



Filed

Supreme Court of Guam, Clerk of Court

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.**

Supreme Court Case No.: CVA17-020
Superior Court Case No.: SP0106-07
(consolidated with SP0104-07, SP0105-07, SP0107-07, SP0110-07, & SP0111-07)

OPINION

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Appeal from the Superior Court of Guam
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Hagåtña, Guam

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

CARBULLIDO, P.J.:

[1] This appeal is another dispute in the guardianship over Yuk Lan Moylan. Appellant Richard Moylan, Yuk Lan’s son, appeals a Superior Court Order appointing his sister Respondent Leialoha “Princess” Moylan Alston temporary special guardian of the estate, while the duly-appointed special guardian Kurt Moylan—Richard’s brother—was absent from Guam. Richard argues that the trial court lacked the authority to appoint a temporary guardian, and even if such authority existed, the partial surety bond required of Leialoha was inadequate. Richard also argues that the trial court erred in failing to hold an evidentiary hearing prior to Leialoha’s appointment. Leialoha responds that the trial court’s temporary appointment order was proper given the fact that the trial court’s jurisdiction is limited to the purpose of preventing injury or loss to Yuk Lan while an appeal is pending. For the following reasons, we reverse and remand.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] We previously issued opinions in the following related cases: *In re Guardianship of Moylan*, 2018 Guam 15 (“*Moylan IV*”); *In re Guardianship of Moylan*, 2018 Guam 8 (“*Moylan III*”); *In re Guardianship of Moylan*, 2017 Guam 28 (“*Moylan II*”); *Moylan v. Citizens Sec. Bank*, 2015 Guam 36; and *In re Guardianships of Moylan*, 2011 Guam 16 (“*Moylan I*”). The relevant facts remain the same. Preceding those appeals, a judge appointed Kurt as Limited or Special Guardian of the Estate and Leialoha as Limited or Special Guardian of the Person of Yuk Lan—the Ward. In 2011, a psychiatric report determined that Yuk Lan’s dementia and

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

Alzheimer’s progressed to the point that she was legally incompetent and required a general guardianship.

[3] In 2017, Leialoha and Kurt brought a Petition for General Guardianship. The Petition sought to convert Leialoha’s special guardianship of the person into a general guardianship of the person. It also sought to replace Kurt as Special Guardian of the Estate with Kaleo Moylan—Yuk Lan’s grandson—as General Guardian of the Estate.

[4] Afterwards, Leialoha brought an *ex parte* motion to appoint herself as temporary special guardian of the estate because Kurt was absent from Guam and no general guardian had yet been appointed. Richard opposed Leialoha’s application. During the hearing on the *ex parte* motion, Leialoha’s attorney represented to the court that Leialoha had been managing the “personal funds of Ms. Yuk Lan Moylan . . . for the last number of years” Transcript (“Tr.”) at 10-11 (Mot. Appointment Special Guardian, Sept. 11, 2017).

[5] Over Richard’s objection, the Superior Court granted Leialoha’s *ex parte* petition for temporary guardianship and ordered her to post a surety bond in an amount no greater than \$166,000.00. The quarterly report filed most recently, prior to the appointment, listed \$1,543,431.03 as the amount held in bank accounts—not including other assets. The court had required a surety bond in the amount of \$1,698,102.99 from Kurt. The letters of guardianship, the oath of guardianship, and the surety bond were filed September 25, 2017. Kurt resigned as limited guardian of the estate on December 29, 2017.²

² The several preceding documents were entered on the Superior Court record after the Record on Appeal was transmitted to this court. We take judicial notice of these documents. See *In re N.A.*, 2001 Guam 7 ¶¶ 57-58.

II. JURISDICTION

[6] This court has jurisdiction over appeals from orders granting or revoking letters of guardianship. 15 GCA § 4801 (2005); 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 115-231 (2018)); 7 GCA § 3107 (2005).

