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SUPERIOR COURT  
OF GUAM

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CLERK OF COURT

By: 

IN THE SUPERIOR COURT OF GUAM

KRIS GOGUE,

Plaintiff,

Civil Case No. CV0367-25

vs.

**DECISION AND ORDER GRANTING  
DEFENDANTS' MOTION TO DISMISS**

ROBIN MARQUARDT AND ALL  
PERSONAL UNKNOWN, CLAIMING ANY  
LEGAL OR EQUITABLE RIGHT, TITLE,  
ESTATE, LIEN OR INTEREST IN THE  
PROPERTY DESCRIBED IN THE  
COMPLAINT ADVERSE TO PLAINTIFF'S  
TITLE, OR ANY CLOUD UPON  
PLAINTIFF'S TITLE THERETO, and DOES 1  
through 50, inclusive,

Defendants.

**INTRODUCTION**

This matter came before the Honorable John C. Terlaje on November 4, 2025, for a Motion Hearing regarding Defendants' Motion to Dismiss. Attorney Georgette Bello-Concepcion appeared on behalf of Plaintiff Kris Gogue. Attorney Mark Smith appeared on behalf of Defendants Robin Marquardt and Kathleen Marquardt. After reviewing the record, relevant law, and arguments from the parties, the Court **GRANTS** the Motion to Dismiss because the claim is precluded.

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Robin and Kathleen filed their Motion to Dismiss on June 16, 2025. The Court initially granted the Motion to Dismiss on June 19, 2025, but later granted Gogue's Motion to Reconsider on August 5, 2025. Gogue filed her opposition to the motion to dismiss on October 7, 2025. Robin and Kathleen filed their Reply on October 21, 2025. The Court heard oral arguments for the Motion to Dismiss on November 4, 2025.

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## DISCUSSION

Robin and Kathleen argue in their Motion to Dismiss that the Decision and Order in the probate case regarding Francisco Gogue's estate invalidated the deed and precluded this claim for several reasons. *See* Mot. to Dismiss. First, they argue that the deed is invalid and legally ineffective, and so this claim should be dismissed because there are no facts upon which Gogue can bring her claim. *Id.* at 2–3. Second, they argue that the doctrine of collateral estoppel bars relitigation of this issue because it was decided in a prior proceeding. *Id.* at 3. Third, they argue that the Court should take judicial notice of the Decision and Order pursuant to Guam Rule of Evidence 201. *Id.* at 3. Fourth, they argue that the correct path for relitigation of this issue was for Gogue to appeal the Decision and Order, which she did not do by the deadline to file a notice of appeal. *Id.* at 3–4. Fifth, they argue that the doctrine of *res judicata* precludes this claim. *Id.* at 4–5. And, finally, they argue that it is procedurally proper to raise preclusion doctrines on a motion to dismiss because these defenses are apparent from the face of the complaint. *Id.* at 5.

In response, Gogue argues that the Decision and Order is not a final order because the Decision and Order from the probate court states that there may be other means by which Gogue has a claim to the property at issue. Opp. to Mot. to Dismiss at 2 (Oct. 7, 2025). Gogue argues that an appeal would have been inappropriate because interlocutory appeals are disfavored. *Id.* at 2–3 (Oct. 7, 2025). And Gogue argues that the claim is appropriate because the probate court failed to consider material facts. *Id.* at 3–5.

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2 The Court agrees with Robin and Kathleen Marquardt. However, the Court does not find  
3 it necessary to discuss each of the arguments presented. Instead, the Court will first address  
4 whether it is procedurally proper to discuss preclusion doctrines on a motion to dismiss. Then, the  
5 Court will address whether *res judicata* prohibits Gogue from bringing this claim.  
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8 **Whether it is procedurally proper to discuss preclusion doctrines on a motion to**  
9 **dismiss.**

10 Collateral estoppel and *res judicata* are generally affirmative defenses, but they may be  
11 properly raised in a motion to dismiss under the Guam Rule of Civil Procedure 12(b)(6). To  
12 determine whether collateral estoppel and *res judicata* were properly raised by the Defendants,  
13 the Court will look to the interpretation of Rule 12(b)(6) in the federal context. “When a local  
14 rule tracks the language of its federal counterpart, we view federal precedent as highly  
15 persuasive when interpreting our own.” *Ukau v. Wang*, 2016 Guam 26 ¶ 28; *but see Santos v.*  
16 *Carney*, 1997 Guam 4 ¶ 4 (emphasizing that the Ninth Circuit has given Guam leeway to  
17 interpret its rules that are corollary to Federal rules). The Guam Rule of Civil Procedure 12(b)(6)  
18 is substantially similar to the Federal Rule of the same number. Guam R. of Civ. P. 12(b)(6);  
19 Fed. R. of Civ. P. 12(b)(6). And the Guam Supreme Court has yet to interpret whether the  
20 doctrines of *res judicata* or collateral estoppel may be appropriate to bring in a motion to  
21 dismiss. Thus, the Court will look to the federal interpretation in this instance for guidance on  
22 interpretation.  
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1 The affirmative defenses of collateral estoppel and *res judicata* may be properly raised  
2 under a Rule 12(b)(6) motion to dismiss when the applicability of these defenses is apparent  
3 from the fact of the complaint and judicially noticeable court records. Federal courts have long  
4 held that the affirmative defenses of collateral estoppel and *res judicata* may be used  
5 “offensively” in a new suit “against the party who lost on the decided issue in the first case.”  
6 *Allen v. McCurry*, 449 U.S. 90, 94–95 (1980). “But one general limitation the Court has  
7 repeatedly recognized is that the concept of collateral estoppel cannot apply when the party  
8 against whom the earlier decision is asserted did not have a ‘full and fair opportunity’ to litigate  
9 that issue in the earlier case.” *Id.* at 95 (quoting *Montana v. United States*, 440 U.S. 147, 152  
10 (1979)).  
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13 Here, the Defendants properly raised issues of collateral estoppel and *res judicata*  
14 because Gogue had been given a “full and fair opportunity” to litigate the issue of the lot’s  
15 ownership. *Montana*, 440 U.S. at 152. Although a final determination on Francisco Gogue’s  
16 ownership of this property has not yet been reached, the probate court’s decision on Kris  
17 Gogue’s ownership of the property was based wholly on the allegations and legal claims Gogue  
18 brings before this Court. *See* Compl. to Quiet Title; *see also* In re Estate of Francisco Leon  
19 Gogue, PR0184-23, Decision and Order. Gogue argued before the probate court that she had a  
20 claim to the property because of the same quick claim deed she now brings before this Court. In  
21 re Estate of Francisco Leon Gogue, PR0184-23, Decision and Order at 1–2. Gogue argues that  
22 the probate court failed to consider material facts such as the potential ownership of Francisco  
23 Gogue’s sister. *Id.* at 3. The ownership of Francisco Gogue’s sister is irrelevant to Kris Gogue’s  
24 claim. It does not affect whether the quitclaim deed is valid or gives Gogue an interest in the  
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1 property. The probate court left open the possibility of further clarification of the deceased's  
2 interest in the property, and subsequent proceedings have continued to take place. *Id.* at 6; Opp.  
3 to Mot. to Dismiss at 5. However, continued litigation regarding this property does not negate the  
4 fact that Gogue brings the same claims before this Court that were brought before the probate  
5 court. Thus, Gogue has already had the opportunity to litigate this issue before the probate court,  
6 and the doctrine of *res judicata* is appropriate to consider in the Motion to Dismiss.

