IN THE SUPREME COURT OF GUAM

IN THE MATTER OF THE ESTATES OF IGNACIO OJEDA AGUON AND MARIA GARRIDO AGUON,
Decedents.

TERESITA G. AGUON, Administratrix,
Petitioner-Appellee,

v.

MARIA AGUON CRUZ, JOANNE AGUON SCHAFER, ROSEMARIE AGUON SELBO, NANCY AGUON CRUZ, JEANNE-MARIE AGUON WILHELMI, BARBARA JEAN AGUON TOUT, and PATRICK MICHAEL AGUON MANZOW,
Respondents-Appellants.

Supreme Court Case No.: CVA12-023
Superior Court Case Nos.: PR0207-52; PR0266-90

OPINION

Cite as: 2013 Guam 4

Appeal from the Superior Court of Guam
Argued and submitted on October 30, 2012
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice, and KATHERINE A. MARAMAN, Associate Justice.

CARBULLIDO, C.J.:

[1] Respondents-Appellants Maria Aguon Cruz, Joanne Aguon Schafer, Rosemarie Aguon Selbo, Nancy Aguon Cruz, Jeanne-Marie Aguon Wilhemi, Barbara Jean Aguon Tout, and Patrick Michael Aguon Manzow (collectively, "Appellants"), a daughter and grandchildren of decedent Ignacio Ojeda Aguon, appeal the trial court's Judgment granting Petitioner-Appellee Teresita G. Aguon's Petition for Final Distribution. Appellants argue the trial court's distribution of newly acquired ancestral lands property solely to Teresita violated Guam's Probate Code.

[2] The 1971 Decree of Distribution in Ignacio Aguon's Estate distributed to Ignacio's wife, Maria, any other property not then known or discovered which may belong in his estate. None of the intestate heirs to Ignacio's Estate objected to or appealed this decree of distribution. Accordingly, the newly acquired ancestral lands property passed from Ignacio's Estate to Maria's Estate. Teresita, the sole beneficiary of Maria's Estate, is entitled to distribution of those properties. Therefore, the trial court's ruling is affirmed.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] Ignacio Ojeda Aguon died intestate on February 28, 1952. Maria G. Aguon, the surviving spouse of Ignacio, filed PR0207-52 shortly thereafter and served as the Administratrix of the Estate. On July 15, 1966, Maria filed her first Inventory and Appraisement. The Inventory identified Lot No. 5313, Ukudu, Dededo, as being "condemned by the U.S.

Government" since the lifetime of the decedent. Record on Appeal ("RA"), Reply to Resp'ts' Objection to Proposed Distribution, Ex. B (Pet. for Letters of Admin., Feb. 1, 2012).[1]

[4] On March 4, 1971, Maria G. Aguon petitioned for Distribution to Sole Distributee Without Rendering Account. Notices were properly posted and mailed. Judge Paul J. Abbate issued a Decree of Distribution of Sole Distributee without Rendering Account, also with proper notices, on April 5, 1971 (hereinafter "1971 Decree"). Judge Abbate held:

> IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the residue of said estate hereinafter particularly described and any other property not now known or discovered which may belong to said estate or in which said estate may have any interest, be, and the same is hereby, distributed as follows, to wit: The whole thereof to MARIA GARRIDO AGUON.

RA, Reply to Resp'ts' Objection to Proposed Distribution, Ex. A (Decree of Distribution to Sole Distributee Without Rendering Account, Apr. 5, 1971) (hereinafter "omnibus clause"). Lot 5313 was not directly addressed by the court. None of the intestate heirs of Ignacio's estate objected to or appealed the 1971 Decree.

[5] On March 18, 1988, Maria G. Aguon died. She left a will naming her daughter, Petitioner-Appellee Teresita G. Aguon, the executrix and sole beneficiary of her estate. On August 7, 1991, the trial court issued an Order for Partial Distribution in Maria's estate awarding Teresita the estate property. Proper notice was given, and no challenges to the Order were made.

