IN THE SUPREME COURT OF GUAM

IN THE MATTER OF THE GUARDIANSHIP OF YUK LAN MOYLAN,
Ward.

RICHARD E. MOYLAN,
Appellant,

v.

KURT MOYLAN, LEIALOHA MOYLAN ALSTON, and FRANCIS LESTER MOYLAN, JR.,
Appellees.

OPINION

Cite as: 2018 Guam 15

Supreme Court Case No.: CVA17-006
Superior Court Case No.: SP0106-07
(Consolidated with SP0104-07, SP0105-07, SP0107-07, SP0110-07, & SP0111-07)

Appeal from the Superior Court of Guam
Argued and submitted on October 12, 2017
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Presiding Justice[1]; ROBERT J. TORRES, Associate Justice; JOHN A. MANGLONA, Justice *Pro Tempore*.

TORRES, J.:

[1] Richard E. Moylan appeals the Superior Court's denial of his motions for visitation and to compel the disclosure of financial information. For the reasons stated below, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] This appeal arises out of extensive litigation surrounding the guardianship and estate of Francis L. Moylan, now deceased, and Yuk Lan Moylan. We incorporate the factual and procedural history described in our prior opinions. *See generally In re Guardianship of Yuk Lan Moylan*, 2018 Guam 8 ("*Moylan III*"); *In re Guardianship of Yuk Lan Moylan*, 2017 Guam 28 ("*Moylan II*"); *In re Guardianships of Francis Lester Moylan & Yuk Lan Moylan*, 2011 Guam 16 ("*Moylan I*").

[3] For present purposes, we briefly note that in 2011, we upheld the appointment of Leialoha Alston as the limited guardian of the person of Yuk Lan Moylan. *Moylan I*, 2011 Guam 16 ¶¶ 1, 22-25, 71. Richard has attempted to arrange visits with his mother, Yuk Lan, through Leialoha's counsel. When this failed, Richard filed Motions for Visitation and to Compel the disclosure of additional financial information related to the estate and the guardians. At the scheduled hearing on the motion, counsel for the guardians did not appear due to illness. Instead of continuing the matter, the Superior Court took it under advisement.

[4] The Superior Court subsequently issued a decision denying both of Richard's motions. In its denial, the court reasoned that it was in the best interest of Yuk Lan to allow Leialoha, as the limited guardian of the person, to determine the location and conditions of visitation.

[1] Associate Justice F. Philip Carbullido, as the senior member of the panel, was designated Presiding Justice.

Additionally, the court held that Richard was not entitled to additional financial documentation, beyond the reports he was already entitled to pursuant to our holding in *Moylan I*, 2011 Guam 16 ¶¶ 46-55. Richard filed a timely appeal. The parties subsequently engaged in court-ordered mediation, but they were unable to resolve the issues now before us.

II. JURISDICTION

[5] This court has jurisdiction over appeals arising from final orders of the Superior Court. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 115-223 (2018)); 7 GCA §§ 3107, 3108(a) (2005); *see also* Guam R. Civ. P. 54(a).

III. STANDARD OF REVIEW

[6] Ripeness is an issue of subject matter jurisdiction, and "[w]hether a court possesses subject matter jurisdiction is a question of law reviewable de novo." *Blake v. Cty. of Kaua'i Planning Comm'n*, 315 P.3d 749, 757 (Haw. 2013) (as amended Jan. 8, 2014) (quoting *Kapuwai v. City & Cty. of Honolulu, Dep't of Parks & Recreation*, 211 P.3d 750, 756 (Haw. 2009)). We "review 'the trial court's actions on remand for an abuse of discretion.'" *Moylan II*, 2017 Guam 28 ¶ 13 (quoting *Town House Dep't Stores, Inc. v. Ahn*, 2003 Guam 6 ¶ 17); *see also Lanser v. Lanser*, 2003 Guam 14 ¶ 15; *People v. Cruz*, No. CR92-00097A, 1994 WL 550110, at *1 (D. Guam App. Div. Oct. 4, 1994), *aff'd*, 70 F.3d 1090 (9th Cir. 1995). An abuse of discretion occurs when the trial court's "decision is based on clearly erroneous factual findings or an incorrect legal standard." *M Elec. Corp. v. Phil-Gets (Guam) Int'l Trading Corp.*, 2016 Guam 35 ¶ 41 (quoting *Agana Beach Condo. Homeowners' Ass'n v. Untalan*, 2015 Guam 35 ¶ 12) (internal quotation marks omitted). "A finding of fact is clearly erroneous where it is not supported by substantial evidence, and this court is left with a definite and firm conviction that a mistake has been made." *Id.* (quoting *Ptack v. Ptack*, 2015 Guam 5 ¶ 24).

