

FILED

2014 NOV 20 PM 1:57 *g*

SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

**IN THE MATTER OF THE GUARDIANSHIP
OF LUCY PEARL ULLOA,**

Petitioner-Appellant,

VIVIAN U. MCCURDY and ALVIN. J. ULLOA,

Petitioner-Appellees,

and

OFFICE OF THE PUBLIC GUARDIAN,

Respondent-Appellee.

OPINION

Cite as: 2014 Guam 32

Supreme Court Case No. CVA13-008

(consolidated with CVA13-022)

Superior Court Case No. SP0168-05

Appeal from the Superior Court of Guam

Argued and submitted on May 12, 2014

Hagåtña, Guam

Appearing for Petitioner-Appellant:

Curtis C. Van de veld, *Esq.*
The Van de veld Law Offices, P.C.
Restored Historic Dungca House, 2nd Fl.
123 Hernan Cortes Ave.
Hagåtña, GU 96910

Appearing for Plaintiff-Appellee:

Marcelene C. Santos, *Esq.*
Office of the Public Guardian
210 W O'Brien Dr.
Hagåtña, GU 96910

Appearing For Petitioner-Appellee:

Jacqueline Taitano Terlaje, *Esq.*
Law Office of Jacqueline Taitano Terlaje,
P.C.
Nanbo Guâhan 250 Bldg., Ste. 204
Hagåtña GU 96910

BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; ALBERTO E. TOLENTINO, Justice Pro Tempore.¹

TORRES, C.J.:

[1] This is a consolidated case addressing the appeals of Petitioner-Appellant Lucy Pearl Ulloa (“Lucy”) and Petitioner-Appellees Vivian U. McCurdy (“Vivian”) and Alvin J. Ulloa. Lucy appealed from the trial court’s March 5, 2013 decision and order denying her petition to terminate the guardianship of Respondent-Appellee Office of the Public Guardian (“OPG”). Lucy objected to the appointment of the OPG as the legal guardian of her estate, claiming that the court erred in appointing and subsequently retaining the OPG without an adequate showing of her incompetence. In addition, Lucy argued that the appointment of the OPG violated her due process rights. Lucy died while the appeal was pending.

[2] Vivian appeals the trial court’s July 9, 2013 decision and order, claiming that it erroneously revoked her authority as guardian over Lucy’s estate, and that it failed to consider whether she was a suitable, available, and willing guardian of Lucy’s estate pursuant to 7 GCA § 3112(c). The Public Guardian opposes the motions of both Lucy and Vivian, and requests that this court dismiss Vivian’s appeal as frivolous and impose sanctions. For the reasons set forth below, we dismiss Lucy’s appeal as moot and affirm the trial court’s July 9, 2013 decision and order.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] Lucy was an elderly woman in her mid-nineties. She never married and had no children. She was a senior stockholder in Chamorro Equities, Inc. (“CEI”), along with five of her siblings, including Vivian, Priscilla Hartwick (“Hartwick”), and Esther Thompson.

¹ Associate Justice Katherine A. Maraman recused herself from this matter.

[4] In 2005, Vivian and her brother, Alvin J. Ulloa (“Alvin”), filed a petition for guardianship of the person and estate of their sister, Lucy. They alleged that Lucy sought “the appointment of her sister and brother as her guardians to assist her with her affairs due to her failing health and old age.” RA, tab 3 at 1 (Pet. for Guardianship, Sept. 22, 2005). The petition stated that it was “necessary that legal guardians for the person and estate of Lucy P. Ulloa be appointed for the purpose of caring for said person and her affairs and to provide for the basic necessities of the person.” *Id.* at 2. The petition further stated that it was “necessary that legal guardians for the estate of the person be appointed so the guardians can manage the financial affairs of said person.” *Id.* Lucy filed a consent form joining in the petition. The court (hereinafter the “2005 court”) subsequently appointed Vivian and Alvin as co-guardians of Lucy’s person and estate, finding that “[Lucy’s] person and her estate need care and attention of some fit and proper person.” RA, tab 10 at 1-2 (Order Appointing Guardians of Person and Estate of Lucy P. Ulloa, Nov. 10, 2005).

[5] In 2007, Vivian and Alvin filed for an expansion of authority as Lucy’s guardians and for an increase in the limit for guardian expenditures, which the court granted. In a hearing on the matter, Vivian and Alvin represented to the court that Lucy “seems to suffer slight dementia.” RA, tab 16 at 2 (Mins. Mot. Hr’g Increase Guardian’s Expenditure, Apr. 11, 2007). Alvin passed away in early 2009, leaving Vivian as sole guardian.