III. STANDARD OF REVIEW

[7] This court reviews jurisdictional questions *de novo*. See, e.g., *People v. San Nicolas*, 2016 Guam 21 ¶ 9. While the appointment of a particular guardian is reviewed for abuse of discretion, see *In re Guardianship of Ulloa*, 2014 Guam 32 ¶ 22, the Superior Court’s power to appoint a guardian is an issue of statutory interpretation reviewed *de novo*, see *Melwani v. Hemlani*, 2015 Guam 17 ¶ 16. Questions regarding “[w]hether a bond is required to be posted by a guardian over a person” and the corresponding statutory calculations are issues of statutory construction reviewed *de novo*. *In re Guardianships of Moylan*, 2011 Guam 16 ¶ 13.

IV. ANALYSIS

A. In a Guardianship Proceeding, a Pending Appeal Divests the Superior Court of Jurisdiction Only Over the Subject Matter of that Appeal

[8] “This court has jurisdiction over appeals from orders ‘granting or revoking letters of guardianship[,] settling an account of a guardian[,] or refusing to make any order’ relating to the guardianship provisions of Guam’s Code Annotated (“GCA”).” *In re Guardianship of Ulloa*, 2014 Guam 32 ¶ 21 (alterations in original) (quoting 15 GCA § 4801). Generally, trial court proceedings are stayed when an appeal is timely and validly filed in the Supreme Court. See *San Nicolas*, 2016 Guam 21 ¶ 13 (discussing the divestiture rule); see also *Hemlani v. Flaherty*, 2002 Guam 10 ¶ 6; *Dumaliang v. Silan*, 2000 Guam 24 ¶ 14. This divestiture rule is judge-made and is intended “to avoid confusion or waste of time from having two courts considering the same

issues at the same time.” *Dumaliang*, 2000 Guam 24 ¶ 14 (citing *United States v. Powell*, 24 F.3d 28, 31 (9th Cir. 1994)).

[9] In appeals from final judgments, the trial court is usually divested of jurisdiction to proceed—except to aid in furtherance of the appeal—because the appeal concerns the entire case. *See id.*; *Hemlani*, 2002 Guam 10 ¶ 6. A trial court may also sometimes be permitted to rule on non-dispositive or independent issues arising during the ordinary course of an appeal from certain interlocutory or collateral orders. *See, e.g., Bradley v. State*, 649 N.E.2d 100, 106 (Ind. 1995) (authorizing a criminal trial on the merits to proceed while an appeal over the defendant’s denial of bail was pending). In guardianship cases, however, normal divestiture rules do not apply and trial courts are not divested of all jurisdiction over a case while an appeal is pending. *See Garrison v. Vance*, 103 So. 3d 1041, 1043 (Fla. Dist. Ct. App. 2013). They are divested of jurisdiction only over the subject matter of the order subject to the appeal. *See, e.g., Schumacher v. Radiomaha, Inc.*, 619 N.E.2d 271, 273 (Ind. 1993) (“[T]he trial court does not have jurisdiction to continue with a case concerning matters from which an appeal is taken as long as that appeal is pending.”).

[10] The reasoning in *Garrison* is particularly relevant:

The orders are “final orders” for purposes of appeal, but unlike a final order or judgment in a typical civil case, the orders did not “dispos[e] of the cause” by ending the judicial labor in the trial court. Indeed, the orders effectively marked the beginning of the judicial labor in the guardianship case, not the end, because the case will remain open until the trial court terminates the guardianship and discharges [the guardian].

103 So. 3d at 1042-43 (first alteration in original) (footnotes omitted). While Florida courts have a particular court rule that governed in *Garrison, id.*, Guam has a similar divestiture rule that exists in case law, *see Dumaliang*, 2000 Guam 24 ¶ 14, and a statutory provision that provides

jurisdiction over appeals from final orders, *see* 7 GCA § 3107(b) (2005). Even in light of the distinction, the *Garrison* reasoning is sound and applicable. Guardianships, including those in Guam, do not lead to final judgments, but instead only a series of final appealable orders. *See* 15 GCA § 4801; *see also* *Moylan III*, 2018 Guam 8 ¶ 9 (exercising appellate jurisdiction over an order regarding attorney’s fees in a guardianship proceeding); *Moylan II*, 2017 Guam 28 ¶¶ 7, 12 (exercising appellate jurisdiction over an order regarding disposition of ward’s assets). The care of a ward could never be efficiently accomplished if an appeal halted all proceedings.