IV. ANALYSIS

A. The Superior Court's Denial of Richard's Motion to Compel is Sufficiently Ripe for Review

[7] The guardians contend that Richard's appeal is not ripe. *See* Appellees' Br. at 13-15 (Aug. 16, 2017). Ripeness is a prudential doctrine which seeks to "prevent[] courts from entangling themselves in 'abstract disagreements.'" *People v. Gay*, 2007 Guam 11 ¶ 8 (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977)). In determining whether a case is sufficiently ripe for review, a court will consider: (1) whether the issues are fit for judicial consideration and (2) the hardship to the parties if consideration is withheld. *Id.* (quoting *Abbott Labs.*, 387 U.S. at 149); *see also Kang v. Kang*, 2014 Guam 25 ¶ 29. "A question or claim is fit for judicial consideration when 'the issues raised are primarily legal, do not require further *factual* development, and the challenged action is final.'" *Gay*, 2007 Guam 11 ¶ 8 (emphasis added) (quoting *Verizon Cal. Inc. v. Peevey*, 413 F.3d 1069, 1075 (9th Cir. 2005) (Bea, J., concurring)). *See generally* 13B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3532 (3d ed. 2008) ("Ripeness doctrine is invoked to determine whether a dispute has yet matured to a point that warrants decision." (footnote omitted)). Inquiry into "ripeness asks whether the facts have developed sufficiently so that an injury has occurred or is likely to occur, rather than being contingent or remote." *Patterson v. Planned Parenthood of Hous. & Se. Tex., Inc.*, 971 S.W.2d 439, 442 (Tex. 1998) (citation omitted); *see also Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 581 (1985) ("The issue presented in this case is purely legal, and will not be clarified by further factual development. . . . 'One does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending, that is enough.'" (quoting *Reg'l Rail Reorganization Act Cases*, 419 U.S. 102, 143 (1974))); *Gay*, 2007

Guam 11 ¶ 9 (finding case not ripe because defendant's injury remained speculative). *See generally* Gene R. Nichol, Jr., *Ripeness and the Constitution*, 54 U. Chi. L. Rev. 153, 170-80 (1987).

[8] We find that the guardians' contention that a pending petition in the Superior Court renders Richard's appeal not ripe misconstrues the doctrine. *See* Appellees' Br. at 13-15; Record on Appeal ("RA"), tab 503C at 1-2 (Pet. Mot. Submit Last Will & Testament, Dec. 19, 2016). In *Moylan I*, we held that "where there is no showing of any compelling reason that guardianship records should be sealed in a specific case, [a] presumption of openness applies to adult guardianship records." 2011 Guam 16 ¶ 52. Part of that record included court-ordered disclosures, including financial reports, in response to Richard's concerns regarding the commingling of assets. *See id.* ¶¶ 46-55; RA, tab 351C (Dec. & Order, Apr. 15, 2010). The present dispute over Richard's alleged entitlement to information thus originates at least as far back as *Moylan I*. *See Moylan I*, 2011 Guam 16 ¶¶ 46-55.

