IN THE SUPREME COURT OF GUAM

IN THE MATTER OF THE ESTATE OF LUCY P. ULLOA,
Deceased.

Supreme Court Case No.: CVA18-013
Superior Court Case No.: PR0134-14

OPINION

Cite as: 2020 Guam 1

Appeal from the Superior Court of Guam
Argued and submitted on March 19, 2019
Hagåtña, Guam

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BEFORE: KATHERINE A. MARAMAN, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; and ROBERT J. TORRES, Associate Justice.[1]

MARAMAN, C.J.:

[1] Respondent-Appellant Vivian U. McCurdy ("Vivian") appeals from Findings of Fact and Conclusions of Law entered by the Superior Court. *See* Record on Appeal ("RA"), tab 103 (Finds. Fact & Concl. L., Mar. 23, 2018) ("2018 Findings"). In the 2018 Findings, the probate judge held that: (1) a "no-contest" clause in decedent Lucy P. Ulloa's ("Lucy") will did not apply to Petitioner George F. Ulloa's ("George") prior objection to Vivian acting as executor, and thus was not a bar to preliminary distribution of Lucy's estate (the "Estate"); (2) preliminary distribution of certain assets of the Estate was appropriate; and (3) the Office of the Public Guardian ("OPG"), as Administrator, did not have to post bond as a condition to preliminary distribution of the Estate. Petitioners-Appellees George F. Ulloa, Priscilla J.U. Hartwick, and Esther M.U. Thompson (collectively, "Petitioners"), as beneficiaries under Lucy's will, assert the Superior Court's 2018 Findings were correct and Vivian's claim that the no-contest clause was violated is barred as untimely. Public Guardian Marcelene C. Santos, in her capacity as court-appointed Administrator, joins Petitioners' brief. For the reasons below, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] We previously addressed a dispute over Lucy's guardianship in *In re Guardianship of Ulloa*, 2014 Guam 32. This case presents different questions because Lucy has since passed and the Estate is now in probate.

[3] Upon Lucy's passing, Vivian filed a petition for probate and request for appointment as executor of the Estate. Section 14 of Lucy's will contemplated that Vivian would act as sole

[1] The signatures in this opinion reflect the titles of the justices at the time this matter was considered and determined.

executor of the Estate, and if Vivian should predecease Lucy or "is otherwise unable to act as Executor," then Alvin Ulloa would be the alternate executor.[2] *See* RA, tab 1, Ex. B, at 5 (V. Pet. Probate of Will & Letters Testamentary, Oct. 24, 2014). A few months after Vivian submitted Lucy's will to probate, both George and the OPG objected to Vivian serving as executor.

[4] After briefing and hearings on the matter, the probate court found Vivian unsuitable to serve as executor because she had failed to satisfy the standard applicable to executors under 15 GCA § 1701(c)(5), which provides that "[n]o natural person is competent to serve as an executor who . . . is adjudged by the Superior Court of Guam incompetent to execute the duties of the trust by reason of . . . want of understanding or integrity." RA, tab 57 at 2-5 (Order After Hr'g Re Mot. Dismiss Pet., Mar. 21, 2016) ("March 2016 Order"). The court found that Vivian had failed to disclose real property that was an asset of the Estate and had failed to investigate the status of such real property, which may have harmed the Estate. The court further determined that Vivian's behavior "[was] intentional and may be inferred as a reflection of her 'want of integrity' under 15 GCA § 1701(c)(5)," and that her actions "come very close to reflecting a lack of 'soundness of moral principle and character'" that apply to fiduciaries. *Id.* at 4 (citation omitted). The court then appointed the OPG as Administrator of the Estate upon the request of both George and the OPG. *See* RA, tab 74 at 2-6 (Dec. & Order re Appt. Pub. Guardian as Adm'r of Estate, Aug. 18, 2016) ("August 2016 Order").

[5] After the court issued the March 2016 Order, and over Vivian's objection, George and the other Petitioners requested partial preliminary distribution of the Estate—namely, certain shares of stock in Chamorro Equities, Inc. ("CEI").[3] Following a bench trial and the filing by the

[2] Alvin Ulloa predeceased Lucy in early 2009. *See In re Guardianship of Ulloa*, 2014 Guam 32 ¶ 5.

[3] To be clear, the Petitioners did *not* contend that Vivian was not entitled to her share of the preliminary distribution, as a named beneficiary in Lucy's will. They only contended that partial preliminary distribution was appropriate.

