IN THE SUPREME COURT OF GUAM

IN THE MATTER OF THE ESTATE OF
EVELYN IWALANI CONCEPCION,
ELIZABETH CONCEPCION and DELFINA BORJA,
Respondents-Appellants,

vs.

ANTONIO SIGUENZA,
Petitioner-Appellee.

Supreme Court Case No. CVA02-017
Superior Court Case No. PR0054-89

OPINION

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Appeal from the Superior Court of Guam
Argued and submitted on April 15, 2003
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; FRANCES M. TYDINGCO-GATEWOOD, Associate Justice; JANET HEALY WEEKS, Justice *Pro Tempore*.

WEEKS, J.:

[1] In this appeal from a probate court's decree of final distribution, the Administrator, Elizabeth Concepcion ("Concepcion"), and heir, Delfina Borja ("Borja"), challenge the distribution of 8/9ths of the estate to Co-administrator Antonio Siguenza ("Siguenza"). Concepcion and Borja argue that Siguenza should not have been granted letters of administration, and that Siguenza was not entitled to the estate property. We affirm the probate court's decree of final distribution.

I.

[2] Evelyn Iwalani Concepcion ("Decedent") died intestate in 1987. The underlying probate case was filed in 1989 by the First Hawaiian Bank ("Bank"), which held a mortgage in decedent's real property.[1] On February 27, 1989, the Bank filed a Petition for Appointment of Special Administrator which named decedent's nine children, Leroy, Elizabeth, Delfina, Enrique, Cindyann, Evelina, Susan, Lawrence and Norman as heirs, and identified a single house and real property lot ("Property"), which is the subject of this probate case. The Petition also requested that the probate court appoint Susan as special administrator. On March 3, 1989, the probate court appointed Susan as special administrator.

[3] In 1991, Siguenza obtained ownership interests in the property by way of quitclaim deeds from several of the heirs. On March 11, 1996, Siguenza petitioned the probate court for letters of administration. On April 29, 1996, the probate court appointed Siguenza and one of the originally named

[1] The record shows no other activity by the Bank. The Bank was not named as a party in this appeal. However, on December 16, 2003, this court ordered the Bank to file a statement whether it desired to be a party. The Bank thereafter requested an extension which was granted until January 16, 2003. The Bank failed to file a statement and is not a party to this appeal.

heirs, Elizabeth, as co-administrators. In 1997 and 1998, Siguenza received two more quitclaim deeds for a total of 8/9ths interest in the Property.

[4] In January 2000, Siguenza petitioned the probate court for final distribution. In March 2000, Siguenza's petition came for hearing before the probate court. At this hearing, the heirs objected and requested more time to retain counsel. The probate court granted the request and continued the matter. On June 8, 2000, the parties appeared before the probate court and a scheduling order was issued as follows: (1) August 1, 2000 - deadline to file motions; (2) September 8, 2000 - deadline to file oppositions to motions; (3) September 22, 2000 - trial date. On June 20, 2000, the probate court issued a written order memorializing the scheduling order.

[5] On July 5, 2000, in conformance with the scheduling order, Siguenza filed a motion for summary judgment and served all heirs with requests for admissions. On September 1, 2000, one month after the motion cutoff date, Concepcion and Borja filed three motions: (1) a motion to revoke letters of administration and for surcharge; (2) a motion to return real property by quitclaim; and (3) an *ex parte* motion to continue trial and to shorten time to hear motions. On that date, the probate court considered the *ex parte* motion and ordered that Siguenza's summary judgment motion and Concepcion and Borja's motions would be heard on September 8, 2000. On September 8, 2000, the motions were heard. On June 12, 2001, the probate court issued a decision and order denying Siguenza's summary judgment motion. That decision and order also denied Concepcion and Borja's motions to revoke letters and set aside quitclaim deeds as untimely and in violation of the scheduling order.

[6] On November 7, 2001, Siguenza filed a Re-notice Rendering Account for Final Settlement and Petition for Distribution. On November 27, 2001, Concepcion and Borja filed an objection. On November 28, 2001, in a hearing before the probate court on Siguenza's petition for final distribution, the probate court noted that the objection filed on November 21 failed to include details and gave Concepcion

and Borja until November 30, 2001 to file a detailed objection. Concepcion and Borja failed to file a detailed objection.