[6] On March 31, 2011, Teresita filed a motion to reopen the Estates of Ignacio and Maria Aguon because "[n]ew property had reverted back to the Estate which now requires reopening of probate" for distribution. RA, Mot. to Re-Open Probate and Appoint Adm'r at 2 (Mar. 31, 2011). The two estates were consolidated, and Teresita was appointed the Administratrix.

[1] The appraisement refers to the area as "Ucudo" and that is the same property elsewhere referenced as "Ukudu."

[7] On December 5, 2011, Teresita filed an Inventory and Appraisement and a Petition for Final Distribution in the consolidated estates. Appellants, who include a daughter and grandchildren of Ignacio and Maria, objected to the proposed distribution. In response, Teresita produced a quitclaim deed from the Guam Ancestral Lands Commission granting Lot 5313 to the Estate of Maria G. Aguon.

[8] On May 18, 2012, the trial court held that Appellants were barred from objecting to the Petition for Final Distribution due to claim preclusion, laches, waiver, and estoppel. The trial court further held that the property and interests in the Estate of Ignacio Ojeda Aguon passed by the 1971 Decree to the Estate of Maria G. Aguon. Because Teresita was the sole devisee under a will from her mother, Maria, the various interests in the ancestral land properties were ultimately distributed to her. Appellants timely appealed.

II. JURISDICTION

[9] This court has jurisdiction over an appeal from a final judgment pursuant to 7 GCA §§ 3107, 3108(a) (2005). This court also has jurisdiction over orders "determining heirship or the person to whom distribution should be made or trust property should pass." 15 GCA § 3433 (2005).

III. STANDARD OF REVIEW

[10] "The standard of review for an order of final distribution is abuse of discretion." *In re Estate of Perez*, 2005 Guam 27 ¶ 13. "A court abuses its discretion when its decision is based on an erroneous conclusion of law or where the record contains no evidence on which the judge could have rationally based the decision." *Id.* (citation and internal quotation marks omitted). The court conducts a *de novo* review of questions involving statutory interpretation. *Id.* ¶ 14.

IV. ANALYSIS

[11] To be successful on appeal, the Appellants must show the lots were not included in the 1971 Decree, or the property does not pass pursuant to the 1971 Decree. However, even if the 1971 Decree is invalid, Appellants must overcome the procedural roadblock of claim preclusion, because they did not object to nor appeal the 1971 Decree as required by Guam's Probate Code. Appellants, however, do not argue the 1971 Decree is invalid; instead, they claim the lots were not a part of the 1971 Decree and thus not a part of the earlier distribution. To properly evaluate Appellants' claims, we must initially examine the effects of reopening probate.

A. Reopening Probate

[12] The Guam Probate Code states that a "decree, when it becomes final, is conclusive as to the rights of heirs, devisees, and legatees." 15 GCA § 3013 (2005); s*ee also*, *Zahnen v. Limtiaco*, 2008 Guam 5 ¶ 17. However, Guam law provides "[t]he final settlement of an estate . . . shall not prevent a subsequent issue of letters testamentary or of administration . . . if other property of the estate is discovered, or if it becomes necessary or proper for any cause that letters should be again issued." 15 GCA § 3039 (2005). This section continues instructing the court to "issue such letters to the person or persons entitled thereto in the same order and manner as is directed in relation to original letters of administration . . . ." *Id.*

[13] The Probate Code provides for inventory and appraisement of newly discovered property. "Whenever property not included in the inventory . . . comes to the possession or knowledge of the personal representative, the personal representative must cause an inventory and appraisement thereof to be made and filed in the manner prescribed in this Chapter . . . ." 15 GCA § 2623 (2005).