[9] On appeal, Richard argues that he is entitled to additional information that should have been contained in these court-ordered reports, contending that without this information he cannot assess the potential mismanagement of the estate. *See* Appellant's Br. at 24 (July 3, 2017). The issue is fit for judicial determination because: (1) it is primarily legal, particularly in light of our prior opinion in *Moylan I*, *see* 2011 Guam 16 ¶¶ 46-55; (2) the facts underlying the dispute have matured sufficiently that they do not require further development; and (3) the trial court has made a final determination on the matter, *see* RA, tab 515C at 6 (Dec. & Order, Mar. 10, 2017). Moreover, the potential hardship Richard could suffer is not abstract, as he is being denied information that he alleges he is entitled to *now*—not in the future—and which allegedly

prevents him from *currently* assessing the potential mismanagement of the estate.[2] Denying him this information therefore imposes "present effects and hardships." *See* Nichol, Jr., 54 U. Chi. L. Rev. at 172. Therefore, the dispute over Richard's Motion to Compel is sufficiently concrete and immediate to warrant judicial determination. *Cf., e.g.*, *Patterson*, 971 S.W.2d at 442.

B. The Superior Court Did Not Abuse its Discretion in Denying Richard's Motion for Visitation

[10] In making decisions related to incompetent wards, courts have a duty to act in the wards' best interests. *See Moylan I*, 2011 Guam 16 ¶ 17. "[B]road discretion [is] vested in the trial court to exercise its powers so as to serve the best interests of the [ward]." *Guardianship of Brown*, 546 P.2d 298, 305 (Cal. 1976) (en banc) (citation omitted).

[11] The Superior Court did not deny visitation between Richard and his mother, but decided only that Leialoha was in the best position to determine the location and conditions of visitation, guided by the best-interest standard. RA, tab 515C at 4-5 (Dec. & Order, Mar. 10, 2017). Where a court order is consistent with the statutory grant of power to a guardian and promotes the best interests of the ward, "placing the establishment of visitation in the guardian [of the person] is not an unauthorized delegation of judicial authority." *See In re Guardianship & Conservatorship of Karin P.*, 716 N.W.2d 681, 690 (Neb. 2006) (citations omitted). Similarly, reading the relevant guardianship statutes in conjunction with the letter of guardianship indicates it was not an abuse of discretion for the Superior Court to permit Leialoha to determine conditions of visitation consistent with her statutory duty to care for the best interests of Yuk

[2] The guardians argue Richard's claim is not ripe because it is contingent on the trial court's determination of whether he is an "interested person" under 15 GCA § 4303. Appellees' Br. at 13. This misapplies the doctrine of ripeness to the present case because whether Richard is an "interested person" under 15 GCA § 4303 does not determine whether the injury he is allegedly sustaining now is abstract or hypothetical as a factual matter. *Cf. Thomas*, 473 U.S. at 581 (finding controversy was ripe in part based on sufficient factual development and impending certainty of harm). Moreover, his claim is, in part, an implicit argument to extend our holding *Moylan I*. *See* Appellant's Br. at 21-30 (citing in part *Moylan I*, 2011 Guam 16 ¶¶ 46-55). A concrete, well-developed controversy is at hand.

Lan, while maintaining Yuk Lan's ability to see family to the extent possible. *See, e.g.*, 15 GCA § 3501 (2005) ("A Guardian is a person appointed to take care of the person or property of another."); 15 GCA § 4101 (2005) ("Every guardian has the care and custody of the person of his ward . . . until legally discharged . . . ."); RA, tab 289C at 1 (Limited Guardianship of Yuk Lan Moylan, Nov. 10, 2008) (stating that Yuk Lan shall retain the right to "to see and visit with family . . . on a regular basis as she desires"). Such decisions are essentially a balancing act between the ward's right to visit with family and the guardian's duty to care for the ward, all within the backdrop of the best-interest standard. *See In re Estate of Wertzer*, 765 S.E.2d 425, 428-29 (Ga. Ct. App. 2014) (balancing guardian's statutory obligation to care for ward with ward's right to freely and privately communicate with persons other than guardian).

