

CHUUK STATE SUPREME COURT APPELLATE DIVISION

BEN ENLET and MARCELLIUS AKAPITO,)
)
 Appellants,)
)
 vs.)
)
 CHUUK ELECTION COMMISSION,)
)
 Appellee,)
)
 ALEXANDER NARRUHN and MEKIOSHY)
 WILLIAM,)
)
 Real Parties in Interest.)
)
 _____)

CIVIL APPEAL NO. 04-2021

ORDER DISMISSING APPEAL

Decided: June 17, 2021

BEFORE:

Hon. Kerio Walliby, Associate Justice, Presiding
Hon. Larry Wentworth, Temporary Justice*
Hon. Bethwell O'Sonis, Temporary Justice**

*Associate Justice, FSM Supreme Court

**FSM Public Defender, Weno, Chuuk

APPEARANCES:

For the Appellants: Johnny Meippen, Esq.
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For the Appellee: Picho Cheida
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For the Real Parties in Interest: Maximo Mida, Esq.
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HEADNOTE

Elections – Court Jurisdiction

Since, under Chuuk election law, the Chuuk State Supreme Court appellate division is to decide on the contested election before the date on which the declared winning candidates are to take office, in an election contest over the Governor and Lieutenant Governor, the appellate division cannot continue to exercise jurisdiction over the election contest appeal once the Governor and Lieutenant Governor have been sworn in. Enlet v. Chuuk Election Comm'n, 23 FSM R. 339, 341 (Chk. S. Ct. App. 2021).

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COURT'S OPINION

KERIO WALLIBY, Associate Justice, Presiding:

In our Order Memorializing Ruling, we memorialized our April 13, 2021 ruling from the bench, denying the preliminary injunction sought by the appellants to enjoin the swearing in of Governor-elect Alexander Narruhn and Lieutenant Governor-elect Mekioshy William, and we also asked the parties to brief whether we had any further jurisdiction in this matter once the new Governor and the Lieutenant Governor were sworn in. Enlet v. Chuuk Election Comm'n, 23 FSM R. 228, 233 (Chk. S. Ct. App. 2021). On April 26, 2021, the real parties in interest filed their brief on jurisdiction. Neither the appellants nor the Election Commission filed a brief. We conclude that we lack further jurisdiction.

I. BACKGROUND

On March 10, 2021, the Election Commission certified the tickets of Alexander Narruhn and Mekioshy William and of Ben K. Enlet and Marcellius J. Akapito as the two tickets for Governor and Lieutenant Governor with the highest number of votes in the March 2, 2021 general election. Neither ticket achieved a majority. The Election Commission then set a runoff election between the two tickets for March 30, 2021, because when "a majority is not received, a runoff election between the candidates on the tickets receiving the two highest pluralities shall be held on the fourth Tuesday following the general election." Chk. Const. art. VI, § 7.

The runoff election was held as constitutionally scheduled. Because of post office staffing problems and the short time between when the general election was certified and the runoff election, the Election Commission was only able to send out 1,004 absentee ballots for the runoff election. Around 13,000 had been sent for the general election. Of the 1,004 that were sent, only 313 were returned and counted in the runoff election. On April 2, 2021, the Election Commission certified the Narruhn-William ticket as the winners of the March 30th runoff election, with a margin of around 380 votes.

On April 5, 2021, the Enlet-Akapito ticket filed its verified complaint with the Chuuk Election Commission, asking that the results be stayed and that the voting-by-absentee-mail-in-ballot part of the election be rerun because a large number of the persons who had requested absentee ballots for the March 2, 2021 general election had not received absentee ballots for the March 30, 2021 runoff election. On April 7, 2021, the Election Commission informed the Enlet-Akapito ticket that its petition would be denied. The Commission issued its written decision on April 11, 2021.

On April 12, 2021, the Enlet-Akapito ticket appealed that decision to the Chuuk State Supreme Court appellate division. They also filed a motion asking us to temporarily restrain or preliminarily enjoin the

certification of Narruhn's and William's election and their swearing in, which was constitutionally scheduled for the next day. Since they were to be sworn in at noon, we held a 9:30 a.m., April 13, 2021 hearing on the Enlet-Akapito ticket's motion, and, at the end of the hearing, we denied that motion from the bench. Narruhn and William were sworn in as scheduled.

II. ANALYSIS

The relevant statute concerning our jurisdiction in election contest appeals states: "[t]he Appellate Division of the Chuuk State Supreme Court . . . shall decide on the contested election prior to the date upon which the declared winning candidates are to take office." Chk S.L. No. 3-95-26, § 131. The Chuuk Constitution provides that a newly elected (or reelected) Governor and Lieutenant Governor take office "at noon on the sixth Tuesday following the general election," Chk. Const. art. VI, § 8, which this year was Tuesday, April 13, 2021.

If this were an election contest over a seat in the Legislature, it is patently obvious that we would now lack jurisdiction because the statute further provides that "[i]n the case of a contested election of a member-elect of the Senate or House of Representatives, the decision of the specific House concerned shall prevail and is final." Chk S.L. No. 3-95-26, § 131. Each house has the constitutional power to be "the sole judge of the elections and qualifications of its members," Chk. Const. art. V, § 7(c), and they make those decisions as the legislative houses organize themselves just before they are all sworn in.

Nevertheless, the statute is clear that we are to "decide on the contested election prior to the date upon which the declared winning candidates are to take office." Chk S.L. No. 3-95-26, § 131. Even appellants Enlet and Akapito presumed that we would not have jurisdiction over this case once the new Governor and Lieutenant Governor were sworn in. In their preliminary injunction motion, they argue that "without a TRO [to delay the date on which the Governor and Lieutenant Governor were to take office], the Court would lose jurisdiction . . ." *Exparte* [sic] *Mot. for a Temporary Order & Prelim. Inj.* at [unnumbered] 4 (Apr. 12, 2021). In their brief, real parties in interest Narruhn and William agree. Neither we, nor the parties, have discovered any authority or any line of legal reasoning under which we could continue to exercise jurisdiction over this election contest appeal.

III. CONCLUSION

Accordingly, this election contest appeal is dismissed for the lack of jurisdiction.

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