[14] Appellants argue that because the trial court granted Teresita's request to reopen probate, deemed "final" by section 3013, the court "implicitly" determined the estate property was newly acquired, and the "property or interest described in the petition had not passed by the decree of distribution." Appellants' Br. at 8 (Aug. 28, 2012) (citing *In re Den*, 45 P.2d 963, 964 (Cal. 1935)).[2] Teresita counters that the motion to reopen probate proceedings did not require the court to determine whether property or interest existed or had passed by decree, but merely that the estate contained property in need of distribution. Appellee's Br. at 25-26 (Sept. 27, 2012). Teresita further contends the administrator of the estate has the responsibility to "marshal the Estate's assets and report to the court; such is not the responsibility of the probate court." *Id.* at 26 (citing 15 GCA § 2205 (2005)).

[15] The Guam Probate Code is clear in section 3039 that issuing subsequent letters is permissible if estate property is later "discovered" or if it becomes "necessary or proper" to issue letters again. 15 GCA § 3039. Teresita sets forth the "discovered" assets to be distributed in the petition to reopen probate. RA, Mot. to Re-Open Probate and Appoint Adm'r at 1. Teresita is correct in that the trial court was not required to determine, at the outset, whether the property or interest existed or had passed by decree. Appellee's Br. at 25. Prior classification of the interests in lots 5309, 5312, 5313, and 5316 as newly discovered property or contingent future interests is not foundational in determining whether probate should be reopened. The trial court's ultimate ruling that the lots were contingent future interests (discussed below) seems, in hindsight, to make the ruling to reopen probate incorrect because, if the interests were contingent

[2] Appellants make this argument to lay the foundation for their second argument that, once reopened, the trial court is "required to distribute [the] property in accordance with 15 GCA 901 *et seq.*" Appellants' Br. at 10.

future interests, they would pass without the need to reopen. *See* 21 GCA § 1230 (2005).[3] However, *at the time* the trial court agreed to further administration, it did not know the classification of the lots.[4] Teresita's decision to file a request to reopen probate, instead of a request for further distribution, was likely an incorrect decision regarding what procedure was necessary to distribute the property. *See* 15 GCA § 2205(a). However, that mistake is not fatal to Teresita's case because reopening of probate does not define the character of the property to be distributed. We now proceed to determining what interests Ignacio owned in the newly acquired ancestral lands property.

B. Contingent Future Interests

[16] The United States government condemned land owned by Ignacio Ojeda Aguon. Appellants' Br. at 2. This court, in an earlier case, held that the owner of land condemned by the government possesses an alienable, contingent future interest to the condemned land.[5] *Taitano v. Lujan*, 2005 Guam 26 ¶ 41. Future interests "may pass by succession, will, and transfer, in the same manner as present interests." 21 GCA § 1230. Furthermore, "[o]nce the final decree of distribution issues and no appeal is taken, the distribution of estate property to heirs, devisees, and legatees is deemed conclusive." *Zahnen*, 2008 Guam 5 ¶ 17 (citing 15 GCA § 3013). In

[3] "Future interests pass by succession, will, and transfer, in the same manner as present interests." 21 GCA § 1230.

[4] The trial court later engaged in analysis of whether the "recently released property is newly discovered or if Maria G. Aguon retained a future interest . . . ." RA, Finds. Fact & Concl. L. at 6 (May 18, 2012).

[5] Specifically, this court held:

> If the United States returned the property to the government of Guam and the government of Guam returned the land to the original landowners, [the landowner] would have an enforceable right to that property because he was one of the original owners with an undivided interest. [The landowner] therefore had an alienable contingent future interest . . . .

Taitano, 2005 Guam 26 ¶41.

addition, "[a] devise of land conveys all the estate of the testator therein *which he could lawfully devise* . . . ." 15 GCA § 621 (2005) (emphasis added).

[17] Here, as the trial court resolved, the condemnation of the lots by the federal government created a contingent future interest in Ignacio Ojeda Aguon. *See Taitano*, 2005 Guam 26 ¶ 41. Appellants argue those properties belong to the Estate of Joaquin Leon Guerrero Aguon and, presumably, cannot be distributed because they are still part of a pending probate. Appellants' Br. at 10. However, *Zahnen* negates this argument because Teresita would only take the interests in which the estate "could lawfully devise." 2008 Guam 5 ¶ 17. Teresita would not receive the contingent future interest of the entire lots, but only the interests devised to the Estates of Ignacio Ojeda Aguon and Maria G. Aguon.