[12] First, Richard contends that the hearing on his motion was not sufficient to gauge the best interests of Yuk Lan and that the court should have held a more thorough evidentiary hearing. Appellant's Br. at 14-15. Richard relies on a handful of cases for the proposition that a full evidentiary hearing is required to assess the best interest of a ward. *See id.* at 15-16. However, the cited cases are not sufficiently analogous so as to persuade us that the Superior Court abused its discretion or clearly erred.

[13] For instance, Richard cites to *Acevedo v. Liberty*, 956 P.2d 455 (Alaska 1998). Appellant's Br. at 15-16. There, the Supreme Court of Alaska determined that an evidentiary hearing was necessary to assess whether a change in a visitation order was in the best interests of a child because the custodial parent's move to another location rendered the existing visitation schedule "virtually impossible" to implement. *Acevedo*, 956 P.2d at 458. However, here—unlike in *Acevedo*—Richard's visitation is not "virtually impossible;" Richard's visitation is merely subject to certain conditions. RA, tab 515C at 4 (Dec. & Order, Mar. 10, 2017).

Moreover, visitation has not been denied and the current guardians do not oppose Richard's visitation altogether. *Id.* at 4-5. There is no indication that visitation cannot be implemented; instead, the Superior Court has simply denied Richard's request to make visitation subject to *his* requested conditions. *Id.*

[14] Additionally, the limited holdings and distinguishing facts in both *Quintela v. Ranieri*, 499 N.Y.S.2d 562 (App. Div. 1986), and *Sanchez v. Russo*, 3 N.Y.S.3d 79 (App. Div. 2015), as cited by Richard, do not provide us with any deeply persuasive or sufficiently analogous principles that weigh in favor of reversing the Superior Court in this particular case. For instance, the *Sanchez* court reversed, in part, over concerns regarding the lack of a sufficient record supporting a lower court's finding that its decision was in the best interest of the child and not solely on the basis that it failed to hold a hearing. *See Sanchez*, 3 N.Y.S.3d at 80 ("[T]he Judge was dismissive of the position of the attorney for the child without the benefit of a proper record . . . ."). Meanwhile, the *Quintela* opinion is a memorandum opinion consisting of virtually no reasoning, and its description of the proceedings below is so brief that it is of almost no value in evaluating the instant case; further, we note that the *Quintela* opinion appears to imply that the trial court failed to consider the best-interest standard at all. *See Quintela*, 499 N.Y.S.2d at 562. In contrast, here, the Superior Court had almost a decade's worth of filings and hearings to consider, as informed by the best-interest standard. *See* In re Guardianship of Moylan, CVA17-006 (Trans. R. Certified Docket Sheets (May 9, 2017)); *see also* RA, tab 515C at 3-5 (Dec. & Order, Mar. 10, 2017) (incorporating best-interest standard into analysis); RA, tab 285C at 1 (Finds. Fact & Concl. L., Nov. 10, 2008) ("The Court has conducted an extensive evidentiary hearing, spanning eleven trial days, has heard the testimony of numerous witnesses, received dozens of documents into evidence, and has received [multiple] reports. . . ." (footnote

omitted)). As a result, we decline to hold that the Superior Court abused its discretion in failing to hold an evidentiary hearing before deciding the matter.