[6] Hartwick and Kenneth Thompson (“Thompson”), another relative of Lucy, petitioned to remove Vivian as Lucy’s guardian, or in the alternative, for one of the petitioners to be appointed as co-guardian over Lucy’s estate in 2011.² They also moved to have Vivian held in contempt for alleged waste, mismanagement, failure to file an account, and holding a debt interest adverse

² Thompson and Hardwick are part of a family faction that is “opposed” to the faction that includes Vivian and Walter Ulloa. RA, tab 91, Ex. A at 3-5 (Mot. Mem. P. & A. Supp. Order Show Cause, March 22, 2012).

to her duties as guardian. Thompson and Hartwick alleged that Vivian failed to properly account for Lucy's estate, and that she improperly loaned Lucy's money to others, including herself. After a series of other motions and hearings, the court filed a decision and order on September 27, 2011. RA, tab 66 at 1 (Dec. & Order ("Sept. 7, 2011 Dec. & Order"), Sept. 27, 2011).

[7] That court (hereinafter the "2011 court") addressed Thompson and Hardwick's allegations in favor of removal, asserting that it was "inclined to agree" with them. *Id.* at 3. It expressed concern that Lucy's entire family was taking advantage of her and harming her interests. As a result, the court appointed the Public Guardian to serve as co-guardian with Vivian, stating that "Vivian shall remain co-guardian of the estate for so long as the Public Guardian recommends." *Id.* at 4. Vivian's guardianship over Lucy's person remained unaffected.

[8] Two months later, the Public Guardian filed a petition for a receiver, stating that "[the Public Guardian is] inclined to agree [with the 2011 court] that Vivian did not always act in Lucy's best interest as the guardian of Lucy's estate." RA, tab 69 at 1 (Pet. for Appointment of a Receiver for Lucy Pearl Ulloa ("Pet. Receiver"), Nov. 21, 2011). The petition also asserted that the Public Guardian met with Lucy on or about October 3, 2011. The Public Guardian also met with Vivian and other family members and attended contested shareholders' meetings for CEI.

[9] The Public Guardian stated that she used a public accountant to examine Lucy's estate, and that the accountant found several problems with the estate. These included: low interest rates charged on loans to CEI that had also not been repaid; payment of CEI dividends to other shareholders but not to Lucy; indications that the estate failed to file tax returns; the estate's purchase of unvalued property in Nevada for \$65,000.00; and the fact that CEI owes the estate at

least \$602,000.00, according to its records. Moreover, the accountant demonstrated that “the expenses of Lucy’s estate have increased dramatically while the cash reserves have declined” between 2006 and 2010. *Id.* at 3. For example, expenses in 2006 were listed at \$2,001.00, while expenses in 2010 were \$197,705.00. Finally, the accountant stated that CEI appeared to be on the brink of insolvency, and that Lucy’s interests in the company were in danger.

[10] In a February 3, 2012 Stipulated Order signed by both parties, the court granted the Public Guardian’s request for a receiver and appointed the Public Guardian as the sole guardian of Lucy’s estate. The Public Guardian then filed an Order to Show Cause against Vivian and other CEI officers based upon the same mismanagement alleged in the Petition for Receiver, and detailing the history of CEI and the ongoing dispute among its senior shareholders. Specifically, it questioned why certain officers of CEI, including Vivian, should not be held in contempt for failure to pay dividends or interest payments to Lucy.

[11] Vivian in turn filed an Order to Show Cause (“OSC”) against the Public Guardian, alleging that the OPG had not paid Lucy’s at-home caregivers since February 2012. By way of background, Vivian contended that “Lucy Ulloa is not incompetent, and has not been declared incompetent by the Court in these proceedings, or in any other proceedings. Instead, Lucy Ulloa was appointed a guardian in 2005 due to her ‘advancing age.’” RA, tab 97 at 1-2 (Mem. P. & A. in Supp. Guardian McCurdy’s Mot. for OSC, Apr. 3, 2012).

[12] Vivian’s OSC against the Public Guardian was resolved through a Stipulation and Order filed by the parties and ordered by the court. RA, tab 124 at 1-3 (Stipulation & Order, Apr. 24, 2012). This affirmed that the Public Guardian was guardian of Lucy’s estate and assets, and that Vivian was under a legal obligation to provide support for Lucy as guardian of her person. The Stipulation and Order stated that “[t]he Public Guardian and [Vivian] expressly agree, upon

Court approval, that [Vivian] assume the following responsibilities,” and listed payment of Lucy’s caregivers’ wages; preparation and filing of necessary tax documents relating to these employees for 2011 and current tax year; and other necessary acts to ensure tax compliance. *Id.* at 2. The Public Guardian approved a monthly budget of \$6,000.00 for household expenses, and Vivian promised to provide an accounting of all expenses every 90 days. *Id.* at 2-3.

[13] Lucy filed a Verified Petition to Terminate Guardianship in August 2012, stating that the guardianship was not initially made “due to insanity, incapacity or incompetence of Lucy Ulloa, but was instead voluntarily requested by Lucy . . . for her own convenience.” RA, tab 137 at 1 (Verified Pet. to Terminate Guardianship (“Pet. Terminate”), Aug. 30, 2012).³ The petition alleged that Lucy had attended meetings with her counsel and a physician, Dr. Edwin Supit, during which she was “lucid.” *Id.* at 2-3. Lucy asserted that she no longer desired the Public Guardian to serve as the guardian of her estate. Lucy also affirmed that she “would not object to the re-appointment of her sister Vivian McCurdy as guardian of her Estate.” *Id.* at 2. Finally, Lucy contended that if the appointment of the Public Guardian is proper, then she moved to terminate guardianship under 15 GCA § 4601(3), by court order and upon application of the ward. *Id.* at 7-8.

