filed its Opposition to Plaintiff’s Motion for Reconsideration on January 29, 2025.
14 Plaintiff filed a Reply to Defendant’s Opposition on February 3, 2025. The issue now before the
15 Court is whether the December 30, 2024 Order Granting Defendants’ Motion to Substitute; Granting
16 in Part and Denying in Part Defendants’ Motion to Dismiss contained clear error or created manifest
17 injustice.
18

19 20 **III. LEGAL STANDARD**

21 Courts grant reconsideration motions when “alteration or amendment of the judgment is
22 necessary to correct a clear error or prevent manifest injustice.” *See* NMI R. CIV. P. 59(e)(3). Plaintiff
23 cited Rule 60(b)(5) as a secondary basis for relief. Rule 60(b)(5) allows relief from a final judgment
24 for “any other reason that justifies relief.” *See* NMI R. CIV. P. 60(b)(5).
25

1 Rule 60(b)(5), and its federal counterpart Rule 60(b)(6), have “been used sparingly as an
2 equitable remedy to prevent manifest injustice” and are “to be utilized only where extraordinary
3 circumstances prevented a party from taking timely action to prevent or correct an erroneous
4 judgment.” See Fed. R. Civ. P. 60(b)(6); see also *United States v. Alpine Land & Reservoir Co.*, 984
5 F.2d 1047, 1049 (9th Cir. 1993).

6 Here, Plaintiff based her Motion for Reconsideration on “clear error” and “manifest injustice”
7 analysis. Plaintiff’s oral arguments at the February 4, 2025 hearing also focused primarily on clear
8 error and manifest injustice. Therefore, the Court will analyze Plaintiff’s Motion under the standards
9 in Rule 59(e)(3). See NMI R. CIV. P. 59(e)(3). Clear error exists where the Court is “left with a firm
10 and definite conviction that a mistake has been made.” See *ANAKS Ocean View Hill Homeowners’*
11 *Association, Ltd. v. Inos*, 2023 MP 4 ¶ 31. Manifest injustice “analysis should specifically indicate
12 what injustice would occur if the previous decision were allowed to stand.” See *Zeyen v. Bonneville*
13 *Joint Dist.*, 114 F.4th 1129, 1139 (9th Cir. 2024).
14

15 16 IV. DISCUSSION

17 The Court will now analyze whether its prior Order contained clear error or manifest injustice.
18 At the February 4, 2025 Motion Hearing, Plaintiff characterized her arguments as to the Court’s
19 application of the CNMI District Court case *Manila v. Guerrero* as “not really material.” The Court,
20 therefore, will address Plaintiff’s material arguments regarding dismissal of OC Defendants and
21 scope-of-employment certification.

22 A. Dismissing OC Defendants

23 Clear error exists where the Court is “left with a firm and definite conviction that a mistake
24 has been made.” See *ANAKS Ocean View Hill Homeowners’ Association*, 2023 MP 4 ¶ 31. Plaintiff
25 argued that the Court’s dismissal of the OC Defendants constituted clear error. Plaintiff served

1 Deleon Guerrero and Cabrera personally. Plaintiff served both OC Defendants' agency, Commerce.
2 However, the service upon Commerce failed to name Deleon Guerrero or Cabrera. These two
3 individuals are separate legal entities in their individual and official capacities. In their official
4 capacities, Deleon Guerrero and Cabrera are separate legal entities from Commerce.

5 Plaintiff's Complaint named seven (7) total defendants. Two (2) of these were the OC
6 Defendants. All defendants in an action must be properly served. A court must dismiss when a
7 defendant is not properly served. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S.
8 344, 350 (1999). By dismissing for lack of service on the OC Defendants, the Court did not
9 improperly elevate form over function. Plaintiff did not serve two defendants in this action in the
10 capacity in which she intended to sue them. Dismissal of the OC Defendants was not in clear error.

11 Plaintiff claims that her summons, rather than service, was defective, and therefore that the
12 Court should have allowed her to correct the error and proceed. Plaintiff also claims that "[OC]
13 defendants in their official capacities are simply alter egos of [Commerce]." *See M. Reconsideration*,
14 4 ¶ 11. This is not the case. OC Defendants are parties in their own right. They must be properly
15 served. It is not clear error to dismiss defendants who were not served for lack of service.