[15] Richard also argues that even a cursory review of the record would have demonstrated that it was not in Yuk Lan's best interest to deny his requests to hold visitations at her home and outside the presence of Leialoha, her husband, and son. Appellant's Br. at 13-19. We acknowledge that the record shows that the siblings have a contentious history. *See* RA, tab 368C at 2-4 (Decl. of Son, Sept. 17, 2010); RA, tab 351C at 5 (Dec. & Order, Apr. 15, 2010). Nevertheless, the record also substantially supports the Superior Court's decision that the location and conditions of visitation may be delegated to a limited guardian of the person consistently with the best interests of the ward. *Cf. Karin P.*, 716 N.W.2d at 689-90. There is a long history of estrangement between Richard and Yuk Lan. *E.g.*, *Moylan I*, 2011 Guam 16 ¶ 21. From the outset of these proceedings, Yuk Lan herself expressed apparent reluctance regarding visitation with Richard, stating: "He gives me a headache," "I feel uncomfortable with him," and stating the he could visit her at home "[o]nly if he asks us, and he doesn't have any problems." RA, tab 61C at 3 (Guardian Ad Litem Rep., Oct. 30, 2007); *see also* RA, tab 285C at 14-16 (Finds. Fact & Concl. L.) (describing, in part, the relationship of Yuk Lan and Richard, vis-à-vis the other children). Both the 2007 and 2010 reports by the Public Guardian recommended that Richard's visitation be subject to reasonable limitations. *See* RA, tab 61C at 4 (Guardian Ad Litem Rep.); RA, tab 364E at 4 (Letter to Judge Elizabeth Barrett-Anderson from Public Guardian, June 18, 2010) (affirming recommendations from 2007 report and stating, "Any visit [by Richard] must be planned with at least one week's notice."). Further, testimony from Dr. Claire Ashe similarly recommended that it was not in Yuk Lan's best interest to impose visitation with Richard. RA, tab 212C at 155 (Tr. of Competency Hr'g, Mar. 10, 2008)

("[F]orcing [the ward] to interact with [Richard] I think would have more of a detrimental effect than leaving things status quo.").

[16] The record, therefore, contains substantial evidence—in some cases going back years—that supports the Superior Court's decision, and, as such, the trial court did not abuse its discretion because we are not left with a "definite and firm conviction that a mistake has been committed." *M Elec. Corp.*, 2016 Guam 35 ¶ 41 (citation omitted). While it would have been beneficial to hold a robust hearing before taking the matter under advisement, the Superior Court already had over a decade of findings and proceedings in this long-running dispute with which to inform its decision. *See, e.g.*, RA, tab 285C at 1-2, 3-17 (Finds. Fact & Concl. L.) (including fifteen pages of findings of fact). Therefore, we affirm the denial of Richard's Motion for Visitation.

C. The Superior Court Did Not Abuse its Discretion in Denying Richard's Motion to Compel

[17] In denying Richard's motion to compel, the Superior Court found that Richard had "not articulated what [was] deficient in the quarterly reporting" filed by the guardians and that he had failed to specify what information was allegedly false. RA, tab 515C at 5 (Dec. & Order, Mar. 10, 2017). The Superior Court also invited Richard to "re-file a motion if he finds missing details in the quarterly reports," *id.*, an invitation that he evidently decided not to accept prior to appeal. On appeal, Richard essentially re-asserts that the "information was never provided," and that the reports lack the financial details necessary to determine mismanagement. Appellant's Br. at 24. He also contends that under 15 GCA §§ 4303 and 4501, he is not required to justify why he seeks additional information. *See id.* at 25-30.

[18] Each of the quarterly reports shows Yuk Lan's itemized monthly expenses. *E.g.*, RA, tab 512C, Ex. C (4th Quarter 2016 Rep., Feb. 1, 2017). These reports also contain a balance

statement of her various accounts. *See, e.g., id.* at 2. The annual report similarly accounts for real property, bank accounts, rental income, accounting expenses, health insurance and medical expenditures, payments made to caregivers (including guardian Leialoha), and tax liabilities. *E.g.*, RA, tab 490C (Guardian's Annual Rep., Aug. 24, 2017). On appeal, Richard argues that—as distinct from the quarterly reports—certain annual reports were not provided, *see* Appellant's Br. at 22-27, but his motion below did not raise this assertion, *see* RA, tab 479C at 5-9 (Mem. Mots. Visitation & Compel, Feb. 8, 2016) ("Finally, the quarterly reports being filed . . . are insufficient. . . ."); RA, tab 486C at 7-11 (Reply to Opp'n to Mots. Visitation & Compel, Mar. 21, 2016) ("[T]he quarterly reports being filed . . . is [sic] deficient. . . ."). The trial court thus, understandably, focused on Richard's contention that the quarterly reports were deficient. *See* RA, tab 515C at 5-6 (Dec. & Order, Mar. 10, 2017). Because "[g]enerally, this court will not entertain an issue raised for the first time on appeal," and we find no applicable reason to deviate from this rule, we decline to address Richard's contention that annual reports are not being provided. *Benavente v. Taitano*, 2006 Guam 16 ¶ 145 (quoting *Sinlao v. Sinlao*, 2005 Guam 24 ¶ 30); *see also United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) ("A skeletal 'argument', [sic] really nothing more than an assertion, does not preserve a claim." (citing *United States v. Giovannetti*, 919 F.2d 1223, 1230 (7th Cir. 1990))).