OPG of two separate inventory and appraisements of the Estate, the Superior Court found that "although [the] Estate is indebted, such debt is slight" and the preliminary distribution of the CEI shares was "in the best interest of the estate or that [it would be] 'without loss to the creditors or injury to the estate.'" RA, tab 103 at 6 (2018 Findings); *see also* 15 GCA § 3003 (2005).[4] The court also determined it was unnecessary for the OPG to post bond before preliminary distribution. RA, tab 103 at 10 (2018 Findings); *see also* 15 GCA § 3001(a) (2005) (permitting preliminary distribution "upon bond []or with or without bond, as the Superior Court determines"). In addition, the court found that certain pending litigation would not adversely affect the Estate's financial condition to such a degree that it prohibited preliminary distribution of the CEI stock. Finally, the court held that George's objection to Vivian's serving as executor did not violate the no-contest clause in Lucy's will.

[6] Vivian appealed the 2018 Findings. We dismissed as untimely the portion of Vivian's appeal that challenged the appointment of the OPG as Administrator. *See* Order, CVA18-013 (July 16, 2018). After oral argument, Petitioners filed a request for judicial notice, attached to which was an order dated March 18, 2019, from Superior Court Case No. SP0200-18, indicating that Richard McCurdy, as appointed guardian of the person and estate of Vivian, is to be substituted on behalf of Vivian in the underlying probate. Finding that Petitioners' request for judicial notice is unopposed and that the requirements of Guam Rule of Evidence 201 are satisfied, we grant the motion to notice the order attached to Petitioners' request for judicial notice. *See* Guam R. Evid. 201(d).

[4] Title 15 GCA § 3003 permits distribution "[i]f . . . it appears that all of the allegations of the petition [for distribution] are true, that the estate is but little indebted, and that the legacy, devise or share of the estate or any portion thereof may be distributed without loss to the creditors or injury to the estate or any person interested therein, the Superior Court shall make an order requiring [distribution] . . . upon receiving . . . a bond . . . in such sum or sums as the Superior Court may designate."

II. JURISDICTION

[7] This court has jurisdiction over appeals from final orders issued in the Superior Court. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 116-91 (2019)); 7 GCA §§ 3107, 3108(a) (2005); *see also* 15 GCA § 3433 (2005).

III. STANDARD OF REVIEW

[8] "Jurisdictional issues may be raised by any party at any time or *sua sponte* by the court." *Portis Int'l, LLC v. Marquardt*, 2018 Guam 22 ¶ 3 (quoting *Duenas v. George & Matilda Kallingal, P.C.*, 2013 Guam 28 ¶ 11). "The jurisdictional statutes prescribing this court's appellate jurisdiction are strictly interpreted." *Id.*

[9] When interpretation of a will involves no extrinsic evidence and is based solely on the language of the will, the interpretation is a question of law reviewed *de novo*. *Estates of Torres v. Estate of Cruz,* 2011 Guam 4 ¶ 17. Questions of statutory interpretation are also reviewed *de novo*. *Ada v. Guam Tel. Auth.,* 1999 Guam 10 ¶ 10.

[10] Findings of fact made following a bench trial are reviewed for clear error. *In re Guardianship of Moylan*, 2011 Guam 16 ¶ 12. Under this review, we look only at whether the trial court's finding of fact is supported by substantial evidence, and the decision will be reversed only if we have a definite and firm conviction that a mistake has been committed. *Id.*

[11] With respect to probate actions, appellate courts will generally not "overturn an order granting a preliminary distribution in the absence of an abuse of discretion by the probate court in evaluating the condition of the estate," with all presumptions "exercised in favor of the correctness of the probate court's order." *Estate of Beard v. Beard*, 84 Cal. Rptr. 2d 276, 293 (Ct. App. 1999); *see In re Estate of Perez*, 2005 Guam 27 ¶ 13 ("The standard of review for an order of final distribution is abuse of discretion," and the probate court is "vested with broad

jurisdiction which will not be disturbed on appeal except when abused." (quoting *Estate of Lock v. Superior Court City & Cty. of S.F.*, 176 Cal. Rptr. 358, 365 (Ct. App. 1981))).

IV. ANALYSIS

[12] This case raises the following issues, each of which we address in turn: (1) whether Vivian's assertion that the no-contest clause in Lucy's will was violated is time-barred; (2) if Vivian's assertion was *not* time-barred, whether George's prior objection to her appointment as executor violated the will's no-contest clause; and (3) whether the financial condition of the Estate is such that the order granting preliminary distribution without requiring a posted bond was an abuse of discretion.