16 Plaintiff's conflation of the OC Defendants and Commerce further militates against finding
17 manifest injustice in the Court's prior order. Even if Plaintiff was correct in that "[OC] defendants
18 in their official capacities are . . . alter egos of [Commerce]," "Plaintiff acknowledge[d] that . . . the
19 Department of Commerce generally lack[s] the capacity to sue and be sued in [its] own name." *See*
20 *P.'s Opp. to D.s' MTD*, 6 ¶ 8. Furthermore, Plaintiff stated that "it is not clear what the consequence
21 of dismissal of the official capacity defendants to this action would be." *See M. Reconsideration*, 2
22 ¶ 17. Plaintiff went on to state that dismissal of the OC Defendants would allow Defendant to "argue
23 that there is no basis for liability on any cause of action." *See id.*, 2 ¶ 20. Manifest injustice "analysis
24 should specifically indicate what injustice would occur if the previous decision were allowed to
25

stand.” *See Zeyen*, 114 F.4th at 1139. Unclear consequences, therefore, cannot be manifestly unjust. Furthermore, it is not manifest injustice that Defendant might “argue that there is no basis for liability on any cause of action.” *See M. Reconsideration*, 2 ¶ 20. If this is a legal argument that flows from proper dismissal of defendants who were not served, it is not manifestly unjust. The Court’s dismissal of the OC Defendants did not constitute clear error or manifest injustice. *See NMI R. Civ. P. 59(e)(3)*.

B. Certifying Scope of Employment

The Court’s prior Order accepted the Attorney General’s certification of the scope of Deleon Guerrero and Cabrera’s employment. Therefore, the Court substituted these IC Defendants for the Commonwealth in Plaintiff’s fifth and sixth causes of action. “The party seeking review of the [Attorney General’s] certification bears the initial burden of proof and must present evidence sufficient to disprove certification by a preponderance of the evidence.” *See Kabir v. CNMI Public School System*, 2009 MP 19 ¶ 13 n. 9.

Plaintiff argues that her Complaint should be a sufficient evidentiary showing to overcome the Attorney General’s certification. *See M. Reconsideration*, 8 ¶¶ 22-25. Plaintiff further argues that Defendant must offer evidence that the conduct complained of “is motivated ‘at least in part’ by serving the interests of the Commonwealth Government.” *See id.*, 9 ¶¶ 2-4 (quoting *Kolstad v. American Dental Ass’n*, 527 U.S. 526, 543-44 (1999)). This is a reversal of the law laid down by the NMI Supreme Court in *Kabir*. “The party seeking review . . . bears the initial burden of proof and must present evidence sufficient to disprove certification by a preponderance of the evidence.” *See Kabir*, 2009 MP 19 ¶ 13 n. 9 (emphasis added).

The Court will not find clear error or manifest injustice in its acceptance of the Attorney General’s certification simply because Plaintiff misinterprets *Kabir*. Requiring Defendant to make an evidentiary showing as to the IC Defendants’ motivations places the burden of proof squarely on

1 the certifying party. *Kabir* requires the opposite, that the party seeking review bears the burden. *See*
2 *id.* Plaintiff is the party seeking review, and so Plaintiff bears this burden.

3 Under Plaintiff’s interpretation of *Kabir*, courts would never accept scope-of-employment
4 certifications. Complaints alone would pass the “preponderance of the evidence” bar. Plaintiffs
5 would be free to sue whichever government employee they chose in their individual capacity based
6 on wholly unsupported allegations laid out in no-doubt histrionic pleadings. This runs directly
7 counter to the law laid out by the NMI Supreme Court: challenging parties bear the burden of
8 disproving certifications by a preponderance of the evidence. *See Kabir*, 2009 MP 19 ¶ 13 n. 9.
9 Plaintiff’s Complaint alone did not meet this burden. Therefore, the Court accepted the Attorney
10 General’s certification. This was not in clear error, and the absurd result potentially created by
11 Plaintiff’s interpretation of *Kabir* would create far more damage than the nebulous “manifest
12 injustice” she fails to describe. *See* NMI R. CIV. P. 59(e)(3).

13
14
15 **V. CONCLUSION**

16 Based on the foregoing, the Court does not find clear error or manifest injustice in its
17 December 30, 2024 Order. Therefore, Plaintiff’s Motion for Reconsideration is hereby **DENIED**.

18 **SO ORDERED** on this 12th day of February in the year 2025.

19
20
21 
22 _____
23 **TERESA K. KIM-TENORIO**
24 Associate Judge
25