[7] On January 14, 2002, a bench trial was held and Concepcion failed to appear. On February 8, 2002, Wilson Quinley, attorney for Concepcion and Borja, filed a motion for extraordinary attorney's fees and for statutory fees of co-administrator. This motion was heard on April 3, 2002. On April 8, 2002, the probate court filed a Decree Settling Final Account of Administrator and Final Distribution finding that Siguenza was entitled to 8/9ths of the Property because: (1) Concepcion and Borja failed to file a detailed objection as ordered by the court on November 28, 2001; (2) Concepcion and Borja failed to respond to Siguenza's Request for Admissions; and (3) Co-administrator Elizabeth did not appear at the trial and failed her burden of proof. The decree also awarded statutory attorney's fees to both parties' attorneys. On April 19, 2002, Concepcion and Borja filed a motion for reconsideration and to sell the Property. This motion was heard on May 30, 2002. On June 20, 2002, the probate court issued a decision and order denying the motion to reconsider and ordering that the statutory attorney's fees be paid personally by both co-administrators, and denying the motion to sell the estate's assets. Concepcion and Borja appealed.

II.

[8] This court has jurisdiction over this appeal from a final judgment of the Superior Court. Title 7 GCA § 3107(b) (1994).

III.

[9] At the outset we note a serious procedural deficiency presented in this appeal. Concepcion and Borja attempt to argue in their Reply Brief that the probate court erred in first granting leave to file their untimely motions to revoke letters of administration and to set aside quitclaim deeds. This issue was not

set forth in their Opening Brief, wherein they chose to attack the probate court's decree of final distribution on substantive grounds.

[10] The general rule is that issues raised for the first time in a reply brief are deemed waived. *See Brooks v. United States*, 64 F.3d 251, 257 (7th Cir. 1995); *Headrick v. Rockwell Int'l Corp.*, 24 F.3d 1272, 1277-78 (10th Cir. 1994); *Thompson v. C.I.R.* 631 F.2d 642, 649 (9th Cir. 1980). The reasons for this rule are that allowing an appellant to raise new arguments at this juncture is manifestly unfair to the appellee, who cannot respond to the issue, and it is unfair to the court itself, which would be without the appellee's response. *Headrick*, 24 F.3d at 1278; *see also Brown v. Glover*, 16 P.3d 540, 545-46 (Utah 2000) (recognizing that issues raised for the first time in a reply are waived because of the resulting unfairness to the respondent if he has no opportunity to respond).

[11] Accordingly, this court has the discretion to reject new issues in Concepcion and Borja's Reply Brief. *See e.g. In re Liquidations of Reserve Ins. Co.*, 524 N.E.2d 538, 544 (Ill. 1988) (granting the Appellee's motion to strike portions of the Appellant's reply brief which referred to an issue raised for the first time). We note that shortly after this appeal was filed, Siguenza filed a motion to dismiss arguing that Appellants' Opening Brief did not comply with the requirements of the Guam Rules of Appellate Procedure. This court agreed and, despite having the authority to dismiss the appeal outright, ordered Concepcion and Borja to file another brief. Thus, they had a rare second opportunity to review their Opening Brief and make appropriate corrections and additions. To allow the new argument to be presented for the first time in the Reply Brief would be manifestly unfair to Siguenza. Therefore, we hold that Concepcion and Borja waived the argument that the probate court erred in first granting leave to file untimely motions then dismissing them as untimely.

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[12] We proceed to the issues raised in the Opening Brief: (1) whether Siguenza's letters of administration should be revoked and whether the quitclaim deeds should be set aside; (2) whether the probate court denied Concepcion and Borja due process at trial; (3) whether Attorney Quinley is entitled to extraordinary attorney's fees; and (4) whether attorney's fees should be paid out of the estate or by Siguenza personally.

A. Whether the Letters of Administration Should be Revoked and the Quitclaim Deeds Set Aside.

[13] The probate court found that the motions to revoke the letters of administration and to set aside the quitclaim deeds were filed one month after the motion cutoff date set forth in its scheduling order, and denied them as untimely. The threshold issue presented here is whether the probate court erred in this procedural denial. We note that Concepcion and Borja's Opening Brief failed to address this primary procedural issue and argued the merits of the motions.