A. This Court Has Jurisdiction Over the No-Contest Clause

[13] Petitioners assert this court lacks jurisdiction to hear Vivian's argument concerning the no-contest clause. Appellees' Br. at 16-20 (Oct. 11, 2018). They argue the issue is time-barred based on the running of the 30-day time frame to appeal either the March 2016 Order finding Vivian unsuitable to serve as executor or the August 2016 Order appointing the OPG as Administrator of the Estate. Petitioners further argue that the Superior Court's 2018 Findings "by use of the Law of the Case doctrine, [simply] restated its 2016 findings and conclusions" and did not enlarge the jurisdictional time frames. *Id.* at 17. The Petitioners effectively insinuate that the probate court had decided how the no-contest clause should be interpreted. *Id.* at 17-19.

[14] None of these arguments are persuasive. First, Petitioners' attempt to construe the two orders entered by the Superior Court in 2016 as if they finally adjudged the scope of the no-contest clause is incorrect. Neither the Superior Court's March 2016 Order nor the August 2016 Order mentioned the will's no-contest clause—let alone *decided any issue* related to it. The March 2016 Order specifically states it responded to George and the OPG's objection to Vivian

serving as executor, but nowhere does the Superior Court allude to the no-contest clause. *See* RA, tab 57 at 2-3 (March 2016 Order). Similarly, the August 2016 Order addressed only whether the OPG was competent to serve as Administrator. *See* RA, tab 74 at 2-6 (August 2016 Order). None of the parties raised the no-contest clause in their filings during these 2016 proceedings, or in the related hearings. There are also no clear references to the no-contest clause during the dispute over Vivian's suitability to serve as executor. Petitioners construe the March 2016 Order and the August 2016 Order as if they were "final and appealable" regarding questions over the no-contest clause. Ordinarily, for an order to be final it must "dispose[] of the entire case by determining the rights of the parties in an action." *Portis Int'l*, 2018 Guam 22 ¶ 5 (citation omitted). That is not the case here. The 2016 proceedings make no reference to the no-contest clause, because the issue was not before the probate court.

[15] Second, the Petitioners misunderstand the law of the case doctrine.

> Under [the] law of the case doctrine, a legal decision made at one stage of litigation, unchallenged in a subsequent appeal when the opportunity to do so existed, becomes the law of the case for future stages of the same litigation, and the parties are deemed to have waived the right to challenge that decision at a later time.

Cristobal v. Siegel, 2018 Guam 29 ¶ 8 (quoting *Williamsburg Wax Museum, Inc. v. Historic Figures, Inc.*, 810 F.2d 243, 250 (D.C. Cir. 1987)). The Superior Court's mere reference in the 2018 Findings to factual findings from its earlier 2016 orders does not mean those earlier orders had decided how to interpret the no-contest clause; law of the case could only cover legal decisions *finally decided* in those earlier 2016 orders. Interpreting the no-contest clause was simply not before the court in 2016—meaning the law of the case could not logically apply. Merely incorporating the factual findings from an earlier order does not by itself trigger law of the case with respect to issues that had not been before the court.

[16] Third, the Petitioners misconstrue this court's July 16, 2018 Order dismissing the portion of Vivian's appeal that sought to challenge the appointment of the OPG as Administrator. *See* Appellees' Br. at 19-20. That order was limited to the Petitioners' motion to dismiss the appeal on whether the OPG was fit to serve as Administrator. *See* Order, CVA18-013 (July 16, 2018) (dismissing only the portion of Vivian's appeal that challenged the appointment of the OPG); *see also* Heirs' Mot. Dismiss Appeal Re Lack of Juris., CVA18-013 (May 10, 2018) (moving to "dismiss part of the appeal because [Vivian's appeal] assert[ing] jurisdiction . . . over the [August 2016 Order] *appointing the Public Guardian* as the Administrator of the Estate" was filed "far too late" (emphasis added)). The July 16, 2018 Order was clear that only that portion of Vivian's appeal seeking review of the OPG appointment should be dismissed.

[17] For these reasons, we reject Petitioners' assertion that this court lacks jurisdiction to hear Vivian's argument concerning the no-contest clause. Vivian's argument that the no-contest clause was violated is not time-barred, and we have jurisdiction over the matter.