[14] Lucy attached a supporting declaration by Dr. Edwin Supit attesting to Lucy’s competence to administer her estate. This stated that Lucy:

[D]emonstrated adequate ability to process information she received and to ask cogent questions of Mr. Van de veld based on the information provided I believe that Lucy Pearl Ulloa was competent at that time and has been since I have treated her. I believe that she suffers some memory loss but when refreshed, she comprehends the matters about which she is informed and is able to act in a manner consistent with competent processing of the information.

³ The Verified Petition to Terminate Guardianship is incorrectly labelled as “Declaration of Curtis C. Van de veld.” RA, tab 137 at 1 (Pet. Terminate).

RA, tab 136 at 1-2. (Decl. Edwin Supit, M.D., Aug. 30, 2012). Lucy's counsel, Mr. Van de veld, also filed a declaration of his own, alleging that he had met with Lucy and her physician, and found her to be competent.

[15] The Public Guardian described Lucy's petition as a "tactic" by Lucy's family members, and emphasized that Lucy was likely to be deceived by her artful and designing family, who had already drained at least half a million dollars from her estate. RA, tab 140 at 2, 6 (Resp. to Pet. Terminate Guardianship, Oct. 16, 2012). The Public Guardian pointed to parties' previous representations to the court, and concluded that "[s]omeone has not exercised *and/or* is not exercising candor before the court with regard to Lucy's medical condition OR Lucy has made a miraculous recovery." *Id.* at 4, 6. The Public Guardian urged the court to have Lucy present during the hearing so that counsel could demonstrate her alleged competence. However, the court apparently never met with Lucy.

[16] In its decision and order on March 5, 2013, the court recognized that it had previously "found and expressed extreme concern that Lucy's family members [were] not able to faithfully serve as guardian of her estate." RA, tab 152 at 5 (Dec. & Order, Mar. 5, 2013) ("Mar. 5, 2013 Dec. & Order"). It also found that the Public Guardian's appointment is not contrary to law. It suggested that courts may appoint a guardian "without a finding that the ward is generally and totally insane" and that one may be competent even where there is "some degree of mental unsoundness or considerable eccentricity." *Id.* at 6. The court then cited to 15 GCA § 3801, including the definition of incompetence cited therein.⁴ It concluded that under this definition,

⁴ This states in relevant part: "As used in this Division of this Title, the phrase *incompetent person, incompetent or mentally incompetent*, shall be construed to mean or refer to any person, whether insane or not, who by reason of old age, disease, weakness of mind or other cause, is unable, unassisted, properly to manage and take care of himself or his property, and by reason thereof is likely to be deceived or imposed upon by artful or designing persons." 15 GCA § 3801 (2005).

Lucy is incompetent. Therefore, the court found sufficient basis to retain the Public Guardian and denied Lucy's petition. Later, during a hearing with all parties present, the court confirmed that the Public Guardian was the guardian of Lucy's estate. Transcript ("Tr."), vol. 1 at 5 (Hr'g Order Show Cause, Apr. 2, 2013).

[17] About a month later, Vivian filed an *Ex Parte* Application for Special Letters of Guardianship for Medical Purposes, seeking "limited guardianship of Lucy Ulloa to make medical determinations and execute medical documents in the event of [her] incapacitation." RA, tab 166 at 2 (Guardian McCurdy's *Ex Parte* Application for Special Letters of Guardianship for Medical Purposes, Apr. 4, 2013) ("*Ex Parte* App."). She mentioned that the court had appointed the Public Guardian as the sole guardian of Lucy's estate, and that she was the guardian of Lucy's person. Vivian alleged that the Public Guardian, described as "co-guardian," had not cooperated with her efforts to obtain the necessary authorization. *Id.* She stated that the *ex parte* application was necessary because "execution of any medical documents would necessarily bind the estate." *Id.* at 3. Vivian also filed for a transfer of funds. Around the same time, the Public Guardian filed another motion for contempt against Vivian for keeping interest payments owed to Lucy.

[18] The court heard the matter of Vivian's *Ex Parte* Application for transfer of funds in June 2013. It discussed the general litigation surrounding Lucy's estate, and issued a decision and order on the *Ex Parte* Application on July 9, 2013. RA, tab 196 at 1-4 (Dec. & Order, July 9, 2013) ("July 9, 2013 Dec. & Order"). It stated:

[T]he Court clarifies for the Petitioner that the Public Guardian is the sole guardian of Lucy P. Ulloa's estate. Likewise, the Court at this time DENIES Petitioner's Application for Special Letters of Guardianship for Medical Purposes. Petitioner is already the guardian over the person of Lucy P. Ulloa and nothing would preclude her from achieving what is set out in her application.

