

FALEGORONG, Plaintiff-Appellee

v.

**TRUST TERRITORIES OF THE PACIFIC ISLANDS, et al.,
Defendant-Appellant**

Civil Appeal No. 197

Appellate Division of the High Court

Yap District

January 11, 1979

Trust Territory appealed from judgment against it in negligence action. The Appellate Division of the High Court, Nakamura, Associate Justice, held that Yap District Legislature employee was an employee of the Trust Territory Government.

1. Trust Territory—District Legislatures—Status

The Yap District Legislature was created as a part of the Trust Territory Government, is an agency of that government, and is not an autonomous body. (3 TTC § 2)

2. Trust Territory—Negligence—District Legislature Employees

Trust Territory was liable for damages resulting from the negligence of an employee of the Yap District Legislature while driving a motor vehicle within the course and scope of his employment. (6 TTC § 251)

3. Trust Territory—Employees—District Legislature Employees

An employee of the Yap District Legislature is an employee of the Trust Territory Government.

Counsel for Appellant:

**JOHN K. RECHUCHER, Assistant
Attorney General, TTPI**

Counsel for Appellee:

**DANIEL H. MACMEEKIN, ESQ.,
Micronesian Legal Services
ISAAC V. FIGER, Micronesian
Legal Services, Yap District**

Before HEFNER, Associate Justice, NAKAMURA, Associate Justice, and GIANOTTI, Associate Justice

NAKAMURA, Associate Justice

This is an appeal from a judgment of the Trial Division of the High Court, Yap District, in Civil Action No. 6-76.

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The facts of this case are straightforward. On November 10, 1975, a car collision took place in Yap District between a car owned by the Yap District Legislature and a car which was found by the Trial Court to have been owned by Augusta Kugfel Falegorong, plaintiff/appellee. The District Legislature's car was driven by James E. Siyou, an employee of the District Treasurer's Office, Yap District Legislature.

On May 21, 1976, plaintiff/appellee filed her action for damages, based upon the negligence of defendant Siyou and the concurrent liability of defendant Trust Territory of the Pacific Islands under the doctrine of *respondeat superior*. By Judgment dated February 4, 1977, both defendants were found jointly and severally liable to plaintiff/appellee for damages in the amount of \$422.40. Only the defendant Trust Territory of the Pacific Islands appeals from this Judgment.

[1] Appellant's first contention is that the Trial Court erred in holding that the Yap District Legislature is an agency of the Trust Territory of the Pacific Islands. We disagree.

The Yap Legislature was established on August 7, 1968, in accordance with 3 TTC 2, by a charter granted by the High Commissioner. The purpose of its function was to assist in the Government of the District in accordance with the laws of the Trust Territory of the Pacific Islands. It was never intended to be an autonomous body. See *Trust Territory v. Santos*, 7 T.T.R. 22 (Tr. Div. Marianas 1974). It was created as a part of the Trust Territory Government. A.G. Op. 73-1; Journal of the Senate, Congress of Micronesia, First Regular Session (January-March 1975), p. 436.

We hold, therefore, that the Yap District Legislature is an agency of the Trust Territory of the Pacific Islands.

[2] Appellant's second contention is that the Trial Court committed error in holding the Trust Territory to be liable for damages resulting from the negligence of an employee of the Yap District Treasurer, acting within the course and scope of his employment. We disagree.

The Trust Territory of the Pacific Islands has consented to be sued "for injury or loss of property . . . caused by the negligent or wrongful act or commission of any employee of the Government while acting within the scope of his employment or office . . ." 6 TTC 251.

[3] The question then is whether defendant Siyou, the employee of the Yap District Treasurer's Office whose negligence while acting within the course and scope of his office or employment gave rise to this action, is "any employee of the Government" within the meaning of 6 TTC 251.

The Office of the District Treasurer is created by Trust Territory statute. 3 TTC 57. The Treasurer is appointed by the District Administrator with the advice and consent of the Legislature. He is on the staff of the District Administrator. He is under the supervision and control of the District Administrator. 3 TTC 58. He may be removed for cause at any time by the District Administrator. 3 TTC 57. The District Administrator is responsible to the High Commissioner, the Chief Executive Officer of the Trust Territory of the Pacific Islands. He is under the supervision of the High Commissioner and may be removed at the pleasure of the High Commissioner. 3 TTC 51.

Defendant Siyou was a tax collector for the District Legislature. His position was created by Yap District Code § 4000. He is subject to the supervision and control of the District Treasurer, who, as we have seen, is subject to the supervision and control of the District Administrator, who in turn is responsible to the High Commissioner.

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Appellant, however, argues that since Siyou's position was created by the District Legislature and his salary was funded by the District Legislature, he is not an employee of the Trust Territory Government. We find this argument to be untenable. Who created the position and funds the position are not critical factors in determining who is liable for negligence of the employee occupying the position. We believe that the critical factor, as articulated by the appellee, is whether the entity sought to be held liable has the right to control and direct the employee in the performance of his work and the manner in which it is to be done. It is clear that the Trust Territory Government had control and supervision over Siyou when this incident happened.

This question of whether an employee of the District Legislature is an employee of the Trust Territory has been addressed by the Congress of Micronesia. In considering S.B. No. 6-73, "A Bill for an Act to amend Subsection (1) of Section 9 of Title 61 of the Trust Territory Code . . ." (now 61 TTC 9(1) (p), Supp. 1975), the House Committee on Judiciary and Governmental Relations, in its Committee Report dated March 2, 1975, stated:

Your Committee would add specifically that it agrees with the Senate Amendment which would include the employees of boards, commissions, agencies, authorities or other bodies created by district legislatures. *Such employees are in fact employees of the Trust Territory Government since the district legislatures are a part of the government.* To exclude them from the protections afforded by the Public Service System would be to deny them important protections afforded by the act. (Emphasis added.) Journal of the House of Representatives of the Congress of Micronesia, Sixth Congress of Micronesia, First Regular Session (January-March 1975), p. 569.

Based on the foregoing, we hold that an employee of the District Legislature is an employee of the Trust Territory Government.

Appellant's third and last contention is that the Trial Court erred in finding appellee to be a real party in interest. As this Court has stated on numerous occasions that it is not the function of the Appellate Court to set aside the findings of the Trial Court unless clearly erroneous. 6 TTC 355. We have read the transcript of the trial proceedings and we find substantial evidence to support the findings of the Trial Court.

In view of the foregoing, the Judgment of the Trial Court is hereby AFFIRMED.

IN RE THE MINOR CHILD
AWASIO ERAM THREADGILL

Civil Appeal No. 283

Appellate Division of the High Court

January 22, 1979

BURNETT, *Chief Justice*

On January 10, 1979, the trial court entered an Order granting petitioner Priscilla Threadgill temporary custody of the minor child. The Order was clearly temporary in nature, and contemplated further hearing at which respondent, natural father of the child, would be represented by counsel.

Thereafter, on petition of the father, I ordered that the child not be removed from the jurisdiction pending final determination. I entertained the matter for that limited purpose only; the merits of the case are not before me.

The trial court entered further order, following that of this Court, on January 12, 1979, restraining removal of the child, and continuing bond provisions of its first order. The parties have not yet had the final hearing contemplated