B. George's Prior Objection to Vivian's Executorship Did Not Violate the No-Contest Clause

[18] Section 16 of Lucy's will contains the following "no-contest" clause:

> *Every heir, legatee, devisee, or beneficiary under this will who shall contest in any court* ***any*** *provision of this instrument shall not be entitled to any devises, legacies, or benefits under this will or any codicil to this will or any trust created by this will*. Any and all devises, legacies, and portions of the income or corpus of my estate, otherwise provided to be paid to such person, shall lapse and shall be paid, distributed and passed as remainder in my estate. My executor is specifically authorized to defend at the expense of my estate any contest or attack of any nature upon this will or any codicil to this will, or on any paragraph or provision hereof.

RA, tab 1, Ex. B at 5-6 (V. Pet. Probate of Will & Letters Testamentary) (emphases added). Interpreting the word "any" in this portion of Lucy's will, to be broad and all-encompassing, is the essence of Vivian's claim that George violated the clause by objecting to her appointment as

executor.[5] Vivian argues that the intent of Lucy, as testator, controls, and that she expressed her intent by use of the plain meaning of the word "any." Appellant's Br. 11-14 (Sept. 12, 2018).

[19] The obvious difficulty in this argument—which Vivian fails to address—is that to construe the word "any" in this broad manner would effectively prohibit *all challenges* by beneficiaries to Vivian's executorship, no matter how well-grounded those challenges may be. It would be wrong for a beneficiary to lose his or her interest in an estate merely because he or she challenged an executor's appointment on grounds permitted by statute—as is the case under 15 GCA § 1701(c)(5), upon which George based his objection to Vivian's appointment. Were we adopt to Vivian's interpretation of the word "any," then effectively any beneficiary will forever be foreclosed from challenging Vivian's appointment as executor, no matter the reason.

[20] Vivian also relies on *In re Estate of Esteban*, 2014 Guam 30, where we stated that in cases of ademption, we should "discern[]" the testator's intent "from the terms of the will in its entirety." 2014 Guam 30 ¶ 29; *see also Estate of Torres*, 2011 Guam 4 ¶¶ 19-28 (adopting same standard in the context of when a probate court can consider extrinsic evidence). *Estate of Esteban* is distinguishable because it involved specific, limited questions of when property was subject to ademption. 2014 Guam 30 ¶¶ 28-29 (noting specific issue was construing testator's intent *to avoid ademption*). Nothing in *Estate of Esteban* provides any clear guidance on how this court should construe the word "any" in a no-contest clause in a will. Further, nothing in Title 15 of the Guam Code Annotated requires us to adopt Vivian's interpretation of Section 16 of Lucy's will. Title 15 GCA § 603 specifically contemplates instances when a testator's intent will *not* be given full effect. *See* 15 GCA § 603 (2005) ("Where the testator's intention cannot

[5] Vivian also moves for attorney's fees pursuant to the final sentence in Section 16 of the will. *See* Appellant's Br. 3 (Sept. 12, 2018). We deny this motion because it applies only to the "executor" of the estate—and Vivian is not the executor, so her counsel cannot logically claim for fees under this provision. The OPG is the Administrator of the Estate.

have effect to its full extent, it must have effect as far as possible."). In those instances, the court must provide for the testator's intent "*as far as possible*." *Id.* However, this does not mean that the meaning of the word "any" in Section 16 of Lucy's will should be limitless—otherwise statutory requirements such as those governing who can serve as executors would be rendered meaningless. *See* 15 GCA § 1701 (2005).

[21] Turning to case law, the parties cite four important cases involving no-contest clauses, which represent the general approach taken by courts in California and elsewhere:[6] *Burch v. George*, 866 P.2d 92 (Cal. 1994) (in bank); *Estate of Bullock v. Gilreath*, 70 Cal. Rptr. 239 (Ct. App. 1968); *Estate of Lewy v. Oldham*, 113 Cal. Rptr. 674 (Ct. App. 1974); and *Estate of Wojtalewicz v. Woitel*, 418 N.E.2d 418 (Ill. App. Ct. 1981). These cases show that courts are typically unwilling to rigidly enforce no-contest clauses if they would otherwise prohibit good-faith challenges to an executor's appointment but not the other aspects of a will (e.g., such as the plan of distribution).

[22] In *Estate of Bullock*, the California Court of Appeal considered whether certain beneficiaries of a trust had violated a no-contest clause—drafted similarly to Section 16 of Lucy's will—by petitioning for a determination on whether the named trustee was incompetent.[7] The court held that the no-contest clause did not intend to foreclose challenges related to the manner of administering the estate, as the testator could not have intended to inhibit the right of beneficiaries to have proper accountings and distributions of the estate. *Estate of Bullock*, 70

[6] As we have done previously, we look to California case law to aid in our interpretation of Guam's probate code. *See In re Estate of Maruyama*, 2013 Guam 23 ¶ 22; *In re Estate of Hemlani*, 2008 Guam 25 ¶ 16; *Zahnen v. Limtiaco*, 2008 Guam 5 ¶ 17.