RA, tab 196 at 4 (July 9, 2013 Dec. & Order).

[19] Lucy appealed the court's March 5, 2013 decision and order, and Vivian appealed the court's July 9, 2013 decision and order. Vivian filed a motion to consolidate the two cases, which this court granted pursuant to Guam Rules of Appellate Procedure ("GRAP") 3(b).

[20] A Suggestion of Death was filed by Lucy's counsel pursuant to GRAP 23(a) to suggest that Lucy passed away on October 9, 2014. The parties were ordered to file supplemental briefs addressing why the following issues in the above-captioned appeal should not be dismissed as moot:

1) Whether the Trial Court Erred in Not Terminating the Public Guardian as Guardian of Lucy Pearl Ulloa's Estate.

2) Whether the Appointment of the Public Guardian Denied Lucy Pearl Ulloa Due Process of Law.

3) Whether the Trial Court's July 9, 2013 Decision Erroneously Revoked Vivian McCurdy's Authority as Guardian.

In the Matter of Guardianship of Lucy Pearl Ulloa, CVA13-008 (Order at 1 (October 27, 2014)) ("October 20, 2014 Order"). Although the OPG requested sanctions against Vivian on appeal, the October 20, 2014 Order directed the parties to not brief that issue. *Id.* at 2. Vivian and the OPG filed responsive briefs on October 27, 2014, and Lucy's counsel joined Vivian's brief that same date.

II. JURISDICTION

[21] This court has jurisdiction over appeals from a final judgment of the Superior Court pursuant to 48 U.S.C.A. § 1421-1(a)(2), (Westlaw through Pub. L. 113-163 (2014)), 7 GCA §§ 3107(b) and 25102(b) (2005). 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”). 15 GCA § 4801 (2005).

III. STANDARD OF REVIEW

[22] A determination of incompetency leading to the appointment of a guardian is a question of fact, which we review for clear error. *In re Guardianships of Moylan*, 2011 Guam 16 ¶ 12; *In re Guardianship of Malnick*, 145 N.W.2d 339, 340 (Neb. 1966). In determining whether there was clear error, “we only look at whether the trial court’s finding of fact is supported by substantial evidence.” *Fargo Pac., Inc. v. Korando Corp.*, 2006 Guam 22 ¶ 30. The appointment or retention of a guardian is reviewed for abuse of discretion. *In re Guardianships of Moylan*, 2011 Guam 16 ¶ 12. “A court abuses its discretion by basing its decision on an erroneous legal standard or clearly erroneous factual findings.” *People v. Jesus*, 2009 Guam 2 ¶ 18.

[23] The question of whether a constitutional right has been violated is reviewed *de novo*. *Coffey v. Gov’t of Guam*, 1997 Guam 14 ¶ 6. The issue of sanctions is a question of law brought up for the first time on appeal, and will be reviewed *de novo*. See GRAP 21; *In re Est. of Concepcion*, 2003 Guam 12 ¶ 35; see also *JWS Refrigeration & Air Conditioning, Ltd. v. Cain*, 2013 Guam 19 ¶ 18.

IV. ANALYSIS

A. Whether this Appeal is Rendered Moot in Whole or in Part by Lucy’s Death.

[24] Lucy’s death requires us to address whether the issues presented in this consolidated appeal are moot in whole or in part. This is necessary because the exercise of our judicial power “depends on the existence of a case or controversy.” See *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975); see also *Tumon Partners, LLC. v. Shin*, 2008 Guam 15 ¶ 37 (“It is a well-

settled general rule that the existence of an actual controversy is an essential requisite to appellate jurisdiction” (citations omitted)). Every judicial tribunal has a duty “to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.” *Mills v. Green*, 159 U.S. 651, 653 (1895). This is true absent fault of any party. *See id.*

[25] A claim is moot “when the issues are no longer live or the parties lack a legally cognizable interest in the outcome.” *Town House Dep’t Stores, Inc. v. Ahn*, 2000 Guam 32 ¶ 9 (internal quotation marks and citation omitted)). Accordingly, “an appeal should be dismissed as moot when, by virtue of an intervening event, the appellate court cannot grant effectual relief whatever in favor of the appellant.” *Id.*; *see also, Tumon Partners*, 2008 Guam 15 ¶ 37.

[26] A case can become moot “at any stage of litigation.” *Town House*, 2000 Guam 32 ¶ 9 (citing *Calderon v. Moore*, 518 U.S. 149, 150 (1996)). Accordingly, our court may lose jurisdiction at any point “since [c]ourts may not give opinions upon moot questions or abstract propositions.” *Rapadas v. Benito*, 2011 Guam 28 ¶ 16 (internal quotation marks, citation, and footnote omitted).

[27] Even if a mootness issue is not raised by the parties “[courts] are required sua sponte to examine jurisdictional issues.” *See Am. Civil Liberties Union of Nevada v. Masto*, 670 F.3d 1046, 1062 (9th Cir. 2012) (quoting *B.C. v. Plumas Unified Sch. Dist.*, 192 F.3d 1260, 1264 (9th Cir.1999)).