[14] The failure to abide by a scheduling order "constitutes a failure to comply with the rules of procedure as well as a failure to comply with a court order and, in most instances, delays the timely resolution of the action . . . [and] was in the nature of a Rule 41(b) . . . dismissal for failure 'to prosecute or to comply with these rules or any order of court.'" *McKenzie v. Scheeler*, 949 P.2d 1168, 1172 (Mont. 1997).[2] A dismissal for violation of Rule 41(b) of the Guam Rules of Civil Procedure is reviewed for an abuse of discretion. *Ward v. Reyes*, 1998 Guam 1, ¶ 17. In such a review, "an abuse of discretion occurs only when the decision is based on an erroneous conclusion of law or where the record contains no evidence on which the judge could have rationally based the decision." *Id.* (citation omitted). Under

[2] Rule 41(b) of the Guam Rules of Civil Procedure is substantially similar to Rule 41(b) of the Montana Rules of Civil Procedure and provides in part: "Involuntary Dismissal: Effects Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant." Guam R. Civ. P. 41(b).

this standard, a trial court decision will not be reversed unless the appellate court has "a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon weighing of the relevant factors." *Id.*; *Santos v. Carney,* 1997 Guam 4, ¶ 4.

[15] This court has employed a five part test in reviewing a dismissal pursuant to GRCP 41(b): "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring the disposition of cases on their merits; and (5) the availability of less drastic sanctions." *Santos,* 1997 Guam 4 at ¶ 5 (citation omitted). Deference must be given to the trial court which is in the best position to manage its own docket. *Id.* In considering these factors, it is Concepcion and Borja's burden to show that the delay is reasonable and that the defendant is not prejudiced by the delay. *Id.* If the plaintiff shows a reasonable excuse for the inaction, then the burden shifts to the defendant who must then demonstrate prejudice. *Id.* On appeal, deference must be given to the trial court in determining the reasonableness of the delay because it is in the best position to determine what period of delay can be endured before its docket becomes unmanageable. *Id.* If the trial court does not make specific findings as to each factor, the appellate court reviews the record independently to determine an abuse of discretion. *Id.*

[16] On June 12, 2001, the probate court issued a Decision and Order denying the Appellants' motions. The probate court stated:

> The Court is compelled to admonish counsel [Attorney Quinley] for Heirs for his utter failure to abide by the deadlines established by the Scheduling Order dated June 19, 2000. Counsel was present at hearing on June 8, 2000 when these dates were established by the Court in conjunction with approval of both parties. Counsel for Heirs gave no reasonable justification for failure to abide by the ordered deadlines. These deadlines should not be taken lightly by counsels in any action. They are established and ordered with the concurrence of counsels during a scheduling hearing for the purpose of affording both sides reasonable notice of times and dates which must be complied with. These dates are critical to the Court. They provide the Court sufficient time within which to review pleadings and prepare for motion hearings. When counsels ignore these times and dates, it creates an unfairness to opposing counsel to have to deal with responses with less than the time

> afforded by the order. It further subjects the management of the Court's case flow to utter chaos.
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> For this reason alone the Court is compelled to dismiss all motions filed by Heirs on September 1, 2000, nearly one month AFTER the deadlines under the Court's Scheduling Order. The Court agrees with Siguenza that the Heirs mistake motion practice with filing what appears to be a cause of action for replevin of real property.

Appellants' Excerpts of Record, tab 3, pp. 3-4. The probate court's sanction for the Appellants' failure to comply with the scheduling order was denial of the motions. Review begins with the *Santos v. Carney* factors.

1. The Public's Interest in the Expeditious Resolution of Litigation and the Court's Need to Manage its Docket.

[17] These two factors are normally considered together. *Santos*, 1997 Guam 4 at ¶ 7. Proper docket management leads to more efficient administration of justice which is in the public's interest. It was the burden of Concepcion and Borja to show that the filing of their motions one month after the motion cut-off date was not unreasonable and that Siguenza was not prejudiced by the delay.

[18] The record shows that one month after the motion cutoff date, Concepcion and Borja filed a motion entitled *Ex Parte* Notice of Motion and Motion for Continuance of Trial and to Shorten Time to Hear Motions Filed Concurrently. Record on Appeal, tab 61. We note that counsel for Concepcion and Borja does not dispute that he was aware of the scheduling order announced by the probate court at a hearing on June 8, 2000 and memorialized in a written order filed on June 20, 2000.