[7] Vivian tries to distinguish this case on the ground that it involved a trustee rather than an executor, *see* Appellant's Br. at 12, 15, but such a distinction is untenable because both the present case and *Estate of Bullock* involve the potential distribution of property under a will, with certain beneficiaries challenging the competence of the fiduciary. *See Estate of Bullock*, 70 Cal. Rptr. at 241. Whether that fiduciary technically functions as a "trustee" or an "executor" is a distinction that lacks substance under the circumstances.

Cal. Rptr. at 242. The court further determined that the beneficiaries who questioned the competency of the sole trustee were "entitled to have heard in the probate court their petition for a determination as to whether they can safe[l]y proceed" with an action for the trustee's removal. *Id.* at 245. In doing so, the court noted:

> Assuming that the beneficiaries did bring an action to oust the trustee, we think that in itself is not necessarily opposing, contesting, attacking or seeking to impair, invalidate or to set aside the will or any trust under the will. In other words it is difficult to see how under the circumstances any such action would or could thwart the will of the testatrix as expressed. . . . On the face of the record it would seem that the beneficiaries have as an objective that the intentions of the trustor be fulfilled and that they get what was given to them—not to avoid the gift, *but to protect it*. We take a dim view of any proceeding which has the effect of deterring any interested party from resorting to the probate court in proper cases.

Id. at 242-43 (emphasis added). Thus, the *Estate of Bullock* court found that because the beneficiaries were interested in protecting the corpus of the estate in good faith, they should not forfeit their interest in the estate under the no-contest clause because—far from undermining the testator's intent—those actions aligned with the testator's intent. *Id.*

[23] In *Estate of Lewy*, the California Court of Appeal was presented with whether a beneficiary's litigation conduct—which included challenging the appointment of the executor—should result in forfeiture of the beneficiary's share of the estate under a no-contest clause. 113 Cal. Rptr. at 676-79. The court recognized that at the time, no-contest clauses were generally enforceable in California. *Id.* at 677. The court held that the beneficiary's challenge did not attack the validity of the will itself and was instead a valid challenge to the executor's appointment. *Id.* at 678. The court also found that the record showed no bad faith by the beneficiary in mounting this challenge; taken together, the court determined the challenge did not constitute a "contest" under the will. *Id.* at 679.

[24] Similarly, in *Estate of Wojtalewicz*, 418 N.E.2d 418, an Illinois Appellate Court invoked similar reasons as the California courts in *Estate of Lewy* and *Estate of Bullock* in determining that a challenge to an executor's appointment was valid despite a no-contest clause. The *Estate of Wojtalewicz* court came out even more strongly against the enforcement of no-contest provisions, holding that such clauses are void because they contravene public policy. 418 N.E.2d at 420. The court stated that "[t]he legatee has a right to express a feeling of hostility toward and an opinion of the executor 'in any way, at any place, at any time' he sees fit, without being vulnerable to a charge that he directly or indirectly aided in the contest of the will." *Id.* at 421 (quoting *Lavine v. Shapiro*, 257 F.2d 14, 19 (7th Cir. 1958)). The court reasoned that because beneficiaries have a *statutory right to object* to the appointment of an executor, that right should not be vitiated by a no-contest clause, as it could otherwise endanger the assets of the estate. *Id.* at 420-21.

[25] Vivian relies heavily on *Burch v. George*, 866 P.2d 92. *See* Appellant's Br. at 13. We find *Burch* does not conflict with *Estate of Bullock, Estate of Lewy*, and *Estate of Wojtalewicz*, particularly because *Burch* involved a spouse challenging her husband's trust to litigate her community property rights in the trust estate; it did not involve merely a stand-alone objection against the trustee. *Burch*, 866 P.2d at 95, 105. In this respect, it is easily distinguishable.

[26] Given these persuasive authorities, we do not construe George's objection to Vivian's possible executorship as violating the no-contest clause. Beneficiaries of an estate can object to the letters testamentary granted to an executor under certain circumstances. *See* 15 GCA § 1723(a) (2005). The Superior Court recognized this in its March 2016 Order. *See* RA, tab 57 at 3 (March 2016 Order) (noting George had standing and objected under 15 GCA § 1723(a)).