[28] Vivian cites *Zipp v. Wuemling*, 218 S.W.3d 71 (Tex. 2007), for the proposition that the death of a ward does not automatically moot an appeal. Pet’r-Appellee’s Br. Re: Mootness at 1, 3 (Oct. 27, 2014). Although Vivian did not develop that argument further, review of this

authority suggests that a ward's death does not render an appeal moot when a ward has died yet there remains a dispute between guardians over the estate.

[29] As discussed above, “[a]n appeal is moot when a court’s action on the merits cannot affect the rights of the parties.” *Zipp*, 218 S.W.3d at 73 (citing *VE Corp. v. Ernst & Young*, 860 S.W.2d 83, 84 (Tex.1993)). Hence, “the death of a party can, under certain circumstances, render an appeal moot.” *Id.* (citation omitted). However, the estate must still be settled, and “[w]hen there is a dispute as to who shall settle the estate, a justiciable controversy exists.” *Id.* at 74 (citations omitted).

[30] In *Zipp*, the county-appointed guardian over the person and estate was removed by the trial court for cause and replaced by guardian Wuemling following a dispute between Zipp and the ward’s family. 218 S.W.3d at 72. Zipp appealed her removal by the trial court, but the incapacitated ward died during the pendency of the appeal. *Id.* The appellate court dismissed the case as moot, holding no justiciable controversy existed. *Id.* The Supreme Court of Texas reversed, holding the case was justiciable despite the ward’s death because “two of Zipp’s issues remain in controversy: (1) whether the district court properly removed Zipp as guardian, and (2) whether Zipp has a legally cognizable interest in fees and costs.” *Id.* at 74.

[31] The first issue brought by Lucy involves whether the trial court erred in not terminating the Public Guardian. Appellant’s Br. at 2 (Oct. 7, 2013). On appeal, Lucy asserted that the trial court erred both in appointing the Public Guardian and in not granting her petition to terminate guardianship because there was insufficient evidence of her incompetency in both instances. Appellant’s Br. at 8-14. Lucy suggested the trial court did not find her incompetent at the time of the initial appointment of the Public Guardian, and was not justified in finding her incompetent in light of the facts at the time of the March 5, 2013 decision and order. *Id.* This

issue is moot because this court cannot grant effectual relief to Lucy because she is deceased. Additionally, the issue does not involve a controversy between two live parties over who should administer Lucy's estate, as was the case in *Zipp*.

[32] The second issue brought by Lucy relates to whether the appointment of the OPG denied Lucy due process of law. *Id.* at 14-16. Lucy's appeal involves two general challenges to the procedures governing the OPG. First, Lucy asserted that there is "no process by which the Public Guardian administratively performs its activities," thereby depriving her of her right to manage her estate. *Id.* at 15-16. Second, Lucy suggested that there are no procedures to counteract the danger that the court will be unduly swayed by the opinion of the Public Guardian, who is an employee of the court. *Id.* at 14. This issue is moot because it involves a challenge by a deceased individual to the procedures governing the OPG.

[33] The third issue was brought by Vivian and considers whether the trial court's July 9, 2013 Decision & Order erroneously revoked Vivian's authority as guardian. The *Zipp* case involved a controversy brought by two guardians rather than the ward, and neither party to the controversy had died. *Zipp*, 218 S.W.3d at 73. Here, an appeal was brought by a ward who died while the appeal was pending. That appeal was consolidated with Vivian's appeal contending her authority over Lucy's estate was erroneously revoked by the trial court's July 9, 2013 Decision and Order. Pet'r-Appellee's Br. at 6 (November 19, 2013); *see* RA, tab 196 at 1-4 (Dec. & Order, July 9, 2013). Because both potential guardians over Lucy's estate are alive, as was the case in *Zipp*, the issue of whether Vivian or the OPG has proper authority over Lucy's estate is still in dispute. There is thus a separate controversy between Vivian and the OPG over whether the trial court's July 9, 2013 Decision & Order erroneously revoked Vivian's authority as guardian, and this issue is therefore still justiciable rather than moot. The OPG's request for

sanctions is justiciable as well, because it stems from the disagreement between Vivian and the OPG respecting guardianship over Lucy's estate.

[34] Notwithstanding our finding that the issues of whether the trial court erred in not terminating the Public Guardian and whether the appointment of the OPG denied Lucy due process are moot, there are recognized exceptions to the mootness doctrine. Accordingly we must still determine whether these issues appealed by Lucy fall within one of the two exceptions to the mootness doctrine, and whether they are therefore justiciable.

1. Whether the Moot Issues are Capable of Repetition, Yet Evading Review

[35] The "capable of repetition, yet evading review" exception to mootness is applicable when "(1) the challenged action is too short in duration to allow full litigation before it ceases, and (2) there is a reasonable expectation that the plaintiffs will again be subject to the same action." *Am. Civil Liberties Union of Nevada v. Lomax*, 471 F.3d 1010, 1017 (9th Cir. 2006) (citing *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 774 (1978); *Padilla v. Lever*, 463 F.3d 1046, 1049 (9th Cir.2006) (en banc)).