[19] It is the responsibility of counsel to be cognizant of court imposed deadlines. The Guam Rules of Civil Procedure provide for enlargement or waiver of filing deadlines.[3] In the instant case, counsel for

[3] Rule 6(b) of the Guam Rules of Civil Procedure provides:

> When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without notice or motion order

Concepcion and Borja, took the extraordinary step of seeking the probate court's permission to file the untimely motions via an *ex parte* motion to continue the trial and shorten time for hearing their motions to revoke letters of administration and return real property by quitclaim.

[20] This *ex parte* motion was filed one month after the motion cutoff date and three weeks before the scheduled trial date. The motion stated:

> This motion is based on Guam Rule of Civil Procedure Rule 6, the inherent power of the court to control its own docket and equitable considerations, and attached memorandum of points and authorities, filings to date and any further argument and evidence attached and to be introduced at the hearing on this motion.

Record on Appeal, tab 61 (*Ex Parte* Mot. for Continuance of Trial and Shorten Time to Hear Mots. Filed Concurrently). The memorandum of points and authorities in support of this *ex parte* motion, argued only that the trial should be continued for equitable reasons, that Siguenza should not have been appointed administrator, and that he improperly obtained the quitclaim deeds, but failed to argue that the failure to file the motions in a timely manner was caused by excusable neglect. Record on Appeal, tab 57 (Mem. Supp. Mot. to continue Trial and Shorten Time to Hear Mot. Filed Herein).

[21] At the September 1, 2000 hearing on the *ex parte* motion, Counsel for Concepcion and Borja offered the following justification to continue the trial:

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> the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them.

Guam R. Civ. P. 6(b).

> The Court: You need more time? For what?
>
> Mr. Quinley: Well, yes, Your Honor. First of all, this is the first time I've – I'm here in front of the court on this matter. But to me, I'm not aware of what the triable issue is in that one, – what was the trial – what's the trial for. This is a probate matter. You're talking about a distribution issue, aren't you?

Transcript vol. - -, tab Sept. 1, 2000, p. 5 (*Ex Parte* Mot. to Return Real Prop. Under Quitclaim, Sept. 1, 2000). Counsel for Concepcion and Borja claimed that he was new to the case and did not know what was to be tried. However, exactly when counsel entered the case is not discernable as he failed to allege a date of entry and the record is void of any entry of appearance. Thus, it is impossible to determine whether counsel had a reasonable time after he came on the case either to file timely motions, or to file a motion to enlarge time to file the motions. Moreover, counsel does not dispute that his clients knew of the scheduling order. Under these circumstances, counsel failed his burden to show excusable neglect pursuant to GRCP 6.

2. Prejudice to Siguenza.

[22] Concepcion and Borja's Opening Brief fails to argue that Siguenza was not prejudiced by the delays. Therefore the prejudice to Siguenza may be presumed. *See Ward*, 1998 Guam 1 at ¶ 18. Moreover, we agree with the probate court's explanation that Siguenza was prejudiced because he had less time to respond under the deadlines set in the scheduling order. Record on Appeal, tab 93, p. 3 (Decision and Order). Thus, the probate court properly found the delay to be unreasonable. "Once a delay is determined to be unreasonable, prejudice to the Plaintiff is presumed." *Santos*, 1997 Guam 4 at ¶ 8. "Presumed prejudice is sufficient to support a dismissal under GRCP 41(b)." *Id.*

3. The Public Policy Favoring Disposition on the Merits.

[23] This policy ordinarily leans against dismissal. However, it must be weighed against the first two factors, the expeditious resolution of litigation and the court's need to manage its docket. Thus, the

question is whether the policy of determining cases on their merits justifies the delay and prejudice caused by Concepcion and Borja's conduct. *Santos*, 1997 Guam 4 at ¶ 9. In *Santos*, this court stated:

> It is sufficient to demonstrate that the plaintiff has ignored his responsibilities to the court in prosecuting the action and the defendant had suffered prejudice as a result thereof. . . . The prejudice caused by Santos' lack of diligence outweighs factor four. The public policy of determining cases on their merits should not be used defensively as a shield by a passive Plaintiff who has failed in his obligation to prosecute the defendants with the vigor expected of a plaintiff.

Id. (citation omitted). In the instant case, the same events occurred. Concepcion and Borja, and their counsel, ignored their responsibility in prosecuting this case and ignored the scheduling order. They made no reasonable attempt to explain their delay. Thus, they have not shown that the public policy of disposition of a case on its merits outweighs the expeditious resolution of litigation and the probate court's need to manage its docket.