Further, George objected only to Vivian serving as executor; he did not contest the will itself,[8] a fact found by the Superior Court in its 2018 Findings. *See* RA, tab 103 at 9 (2018 Findings) ("George Ulloa's objection specifically indicated that [he] did not object to the dispositive portion of Decedent's Will, but the objection was limited to McCurdy serving as an executor.").

[27] In addition, Vivian construes George's objection as if it were not made in good faith, merely because George's objection followed the OPG's objection by two days. Vivian argues that because George's objection was "not necessary, due to the already advanced objection by the [OPG]," he cannot now claim he was acting in good faith. Appellant's Reply Br. at 3-4 (Oct. 29, 2018). To conflate the need for George's action with determining whether it was done in good faith is an obvious fallacy—these are different inquiries, and just because an action may not be necessary does not mean it was done in bad faith. George probably would have had to object to preserve the issue for appeal. Thus, it is untenable to argue that George did not act in good faith merely because his objection was filed two days after the OPG filed a similar objection. The Superior Court, in its March 2016 Order, found that Vivian's failure to disclose real property that was an asset of the Estate "[was] intentional and may be inferred as a reflection of her 'want of integrity' under 15 GCA § 1701(c)(5)," and that her actions "come very close to reflecting a lack of 'soundness of moral principle and character'" that apply to fiduciaries. *See* RA, tab 57 at 4 (March 2016 Order) (citation omitted). On this basis, it appears George's objection was out of concern for protecting the assets of the Estate, a concern later realized given the Superior Court's March 2016 Order finding Vivian incompetent to serve as executor.

[8] George's objection stated: "George F. Ulloa makes no objection to the dispositive portion or other portions of Lucy P. Ulloa's Will. Instead, this Objection is based on 15 GCA § 1723(a), and limited to an objection to Vivian U. McCurdy serving as Executor of the Estate." RA, tab 9 at 1 (Obj. George F. Ulloa to Vivian U. McCurdy Serving as Ex'r, Dec. 17, 2014).

[28] Accordingly, we find that George's objection to Vivian serving as executor did not violate the no-contest clause in Section 16 of Lucy's will.

C. Ordering Preliminary Distribution of Certain Assets Without Requiring the Administrator to Post Bond Was Not an Abuse of Discretion

[29] The probate court is vested with broad discretion to order distribution of an estate. *See Estate of Beard*, 84 Cal. Rptr. 2d at 293; *In re Estate of Perez*, 2005 Guam 27 ¶ 13 (applying abuse of discretion standard in a case of final distribution). "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.'" *In re Estate of Perez*, 2005 Guam 27 ¶ 13 (citation omitted). In addition, 15 GCA § 3001(a) states that the Superior Court may, upon satisfaction of pertinent procedural requirements, order preliminary distribution "with or without bond" being posted. 15 GCA § 3001(a); *see also* 15 GCA § 3003.

[30] Under 15 GCA § 3001, four months after the probate court publishes a notice as required by 15 GCA § 2503, any beneficiary—"with or without bond, as the Superior Court determines,"—"may petition . . . for distribution . . . of the estate or any portion or portions thereof to which he is entitled." 15 GCA § 3001(a). The petition shall be subject to a hearing, and "[a]ny person interested in the estate . . . may resist the application" for preliminary distribution. *Id.* § 3001(b). After this hearing, the probate court "shall" order distribution if it "appears that all of the allegations of the petition are true, that the estate is but little indebted, and that the [distribution may be made] without loss to the creditors or injury to the estate or any person interested therein." 15 GCA § 3003. In connection with the distribution, the Superior Court "*may* direct, to the person or persons entitled thereto," the posting of bond. *Id.* (emphasis added).

[31] Here, the Petitioners' Petition for Partial and/or Preliminary Distribution sought the distribution of 108,333 shares of CEI stock, valued at approximately $1,346,000. The Petition did not seek the distribution of any other Estate assets. After briefing and a hearing on the matter, the Superior Court granted the Petition, without requiring the OPG to post bond.