[36] A challenged action satisfies the exception's first requirement if it is "almost certain to run its course before [an appellate court] can give the case full consideration." *Id.* (citing *Miller ex rel. NLRB v. Cal. Pac. Med. Ctr.*, 19 F.3d 449, 454 (9th Cir.1994)). An election case, for example, would fall within this exception "because the inherently brief duration of an election is almost invariably too short to enable full litigation on the merits." *Id.* (citing *Porter v. Jones*, 319 F.3d 483, 490 (9th Cir.2003)) (internal quotation marks omitted). Vivian argues that the first element is met due to Lucy's and other elderly wards' advancing age during resolution of guardianship disputes. Pet'r-Appellee's Br. Re: Mootness at 2-4. However, death is inherently

uncertain and it cannot be said that death of an elderly ward is almost certain to result pending appeal. Thus, the first requirement is not met.

[37] To satisfy the second element, it must be shown that it is reasonable to expect conduct will be engaged in “that will once again give rise to the assertedly moot dispute.” *Am. Civil Liberties Union of Nevada*, 471 F.3d at 1018 (internal quotation marks and citation omitted). This requires “a reasonable expectation that the same complaining party would be subjected to the same action again.” *Murphy v. Hunt*, 455 U.S. 478, 482 (1982); *see also Weinstein v. Bradford*, 423 U.S. 147, 149 (1975). The “same complaining party” has been interpreted to by some courts to strictly mean the “same” party, though other cases, particularly in the election context, have been more liberal in interpreting the term. *Presnick v. Bysiewicz*, 297 F. Supp. 2d 431, 434 (D. Conn. 2003)

[38] Turning to the second requirement, Vivian contends future cases will involve (1) the appointment of the Office of the Public Guardian; (2) the revocation of guardianship powers; and (3) the restoration of capacity by a ward. However, because Lucy is deceased, it is not reasonable to expect that she, as the complaining party, will be subject to the same action again. This argument might be convincing if Lucy had brought a class action suit, but that is not the case. *See Heles v. State of S. D.*, 682 F.2d 201, 202 (8th Cir. 1982); *see also Murphy*, 455 U.S. at 482. Accordingly, the capable of repetition, yet evading review exception to mootness is not applicable to the moot issues in this case.

2. Whether the Moot Issues Involve Matters of an Important Continuing Interest

[39] The mootness doctrine is “flexible and discretionary; it is not a mechanical rule that we invoke automatically.” *In re Guardianship of Tschumy*, 853 N.W.2d 728, 737 (Minn. 2014) (citing *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005)). A court has “authority to decide

cases that are technically moot when those cases are functionally justiciable and present important questions of statewide significance.” *Id.* (citing *State v. Rud*, 359 N.W.2d 573, 576 (Minn.1984)).

[40] In contending this matter presents issues of important and continuing public interest, Vivian relies exclusively on a life-sustaining treatment case. Pet’r-Appellee’s Br. Re: Mootness at 4.; *see also In re Guardianship of Tschumy*, 853 N.W.2d at 735-36. Several jurisdictions “have declined to rely on the death of the real party in interest and the mootness doctrine to avoid resolving issues raised in medical treatment cases.” *Rasmussen by Mitchell v. Fleming*, 741 P.2d 674, 681 n.4 (Ariz. 1987) (noting jurisdictions that have adjudicated a medical treatment cases of a deceased ward despite mootness.). However, this line of authority does not support Vivian’s position because there is no life-sustaining treatment at issue. Vivian has provided no authority as to whether this particular case involves an important and continuing public interest. Thus, we hold that that the public interest exception is inapplicable to the moot issues.

[41] We now turn to addressing the remaining justiciable issues of whether the trial court’s July 9, 2013 Decision & Order erroneously revoked Vivian’s authority as guardian and whether Vivian should be sanctioned

B. Whether the Trial Court’s July 9, 2013 Decision and Order Erroneously Revoked Vivian’s Authority as Guardian.

[42] Vivian contends that the court, in its July 9, 2013 decision and order, improperly “revoked the April 24, 2012 Stipulation and Order,” which allegedly granted her powers as a special guardian to manage Lucy’s employees. Pet’r-Appellee’s Br. at 6 (Aug. 27, 2013); Reply Br. at 1-3 (Apr. 17, 2014). She also argues that the court improperly “reinstated and restored” the Public Guardian as the sole guardian of Lucy’s estate, without addressing whether Vivian was a suitable and willing guardian. Pet’r-Appellee’s Br. at 9.