[19] As far as the quarterly reports, in the absence of Richard pointing out more particularized deficiencies, we are unwilling to vaguely speculate, as a factual matter, as to what other information might reveal the alleged mismanagement of the estate. *See Gov't of Guam v. Gutierrez ex rel. Torres*, 2015 Guam 8 ¶ 21 ("[R]esolution of factual issues not evaluated by the trial court is not an appropriate function of an appellate court." (citation omitted)); *cf. Taitano v. Calvo Fin. Corp.*, 2008 Guam 12 ¶ 12 (citation omitted) (noting that under Guam Rule of Civil

Procedure 9(b), claims of fraud must state facts with sufficient particularity); *Dahl v. Dahl*, 2015 UT 79 ¶ 71, --- P.3d ---- (affirming the denial of a motion to compel where the party that filed the motion made only "generalized allegations" and did not "identif[y] any specific documents introduced at trial demonstrating that [the] initial responses were incomplete or that counsel did not have the appropriate corrective information").

[20] Moreover, Richard overreaches when he argues that he need not show cause to obtain the information he has requested. He provides no analysis of threshold issues, such as whether he provided a complaint under oath, as required by 15 GCA § 4303, or whether he has standing to pursue claims thereunder. *See* Appellant's Br. at 22-30. Instead, he asserts that the Superior Court lacks the resources to conduct extensive audits of estates and that it relies on the good will of "interested persons"—a statutory term that he does not analyze in depth and which has not been litigated below—to detect fraud and waste. *Id.* at 26-27. We find this line of argument dubious. In effect, he asks us to order the Superior Court to permit the auditing of an estate by a litigation adversary based solely on generalized, indistinct allegations of possible mismanagement. We are unwilling to do this in the absence of more detailed factual support for his allegations. In addition, his suggestion implicates significant policy concerns that we need not address in depth, as such concerns are properly left to the legislative branch to address, if it wishes.[3]

[21] Ultimately, we find the denial of Richard's motion was not based on any clearly erroneous factual findings or an incorrect legal standard, and thus, the Superior Court's denial of his motion does not amount to an abuse of discretion. *See M Elec. Corp.*, 2016 Guam 35 ¶ 41;

[3] We find nothing in the plain language of the relevant guardianship statutes that requires adopting Richard's contention that he should, in effect, be given broad audit powers over the estate based only on his current highly generalized allegations. *See, e.g.*, 15 GCA §§ 4303, 4501 (2005).

Goehring v. Brophy, 94 F.3d 1294, 1305 (9th Cir. 1996) (recognizing that "[b]road discretion is vested in the trial court to permit or deny discovery [requests]" (quoting *Sablan v. Dep't of Fin.*, 856 F.2d 1317, 1321 (9th Cir. 1988))), *superseded by statute on other grounds*, Religious Land Use & Institutionalized Persons Act of 2000, Pub. L. No. 106-274, 114 Stat. 803, *as recognized in Navajo Nation v. U.S. Forest Serv.*, 479 F.3d 1024, 1033 (9th Cir. 2007).

V. CONCLUSION

[22] For the forgoing reasons, we hold that the Superior Court did not abuse its discretion in denying Richard's Motion for Visitation or his Motion to Compel. We **AFFIRM** the Superior Court's Decision and Order dated March 9, 2010.

/s/
ROBERT J. TORRES
Associate Justice

/s/
JOHN A. MANGLONA
Justice *Pro Tempore*

/s/
F. PHILIP CARBULLIDO
Presiding Justice