1. The probate court did not abuse its discretion in finding that it "appeared that all of the allegations in the petition [were] true"

[32] Vivian argues "not 'all of the allegations'" in the Petitioners' petition for preliminary distribution were true. Appellant's Br. at 21. It appears she asserts that paragraph 5 of the petition for preliminary distribution—which alleged "on information and belief" that "the Estate has received a substantial payment on or about July 31, 2017 on an outstanding loan made by Lucy to [CEI] equal to $790,894.64"—was not true because it contradicted two inventory and appraisements the OPG had filed on court order. *Compare* RA, tab 92 at 2 (Pet. Partial and/or Prelim. Distrib'n, Aug. 10, 2017) (alleging Estate had received a substantial payment of $790,894.64 "on an outstanding loan" from CEI), *with* RA, tab 100 (Invent'y & Apprais't, Dec. 13, 2017), and RA, tab 101 (Am. Invent'y & Apprais't, Feb. 14, 2018) (each containing a letter dated December 2, 2016, from the Treasurer of CEI detailing $770,831.55 in debt owed by CEI to Lucy). On this basis, it does appear that paragraph 5 of the petition for preliminary distribution indicates an amount received that was more than the total amount due from CEI by approximately $20,000.[9] However, this amount was pleaded "on information and belief," and it does not necessarily appear to be material given the total value of the Estate—which the OPG and the probate court found was approximately $2.5 million.

[9] The differences between these amounts can further be reconciled and explained by the dates indicated in the underlying documents that support the Amended Inventory and Appraisement. Specifically, the alleged payment on or about July 31, 2017 (as stated in paragraph 5 of the petition for preliminary distribution) was made after the date indicated on the bank statements and the date of the letter from the treasurer of CEI detailing outstanding debt. *See* RA, tab 101 at Ex. A (Am. Invent'y & Apprais't). Therefore, the values on those specific documents could not reflect any changes as a result of the payment.

[33] The Superior Court's 2018 Findings focused on the *total value* of the Estate and did not specifically go through each of the Petitioner's allegations in the petition to determine whether each value was accurate down to the penny. *See* Appellees' Br. at 28-31; RA, tab 103 (2018 Findings). Similarly, none of the parties raised this alleged discrepancy in the hearings on the matter. *See* Transcripts (Final Distrib'n, Nov. 30, 2017). Rather, the parties' concerns centered on distribution of the shares of CEI stock and whether the OPG should have to post bond before the distribution. *Id.* at 4-16.

[34] Given Vivian's allegations of discrepancy, the question before us is how technically the court should read the requirement in 15 GCA § 3003 that it must "appear[] that all of the allegations of the petition are true." We have no case law interpreting the word "appear" in 15 GCA § 3003—a phrase which seems to imply that the allegations need not be true in fact. And by the words "appear" and "allegations," section 3003 does not seem to contemplate full-blown evidentiary findings before the court can order a preliminary distribution. To interpret section 3003 otherwise would cut against the primary purpose of preliminary distribution, which is to encourage early distribution of property whenever it can be accomplished without jeopardizing the financial condition of the estate. *See Estate of McCallen v. Estate of McCallen*, 125 Cal. Rptr. 645 (Ct. App. 1975).

[35] Here, the monetary difference to which Vivian alludes—amounting to approximately $20,000—is the amount due from CEI to the Estate in the form of debt. It does *not* relate to the equity which the Petitioners sought to have distributed, i.e., the 108,333 shares of CEI stock. Additionally, the total estimated value of the Estate as determined by the probate court was $2,564,663.68, which Vivian does not dispute. *See* RA, tab 103 at 3 (2018 Findings); RA, tab 101 at 2 (Am. Invent'y & Apprais't); Appellant's Br. at 19-21. The focus by the probate court

on the financial condition of the Estate, in its totality, aligns with the purpose of 15 GCA § 3003, which is to find whether the total value of the Estate is such that preliminary distribution can be ordered without requiring the posting of bond.

[36] Moreover, the standard of review we apply here is abuse of discretion, which requires that a decision be "based on an erroneous conclusion of law or where the record contains no evidence on which the judge could have rationally based the decision." *In re Estate of Perez*, 2005 Guam 27 ¶ 13 (citation omitted). "[A]ll presumptions will be exercised in favor of the correctness of the probate court's order." *Estate of Beard*, 84 Cal. Rptr. 2d at 293; *see also In re Fields' Estate*, 210 P.2d 247, 249 (Cal. Dist. Ct. App. 1949). Findings made by a probate court supporting an order of distribution "are presumed to be supported by the evidence and are to receive, if possible, such a construction as will uphold rather than defeat the order." *In re Fields' Estate*, 210 P.2d at 250. Because of this deferential standard, we find that on these facts the Superior Court did not abuse its discretion in ordering the preliminary distribution of assets without bond because the petition for preliminary distribution satisfied 15 GCA § 3003. This result is supported by the "well-established maxim that public policy favors speedy distribution of probate estate." *Estate of Anderson v. Kelly*, 137 Cal. Rptr. 727, 731 (Ct. App. 1977) (collecting cases); *see also Estate of McCallen*, 125 Cal. Rptr. at 649-50 (emphasizing policy of encouraging early distribution where interests of beneficiaries not jeopardized).