[11] At the time Leialoha was appointed “temporary guardian,” appeals were pending in CVA17-006 regarding visitation, CVA16-016 regarding attorney’s fees for actions taken to benefit the ward, and CVA15-030 regarding shareholder loans and title to putative property of the ward. We subsequently issued opinions in all three appeals. *See* *Moylan IV*, 2018 Guam 15; *Moylan III*, 2018 Guam 8; *Moylan II*, 2017 Guam 28. None of the issues on appeal in these matters directly related to the appointment of a guardian. *See* *Moylan IV*, 2018 Guam 15; *Moylan III*, 2018 Guam 8; *Moylan II*, 2017 Guam 28. Thus, at the time of the Decision & Order regarding the *ex parte* application, none of the appeals limited the trial court’s jurisdiction over an original petition to appoint a guardian. Because the trial court retained jurisdiction, the temporary appointment of Leialoha was not necessary under 15 GCA § 4802. We conclude that the trial court had jurisdiction to consider Kaleo and Leialoha’s petitions for general guardianship.

[12] Even though the trial court had jurisdiction to entertain the petition for general guardianship, we may nonetheless review the trial court’s order to determine if its *ex parte* appointment of Leialoha as guardian of the estate is otherwise proper. As we review an order appealed under all bases potentially supporting it, *see* *Macris v. Richardson*, 2010 Guam 6 ¶ 25,

we find it appropriate to consider the propriety of Leialoha’s appointment as guardian of the estate.

B. Under 15 GCA § 3802, Appointment of a New Guardian Requires a Hearing with Prior Notice of Five Days

[13] While we believe that the Superior Court was attempting to act in the best interests of Yuk Lan, Guam statutes prescribe certain procedural conditions that must be adhered to when appointing a guardian. Guam law provides, in part:

Any relative or friend may file a verified petition alleging that a person is insane or incompetent. Thereupon the clerk shall set the same for hearing by the court and shall cause notice to be given to the alleged insane or incompetent person of the time and place of hearing, *not less than five (5) days before the time so appointed . . .*

15 GCA § 3802 (2005) (emphasis added). While Richard believes this statute requires the trial court to hold an evidentiary hearing, we need not decide that today. The statute requires the Superior Court to provide notice not less than five days before the hearing. The Superior Court held the hearing in this case only four days after the *ex parte* motion was filed. *Compare* RA, tab 530 (*Ex Parte* Verified Pet. Appointment Special Guardian Estate, Aug. 28, 2017), *with* Tr. at 1 (Mot. Appointment Special Guardian). While this might appear to be a technical requirement, it must be followed because guardianships place restrictions on a ward’s liberty interests and the corresponding statutes must be strictly construed. *See, e.g., Boockholdt v. Brown*, 164 S.E.2d 836, 838 (Ga. 1968) (“To place another in control of our person and our possessions deprives us of . . . basic rights. The law permitting such deprivation should be strictly construed and all requirements of the law strictly [sic] complied with.”); *In re Griffith’s Will*, 291 N.W. 21, 22 (Mich. 1940) (“The power of appointment of a guardian by the probate court is derived from the statute and in order to obtain jurisdiction in such cases the statute must be strictly construed.”). In California, from where 15 GCA § 3802 is derived, *see* Guam Probate

Code § 1461 (1953) (Foreword), the giving of notice is jurisdictional in guardianships. *See, e.g., Snyder v. Superior Ct. of San Diego Cnty.*, 274 P. 337, 349 (Cal. 1929); *McGee v. Hayes*, 59 P. 767, 768 (Cal. 1899). We must strictly construe the statutes in this case. Because the guardianship hearing was held with less than five days of notice, we vacate the appointment of Leialoha as guardian of the estate. However, we will leave the remaining questions of procedure to the trial court in the first instance.