[18] Appellants' argument that the land must be newly discovered because the trial court re-issued letters, and therefore the court is bound by laws of intestate succession, is incorrect. Appellants' Reply Br. at 5. Appellants rely heavily on *Torres v. Estate of Cruz ex rel. Guzman,* 2011 Guam 4, to argue intestate succession governs the distribution of property acquired after death. However, the decedent in *Torres* died with a will, and intestacy statutes were not considered in that case. *Id.* ¶ 5. In *Torres*, "we interpret[ed] 15 GCA § 623 to allow for post mortem acquisitions to pass via will, where the intent to devise property is unified with the legal possibility to devise such property, due to the fact that fee simple ownership of the property has been restored." *Id.* ¶ 33. We believed intent was a key factor in determining distribution, whereas here, no intent can be garnered from Ignacio's intestate death. Appellants cite to no statute or case that states newly discovered property must be distributed via intestate succession, and *Taitano* clearly establishes that government condemnation of the lots grants a future interest

to the owner. 2005 Guam 26 ¶ 41. Therefore, the lots passed according to the decree of distribution in Ignacio's Estate.

C. Omnibus Clause

[19] In the 1971 Decree, Judge Abbate ordered the "residue of [Ignacio's] estate . . . and any other property not now known or discovered" be distributed to Maria G. Aguon. RA, Decree of Distribution to Sole Distributee Without Rendering Account, Ex. A (Apr. 5, 1971). The 1971 Decree's omnibus clause is nearly identical to those in two California cases. *Humphry v. Protestant Episcopal Church in the Diocese of Los Angeles*, 97 P. 187 (Cal. 1908) and *Heydenfeldt v. Osmont*, 175 P. 1 (Cal. 1918). In *Humphry*, the omnibus clause closely mirrors the one used in the 1971 Decree. As the Supreme Court of California stated, "that the [trial] court intended to distribute the whole residue whether *described or undescribed, known or unknown*, is made plainly manifest from the language which it employs." 97 P. at 187 (emphasis added).[6] In *Heydenfeldt*, the court interpreted another omnibus clause and held "decrees which by their terms distribute a residue *known or unknown* are sufficient to pass title to lands omitted from the particular description." 175 P. at 3 (emphasis added).

[20] The language in the omnibus clause in the 1971 Decree states "any other property not now known or discovered" should be given to Maria G. Aguon. RA, Decree of Distribution to Sole Distributee Without Rendering Account, Ex. A. The clause is valid and encompassed the contingent future interests in lots 5309, 5312, 5313, and 5316 which Ignacio Ojeda Aguon owned when the federal government condemned his land. *See Humphry*, 97 P. at 188. The trial

[6] The omnibus language from *Humphry* provides: "that the residue of said estate hereinafter particularly described, and any other property not now known or discovered, which may belong to said estate, or in which said estate may have an interest, be and the same is hereby distributed to the said Emily A. Humphry." 97 P. at 187 (internal quotation marks omitted).

court also believed the omnibus clause was controlling, citing to *Humphry* as persuasive authority without analysis.[7] RA, Finds. Fact & Concl. L. at 9 (May 18, 2012).

[21] Granting the interests to Maria G. Aguon by the omnibus clause in the 1971 Decree and then to Teresita through Maria's will does not violate Guam's Probate Code. Sections 3013 and 3039 allow for the court, after a "final" distribution, to issue "subsequent" letters. 15 GCA §§ 3013, 3039. Other implicated sections, namely 15 GCA §§ 623 and 2623, pertaining to after-acquired interests and newly discovered property, respectively, are not violated because *Taitano* makes clear Ignacio possessed a contingent future interest in the property at the time of his death. Section 623 instructs the court to pass the after-acquired interest in will distributions; it does not make reference to intestate succession. The omnibus clause was sufficient to pass the interest to Maria G. Aguon upon Ignacio's death and no challenge was made to either the 1971 Decree of Distribution in Ignacio's Estate or Maria's will. Therefore, Maria's will is sufficient to pass the interests to Teresita.