4. Availability of less Drastic Sanctions.

[24] A dismissal without advance warnings or lesser sanctions is not a per se abuse of discretion. *Santos*, 1997 Guam 4, ¶ 10. The *Santos* court noted: "The trial court is not required to impose lesser sanctions, when the rules do not so provide, and when to do so would encourage neglect and noncompliance with the Guam Rules of Civil Procedure." *Id.* Under the facts of this case, we defer to the trial court and find it did not abuse its discretion in denying the motions without warnings or lesser sanctions.

[25] Under the four *Santos v. Carney* factors, we find that the probate court did not err in denying the motions to revoke letters of administration and to void the quitclaim deeds due to untimeliness and for violation of its scheduling order. Thus, we need not reach the merits of the arguments on these issues, and find that the probate court did not err in refusing to consider the merits of these arguments in subsequent proceedings. We proceed to the next issue of whether the probate court denied Concepcion and Borja due process at trial.

D. Due Process.

[26] Concepcion and Borja claim on appeal that the probate court violated their due process rights by refusing to hear evidence by Borja at the January 14, 2000 trial. At trial, Concepcion failed to appear and the probate court refused to hear Delfina Borja's objection to the final distribution. "The basic elements of due process are reasonable notice and an opportunity to be heard." *People v. Superior Court (Laxamana)*, 2001 Guam 26, ¶ 26 (citation omitted). On November 7, 2001, Siguenza filed a Re-Notice of Rendering of Account and Petition for Final Distribution. Record on Appeal, tab 98. On November 27, 2001, in opposition to the petition, Concepcion and Borja filed a pleading entitled "Objection to Distribution." Record on Appeal, tab 100. This objection stated in its entirety "Co-administratrix Elizabeth Concepcion disagrees with the distribution and so does Delfina Borja. There was inadequate notice of this hearing as notice. This matter was to be set for trial." *Id.* On November 28, 2001, because the objection failed to state any grounds, the probate court gave Concepcion and Borja until November 30, 2001 to file a detailed objection. Appellant's Excerpts of Record, tab 4, p. 1 (Decree of Final Distribution). However, no detailed objection was filed:

> The Court: Mr. Quinley, why did you not respond to the Court's requirement of November 30th to file your objections?
>
> Mr. Quinley: Your Honor, I must have forgotten that one . . . .

Transcript vol. - -, tab Jan. 14, 2002, p. 18 (Bench Trial, January 14, 2002). Specifically, as to Borja's objection to the petition the court asked:

> The Court: And where is Mrs. Borja's objection to the final distribution?
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> Mr. Quinley: Your Honor, I believe that was in the prior motion that we filed back in September of 2000.
>
> The Court: Those were all denied, sir.
>
> Mr. Quinley: I understand, but that is still her objection.

> The Court: All right. The Court cannot recognize that objection. I denied it several months ago and there has not been a new filing of any objection.

Transcript vol. - -, tab Jan. 14, 2002, pp. 33-34 (Bench Trial, January 14, 2002).

[27] An objection to a petition for final distribution is controlled by Title 15 GCA §3011(b) which provides that the probate court, before making final distribution, "may on the *motion* of any person interested in the estate. . . ." inquire into circumstances surrounding the conveyance of estate property by an heir to a transferee. Title 15 GCA §3011(b) (emphasis added). Instead of filing a motion, Concepcion and Borja filed a three sentence objection. Motion practice before the Superior Court is controlled by the Guam Rules of Civil Procedure and by the Rules of the Superior Court. Specifically, Guam Rule of Civil Procedure 7(b) provides that a motion shall be in writing and shall state supporting grounds with particularity. GRCP 7(b). Further, Rule 5 of the Rules of the Superior Court provides that a "motion shall be heard if it is supported by a memorandum containing citations, analysis and explanation." Guam Ct. R. 5(A)(2). It is painfully obvious that Concepcion and Borja's three sentence objection was void of particularity, analysis or citation and was in violation of the GRCP and Rules of the Court.

[28] The probate court could have denied the objection outright, but gave Concepcion and Borja the opportunity to file a detailed objection. They failed to do so. Under these circumstances, Concepcion and Borja were not denied due process when the probate court refused to permit Borja to object orally.