C. Before New Guardianship Letters Are Issued, a New Surety Bond Will Be Required

[14] The appointment of a guardian is linked by statute to the furnishing of a surety bond. 15 GCA § 4002 (2005). In these proceedings, while Leialoha was the guardian only of Yuk Lan’s person, this court determined that no bond was required because Leialoha did not have access to Yuk Lan’s property. *Moylan I*, 2011 Guam 16 ¶¶ 26-33. This situation changed, however, when the Superior Court appointed Leialoha as “Special Guardian of the Estate of Ward Yuk Lan Moylan.” RA, tab 537 at 4 (Dec. & Order, Sept. 5, 2017). In doing so, the trial court gave Leialoha the following limited guardianship powers:

- i. Execution of checks from the ANZ Bank account currently held in the name of Kurt S. Moylan Guardian, Estate for Y L Moylan;
- ii. Payment of taxes, gross receipts, real property and income taxes owed by Yuk Lan Moylan, and the Ward’s other necessary and reasonable expenses; and
- iii. Transactions of all the general business of Yuk Lan Moylan, as set forth in the Guardian’s Quarterly Reports.

Id. In light of this appointment, the Superior Court required Leialoha to post a surety bond “in an amount no greater than \$166,000.00.” *Id.* Richard asks us to determine whether this is a sufficient bond.

[15] Guam law provides, in relevant part:

Before the order appointing a guardian takes effect, and before letters issue, the person appointed . . . must furnish a bond to the ward, with two or more persons or an authorized surety company as surety, to be approved by the judge, and in such sum as required by the order, which sum shall be not less than twice the value of the personal property and twice the value of the probable annual rents, issues and profits of all property belonging to the ward, or, when the bond is given by an authorized surety company, not less than the value of the personal property and the probable annual rents, issues and profits of all property belonging to the ward and conditioned that the guardian will faithfully execute the duties of his trust according to law.

15 GCA § 4001 (2005). Additionally, 15 GCA § 3506 provides, in part: “The court, in its discretion, may appoint more than one guardian, each of whom must give a separate bond, and be governed and liable in all respects as a sole guardian.” 15 GCA § 3506 (2005).

[16] While Richard urges us to hold Leialoha’s bond to be inadequate, Leialoha argues that 15 GCA § 3506 provides the trial court discretion to adjust the amount of the bond when multiple guardians are appointed. Under Leialoha’s view, the only bond required from a special guardian is that which ensures “faithful administration” of the ward’s estate, *see Moylan I*, 2011 Guam 16 ¶ 32. The problem with this argument is that Kurt has since resigned as guardian of the estate. Additionally, the last operative provision of the Superior Court’s order appointing Leialoha as guardian of the estate allows her to transact all the general business of Yuk Lan as set forth in the Quarterly Reports. While it appears from other parts of the appointment order that the powers were intended to be limited, the guardianship appointment gives general powers. There appears to be an inconsistency between the approximately \$1.7 million bond required of Kurt, and the \$166,000.00 bond required of Leialoha.

[17] This inconsistency may have occurred because the trial court has not had the opportunity to consider the impact of Kurt’s resignation and appears to have implemented a general guardianship where a limited one may have been intended. Yet, in light of our reversal of

Leialoha's appointment on procedural grounds, we need not consider the parties' specific arguments concerning the bond amount and will leave those issues to the trial court in the first instance. *See, e.g., Hemlani v. Hemlani*, 2015 Guam 16 ¶ 33. Nonetheless, if and when the trial court orders a new bond as required by statute, *see* 15 GCA § 4001, it should ensure compliance with the statute and avoid future inconsistent findings, *see, e.g., Lujan v. Estate of Rosario*, 2016 Guam 28 ¶¶ 74-75.

V. CONCLUSION

[18] We **VACATE** the Decision & Order of September 5, 2017, and **REMAND** for proceedings not inconsistent with this opinion.

/s/

ROBERT J. TORRES
Associate Justice

/s/

JOHN A. MANGLONA
Justice *Pro Tempore*

/s/

F. PHILIP CARBULLIDO
Presiding Justice