8 **I. Whether *res judicata* precludes Gogue's claim.**

9 *Res judicata* precludes a party from relitigating a claim that was or could have been  
10 raised in a prior action involving parties where there was a final judgment on the merits. *San*  
11 *Nicolas v. Birn*, 2022 Guam 8 ¶ 24; *Zahnen v. Limtiaco*, 2008 Guam 5 ¶ 10; *Trans Pac. Ex. Co.*  
12 *v. Oka Towers Corp.*, 2000 Guam 3 ¶ 13. Although a probate court has limited jurisdiction, a  
13 judgment in probate court that concerns the will or administration of the estate is conclusive.  
14 *Zahnen*, 2008 Guam 5 ¶ 13; 6 G.C.A. § 4209. This includes decisions regarding the deceased's  
15 property ownership. *Id.* at ¶ 18. When these conditions are met in probate court, the doctrine of  
16 *res judicata* applies. *Id.* at ¶ 13. Based on Guam law, the elements of *res judicata* are:

- 19 (1) A final judgment on the merits in an earlier suit,  
20 (2) an identity of the causes of action in both the earlier and later suit, and  
21 (3) an identity of the parties or their privies in the two suits.

22 *San Nicolas*, 2022 Guam 8 ¶ 26. When these elements are met, a claim is barred by the doctrine  
23 of *res judicata*. *Id.*

25 Here, the doctrine of *res judicata* applies to the claim because the Decision and Order  
26 was granted within the probate court's limited jurisdiction. The distribution of an estate or a will  
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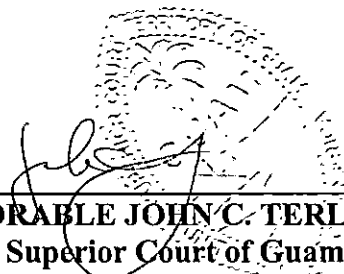
1 does not always quiet title to property because the probate court solely has jurisdiction over what  
2 the deceased possessed at the time of death. *Zahnen*, 2008 Guam 5 ¶ 17. The questions in this  
3 case are regarding what the deceased possessed at the time of death and whether Gogue's deed  
4 from the deceased is valid. Although Gogue claims the probate court did not quiet title to the  
5 property because the deceased's sister may have some claim to the property, Gogue has no claim  
6 to the deceased's sister's claim. And while the probate court may still have issues to address in  
7 terms of the deceased's ownership, Gogue's claim before this Court relies solely on the same  
8 deed brought before the probate court. The original petition with the probate court resolved the  
9 question of Gogue's potential claim to the property. Hence, the doctrine of *res judicata* will  
10 apply to Gogue's claim because her petition with the probate court fell within the probate court's  
11 jurisdiction.  
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14 Gogue's claim meets all the elements of the doctrine of *res judicata* and is barred. The  
15 Decision and Order the probate court granted was a final judgment on the merits of this suit. The  
16 probate court determined if Gogue had any claim to her late husband's ownership in the disputed  
17 property based on the same deed Gogue now brings before this Court. In re Estate of Francisco  
18 Leon Gogue, PR0184-23, Decision and Order at 3–6; Compl. to Quiet Title at 1–3. Gogue and  
19 Robin Marquardt were both parties in the original petition in probate court. *Id.* And the issue  
20 revolved around the ownership of the parties in this claim regarding the deceased's interests in  
21 the property. In re Estate of Francisco Leon Gogue, PR0184-23, Decision and Order at 3–6.  
22 Gogue's appropriate recourse was to appeal the probate court's decision based on the validity of  
23 the deed. Thus, Gogue's claim in the instant matter is barred by the doctrine of *res judicata*.  
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3 **CONCLUSION**

4 Therefore, the Court **GRANTS** Defendants Robin and Kathleen Marquardt's Motion to  
5 Dismiss.  
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7 **SO ORDERED**, this 1/26/26.  
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12 **HONORABLE JOHN C. TERLAJE**  
13 Judge, Superior Court of Guam  
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