2. The probate court did not abuse its discretion in finding that a bond was not required and that distribution could be made because "the estate is but little indebted . . . without loss to the creditors or injury to the estate," under 15 GCA § 3003

[37] In determining that preliminary distribution was appropriate, the Superior Court found that the Estate's was valued at approximately $2.5 million and that distribution of the CEI stock (valued at $1,346,000) could occur without endangering the assets of the Estate. *See* RA, tab

103 at 6-10 (2018 Findings). The court also determined that certain pending litigation involving the Estate did not pose a risk to the assets of the Estate. *Id.* at 7-8. These pending cases include *McCurdy v. Chamorro Equities, Inc.*, CV0632-17 (filed July 3, 2017), and *McCurdy v. Estate of Ulloa*, CV1120-16 (filed Dec. 19. 2016). Vivian points us to no other potential claims on the Estate besides these two cases.

[38] Superior Court Case No. CV0632-17 represents an action by Vivian for quiet title, fraud, and constructive trust brought against CEI concerning a residence of Lucy's valued at approximately $522,675.00. Vivian's action, if successful, would *increase* the value of the Estate (the residence is not currently included in the Estate's value). *See* RA, tab 101 at 2 (Am. Invent'y & Apprais't). Therefore, this action does not represent a potential "claim" on the assets of the Estate.

[39] Superior Court Case No. CV1120-16 represents an action by Vivian for attorney's fees and costs and guardian expenses, against the OPG as Administrator of the Estate, in connection with Vivian's litigation over whether she was competent to serve as executor. The expenses and costs pleaded by Vivian in CV1120-16 amount to $124,443.19. The Superior Court found this amount, even if it were considered a potential claim on Lucy's Estate, was not so large as to endanger the Estate's financial condition. RA, tab 103 at 6-10 (2018 Findings). The monetary claim in CV1120-16 amounts to less than 5% of the total value of Lucy's Estate. We find no abuse of discretion by the Superior Court in finding that the "Estate was but little indebted," and there was little risk of "loss to creditors or injury to the estate." RA, tab 103 at 7-10 (2018 Findings).

[40] Rather than looking at the total assets of the Estate, Vivian urges this court to look at the cash held by the Estate, which amounts only to $157,098.23, as of November 2014. Appellant's

Br. at 20-22; *see also* RA, tab 101 at 2 (Am. Invent'y & Apprais't) (listing a savings account and checking account worth $70,580.72 and $86,517.51, respectively). However, she provides no reason the court should limit its determination of the assets of the Estate to only cash assets. Nothing in the statutory language of 15 GCA § 3003 provides such limitation. Further, cases from California appear to have held otherwise, explicitly looking at the total value of the Estate. *See, e.g., In re Hinkel's Estate*, 169 P. 70, 72 (Cal. 1917) ("Whether an estate is little indebted is to be determined, not by the amount of the debts, viewed absolutely, *but by their relation to the value of the estate*." (emphasis added)).

[41] Vivian's argument is also odd because, even if the CEI stock were distributed to all devisees, the Estate would still be worth approximately $1,218,663.68.[10] This total amount represents over nine times Vivian's claim for fees and costs in CV1120-16, meaning the Estate's assets are not endangered by her potential claim in CV1120-16. Because of the deferential abuse of discretion standard, Vivian's claim that the Estate is endangered by the preliminary distribution (thus requiring posted bond) is tenuous. The record contains sufficient reasons for the Superior Court to hold that the Estate was not at risk of injury by the preliminary distribution. *See* RA, tab 103 at 6-10 (2018 Findings). We conclude that the Superior Court did not abuse its discretion when it found that the Estate was "but little indebted" and there was no risk of loss or injury to creditors of the Estate by the preliminary distribution of the CEI stock.

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[10] This is calculated by taking the total estimated value of the Estate ($2,564,663.68) and subtracting the value of the CEI stock that the Petitioners wish distributed ($1,346,000).

V. CONCLUSION

[42] For these reasons, we **AFFIRM** the Superior Court's Findings of Fact and Conclusions of Law entered March 23, 2018.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
ROBERT J. TORRES
Associate Justice

/s/
KATHERINE A. MARAMAN
Chief Justice