[22] Additionally, section 2623 is not infringed because, as the trial court correctly stated, "the land now at issue is newly discovered in the sense that it was not specifically distributed previously . . ."; but not newly discovered in the sense they were not encompassed in the 1971 Decree because, as noted above, the interests passed via the omnibus clause. RA, Finds. Fact & Concl. L. at 7. The trial court's actions of reopening probate to dispense property *included* in the 1971 Decree but not *distributed* by it contravened neither section 623 nor section 2623.

[7] The trial court explains, just before concluding the omnibus clause should result in distributing the lots to Teresita, that the clause is irrelevant because Maria was given contingent future interests via the 1971 Decree. RA, Finds. Fact & Concl. L. at 7. However, the omnibus clause is crucial *because the trial court itself quoted the clause* in granting the future interest to Maria. Without citation, the trial court stated, "Maria Garrido Aguon was decreed owner of all 'described' residue and 'not now known' property . . .", the same language used in the clause. *Id.* There is no other language in the 1971 Decree that could be construed as granting any interest to Maria other than the language in the clause.

D. Claim Preclusion

[23] Appellants' claim to the interests in the lots is further barred under the doctrine of claim preclusion or res judicata because we have determined the contingent future interests were passed to the Estate of Maria G. Aguon by the omnibus clause in the 1971 Decree. The elements for res judicata are: "(1) a final judgment on the merits in an earlier suit, (2) an identity of the causes of action in both the earlier and the later suit, and (3) an identity of the parties or their privies in the two suits." *Zahnen*, 2008 Guam 5 ¶ 10 (citations and internal quotation marks omitted); s*ee also Federated Dep't. Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981); *Presto v. Lizama,* 2012 Guam 24 ¶¶ 23-33. The doctrine of res judicata "is not a mere matter of practice or procedure inherited from a more technical time than ours. It is a rule of fundamental and substantial justice, 'of public policy and of private peace,' which should be cordially regarded and enforced by the courts . . . ." *Hart Steel Co. v. R.R. Supply Co.*, 244 U.S. 294, 299 (1917) (citation omitted). Without commenting on the correctness of the 1971 Decree, res judicata applies even when the previous decision was erroneously decided. *Federated Dep't. Stores*, 452 U.S. at 398.

[24] The 1971 Decree was a final judgment on the merits under section 3013. Judge Abbate stated that the clerk of court provided proper notice, and no challenge was undertaken. RA, Decree of Distribution to Sole Distributee Without Rendering Account, Ex. A. The subject matter in this dispute and in the 1971 Decree is identical because the contingent future interests Ignacio Ojeda Aguon held in the lots passed to Maria G. Aguon are the same interests as in the current Petition for Final Distribution. Finally, the heirs of Ignacio constitute an identity of parties or their privies. Therefore, res judicata precludes Appellants from contesting the 1971 Decree, and the trial court did not abuse its discretion in ruling in favor Teresita.

IV. CONCLUSION

[25] Appellants are not entitled to the relief they seek because the 1971 Decree distributed any other property not then known or discovered which may belong to Ignacio to Ignacio's wife, Maria. Ignacio received contingent future interests to his condemned lots, consistent with the reasoning in *Taitano*, 2005 Guam 26 ¶ 41. The omnibus clause of the 1971 Decree encompassed and sufficiently transferred those interests to Maria G. Aguon. Maria's will devised the property interests in her estate solely to Teresita. Appellants brought no challenge forty years ago to the decree of distribution in Ignacio's Estate, and they are procedurally barred from raising a claim now.

[26] For the foregoing reasons, the judgment is **AFFIRMED**.

Original Signed By: Robert J. Torres
ROBERT J. TORRES
Associate Justice

Original Signed By: Katherine A. Maraman
KATHERINE A. MARAMAN
Associate Justice

Signed By: F. Philip Carbullido
F. PHILIP CARBULLIDO
Chief Justice