[43] The July 9, 2013 decision and order addressed Vivian’s request for “special letters of guardianship for medical purposes.” RA, tab 166 at 1 (*Ex Parte* App.). Specifically, Vivian petitioned for “an order granting a limited guardianship of Lucy Ulloa to make medical determinations and execute medical documents in the event of the incapacitation of [Lucy].” *Id.* at 2. Although Vivian’s application recognized that the Public Guardian was sole guardian of the estate, it also referred to the Public Guardian as “co-guardian.” *Id.* at 2-3.

[44] The trial court denied Vivian’s application, stating that “[Vivian] is already the guardian over the person of Lucy P. Ulloa and nothing would preclude her from achieving what is set out in her application.” RA, tab 196 at 4 (Jul. 9, 2013 Dec. & Order). The court also emphasized that the Public Guardian is the sole guardian of the estate. *Id.* It is evident that neither Vivian’s *Ex Parte* Application nor the decision and order discuss, or in any way involve, the April 24 Stipulation and Order, which does not involve any medical authority.

[45] Moreover, the Stipulation and Order does not grant Vivian any special guardianship authority over Lucy’s estate. The Stipulation and Order granted Vivian the authority to pay and file taxes relating to Lucy’s obligations as an employer of her caregivers. *See* RA, tab 124 at 1-3 (Stipulation & Order). In discussing the respective obligations of Vivian and the OPG, it emphasized that the Public Guardian “is under a legal obligation *as the guardian of the estate* assets to provide the necessary support for the care of Lucy Ulloa” and that Vivian “is also under a legal obligation *as the guardian of the person* of Lucy Ulloa to provide her support and care.” *Id.* at 1 (emphases added). This language re-affirms the legal obligations of the Public Guardian and Vivian as sole guardian of Lucy’s estate and sole guardian of Lucy’s person, respectively.

[46] The Stipulation and Order stated that the Public Guardian “consents” to Vivian’s responsibility for issuing checks to Lucy’s caregivers. *Id.* at 2. It set forth the Public Guardian’s

approved budget for these costs, on the condition that Vivian provide an accounting of all expenses incurred. *Id.* at 2-3. Finally, it stated that “[t]he Public Guardian and [Vivian] expressly agree, upon Court approval,” that Vivian assume responsibility for issuance of checks and payment of taxes related to Lucy’s household employees. *Id.* at 2.

[47] Vivian’s argument fails to consider the Stipulation and Order as a whole. The provisions express no intention to grant Vivian with any authority as a guardian over Lucy’s estate. Rather, the Stipulation and Order recognized that Vivian has limited powers to issue checks and pay taxes relating to Lucy’s caregivers, subject to the OPG’s budget. These powers are not pursuant to any authority over Lucy’s estate, but are rather in accordance with her obligations as guardian of Lucy’s person. Moreover, in later hearings, the court and the parties appeared to understand that the Public Guardian alone was guardian of Lucy’s estate. *See* Tr., vol. 1 at 5 (Hr’g Order Show Cause); Tr., vol. 2 at 48 (Hr’g Order Show Cause, June 21, 2013). Therefore, Vivian was not granted any powers over Lucy’s estate, but was instead given specific authority relating to Lucy’s caregivers. This authority was not affected by the July 9, 2013 decision and order.

[48] In fact, the July 9, 2013 decision and order did not actually revoke any of Vivian’s responsibilities. Instead, it found that as guardian of Lucy’s person, Vivian was already endowed with the power to make medical decisions. Vivian has not presented proof that she is in fact unable to obtain medical documents, or exercise the authorities given to her by the Stipulation and Order. Therefore, Vivian’s argument rests upon an entirely faulty reading of the July 9, 2013 decision and order – that it removed powers unrelated to her petition, and that it stripped her of powers she was never given.

[49] Vivian also objects to the court’s “reappointment” of the Public Guardian and its failure to find Vivian to be a suitable and willing guardian of the estate. Pet’r-Appellee’s Br. at 9. She

points to oral statements made during a prior hearing to argue that any of her shortcomings as guardian in the past were “due to improper guidance rather than ill-will or any wrongdoing.” *Id.* at 10; Tr., vol. 2 at 40 (Hr’g Order Show Cause). Thus, Vivian alleges that the court should have examined whether Vivian was “recuperated, in terms of her suitability to serve as guardian.” Pet’r-Appellee’s Br. at 11.

[50] Title 7 GCA § 3112(c) states that the court must make certain findings regarding what is in the best interests of the ward when it appoints the Public Guardian. However, Vivian never claimed that the Public Guardian’s authority was terminated or interrupted since its appointment in 2011, and there are no facts to support this position. The July 9, 2013 decision and order could not have *re*-appointed the Public Guardian, because the Public Guardian already held authority over Lucy’s estate since its initial appointment on September 27, 2011. Thus, the trial court did not err in not examining or discussing 7 GCA § 3112. It properly addressed only the issue before it – Vivian’s request for authority relating to Lucy’s medical documents. For this reason, the court did not erroneously “re-appoint” the OPG or fail to address Vivian’s suitability as guardian of the estate.

[51] At the same time, this court is troubled by the OPG’s failure to comply with the Stipulation and Order’s requirement to give Vivian \$6,000.00 per month to pay Lucy’s caregivers. *See* RA, tab 124 at 2-3 (Stipulation & Order). The Public Guardian concedes that she was under this obligation, that Lucy’s estate had sufficient funds to make the monthly payments, and that she was not fulfilling her duties to pay each month. Oral Argument at 10:47:40-10:49:00 (May 12, 2014). The Public Guardian asserts that she did not comply with these obligations out of concern for outstanding debts to Lucy’s estate and dwindling funds. *Id.* We emphasize that simply ignoring the court order is not an acceptable course of action for the

guardian of the estate. If the OPG could not pay or felt that it should not pay its monthly obligations, it should have requested a modification from the trial court.

C. Whether this Court Should Impose Sanctions on Vivian.

[52] The Public Guardian argues that Vivian's arguments should be dismissed as frivolous, and that the court should impose sanctions on Vivian. Resp't-Appellee's Second Br. at 16 (Dec. 19, 2013). Title 7 GCA § 25106 (2005) states that "if the appellant appeals on trivial and frivolous grounds . . . the appeal may be dismissed." The Guam Rules of Appellate Procedure further provide that this court "may impose sanctions, including dismissal of an appeal, for non-compliance with its rules and orders." GRAP 32; *see also* GRAP 21 (if the court determines "that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages") "A motion for sanctions under this rule shall be made separately from other motions or requests." GRAP 21.1(c)(1)(A). The court can also order sanctions on its own initiative. *Id.* at 21.1(c)(1)(B).

[53] Sanctions are merited if a party presents arguments to the court for an improper purpose; if the arguments are not warranted by existing law or constitute a frivolous argument for modification of existing law; or if the argument lacks evidentiary support. GRAP 21.1(b). An appeal is frivolous if it is objectively "both baseless and made without a reasonable and competent inquiry." *In re Oka Towers Corp.*, 2000 Guam 16 ¶ 9; *Nateroj v. Haruyama*, No. 91-00039A, 1992 WL 97207, at *3 (D. Guam App. Div. Apr. 16, 1992). "[A] 'reasonable inquiry' means an inquiry reasonable under all the circumstances of a case." *In re Oka Towers Corp.*, 2000 Guam 16 ¶ 9 (quoting *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1364 (9th Cir. 1990)).

[54] The OPG requested sanctions in its opposition brief and did not submit a separate motion as required by GRAP 21. Resp't-Appellee's Second Br. at 16. Because of this failure to comply with the GRAP rules, the OPG's request will not be granted. Moreover, the lengthy factual background of this case, which began nearly ten years ago, illustrates the extent of confusion connected with it. All parties involved have been represented by a string of attorneys. Several of these attorneys were disqualified or withdrew as a result of conflicts of interest among the interested parties. *See, e.g.*, Tr., vol. 2 at 20, 30; RA, tab 17.1 (Substitution of Counsel, Aug. 8, 2007), tab 23 (Substitution of Counsel, Feb. 25, 2010), tab 55 (Notice of Withdrawal and Entry of Appearance, Aug. 25, 2011). The accountings of Lucy's estate, as well as of CEI, in which Lucy's estate has a large interest, have been disorganized and the subject of more litigation. *See* Tr., vol. 2 at 20, 23, 30, 43 (Hr'g Order to Show Cause). Given the heavy litigation and the confusion involving the management of Lucy's estate, it was not unreasonable for Vivian to misunderstand her involvement in Lucy's affairs. Her appeal is not baseless, and sanctions are not merited.

V. CONCLUSION

[55] The issues of whether the trial court erred in not terminating the Public Guardian and whether the appointment of the OPG denied Lucy due process, which were both appealed by Lucy, were mooted by her death and do not fall within any exception to the mootness doctrine. However, Vivian's appeal is not moot. As to the issue raised in Vivian's appeal, we hold that the July 9, 2013 court did not erroneously revoke any of Vivian's authority as guardian. We further hold that the trial court did not err in failing to discuss Vivian's suitability as guardian of Lucy's estate. In addition, the OPG's request for sanctions is justiciable because it stems from the

disagreement between Vivian and the OPG respecting guardianship over Lucy's estate. However, we hold that sanctions are not warranted under these circumstances.

[56] For the foregoing reasons, we **DISMISS** Lucy's appeal, **AFFIRM** the trial court's July 9, 2013 Decision and Order, and **DENY** the OPG's request for sanctions.

Original Signed - **F. Philip Carbullido**
By

F. PHILIP CARBULLIDO
Associate Justice

Orig. Signed

By: **ALBERTO E. TOLENTINO**

ALBERTO E. TOLENTINO
Justice Pro Tempore

Original Signed - **Robert J. Torres**
By

ROBERT J. TORRES
Chief Justice

I do hereby certify that the foregoing is a full true and correct copy of the original on file in the office of the clerk of the Supreme Court of Guam

NOV 20 2014

By: **IMELDA B. DUENAS**
Assistant Clerk of Court
Supreme Court of Guam