E. Denial of Extraordinary Attorney's Fees and Request to Sell the Estate.

[29] Counsel for Concepcion and Borja appeals the probate court's denial of his request for extraordinary attorney's fees, which was based on his efforts to revoke Siguenza's letters of administration and to set aside the quitclaim deeds. Concepcion and Borja also argue that attorney's fees must be paid out of the estate, therefore, the estate must be sold to pay the attorney's fees.

[30] The award of attorney's fees in probate cases is allowed by statute:

> (a) The attorney for the personal representative shall be allowed out of the estate, as fees for conducting the ordinary probate proceedings, the same amount as is allowed by Section 2803 of this Title as the commission to the personal representative. . . .
>
> (b) Attorneys for personal representatives shall be allowed out of the estate, in addition to those fees provided in subsection (a) of this Section, such further amounts as the Superior Court may deem just and reasonable for extraordinary services.

Title 15 GCA §2811 (1993). However, the attorney's fees in probate proceedings are payable if the attorney's services benefit the estate and not solely the persons who employed the attorney. *See In Re Bundy's Estate*, 44 Cal. App. 466, 467, 186 P. 811, 812 (Cal. Ct. App. 1919) (attorney's "fees are not allowed in ordinary probate proceedings when they are incurred for the benefit of the person employing the attorney").

[31] In the instant case, Quinley admits that he represents only Delfina and Elizabeth. Quinley does not argue that he represents any other heirs or the estate. The motions that Quinley filed were on behalf of Elizabeth and Delfina to cancel their quitclaim deeds to Siguenza and to revoke Siguenza's letters of administration. The motions to cancel the quitclaim deeds were not for the benefit of the estate, they were for the benefit of his two clients. The motion to revoke the letters of administration was an attempt by Quinleys' clients to challenge Siguenza's appointment as co-administrator.

> Although there is some authority to the contrary, the majority rule is that no allowance will be made out of the estate for costs and attorneys' fees incurred in procuring letters of administration or **in litigating the right to administer on the estate**, even though the party asking for such an allowance was successful in obtaining letters of administration.

In Re Phillipi's Estate, 188 P.2d 571, 579 (Cal. Ct. App. 1948) (emphasis added).

[32] Moreover, our decision here affirms the probate court's denial of Concepcion and Borja's motions to revoke Siguenza's letters of administration and to set aside the quitclaim deeds. Concepcion and Borja have not successfully proved their allegations and they are not entitled to extraordinary attorney's fees.

[33] With regard to Concepcion and Borja's argument that the estate should have been sold to pay attorney's fees, as discussed above, the estate is not liable for Quinley's attorney's fees, thus it need not be sold to cover those expenses. Moreover, the statute he cites for support, Title 15 GCA §2421, is inapplicable. That section provides that "The costs of all proceedings provided for in this Chapter must be paid by the estate as expenses of administration." Title 15 GCA §2421 (1993). Chapter 24 pertains to support of the family, homestead and exempt property, and family allowance. It does not apply to disputes over quitclaim deeds or administration of the estate.

[34] Concepcion and Borja offer an alternative argument that Siguenza, as co-administrator, should pay all attorney's fees. This argument is without merit. Quinley was hired by Concepcion and Borja. He represented them, not the estate. Siguenza did not hire Quinley, and Siguenza is not responsible for Quinley's attorney's fees.

F. Siguenza's Counsel's Request for Attorney's Fees on Appeal.

[35] Counsel for Siguenza argues that this appeal is frivolous and that he is entitled to attorney's fees pursuant to Rule 21 of the Guam Rules of Appellate Procedure. Although the handling of this case in the probate court and on appeal by Concepcion and Borja's counsel may be questioned, the issues presented show that the appeal was not frivolous. Counsel for Siguenza also requests attorney's fees on appeal pursuant to Title 15 GCA §2811, which provides for statutory attorney's fees for ordinary probate proceedings. However, as determined above, such fees should be allowed only for ordinary probate proceedings which benefit the estate. Counsel's representation of Siguenza on appeal benefits Siguenza, not the estate. Counsel for Siguenza also seeks attorney's fees pursuant to *Taijeron v. Kim*, 1999 Guam 16. However, in that case counsel was awarded attorney's fees pursuant to a provision in a lease agreement. *Id.* at ¶ 28. In the instant case, counsel cannot rely on any such contractual provision and *Taijeron* is inapplicable. Counsel's request for attorney's fees on appeal is denied.

IV.

[36] It is the responsibility of legal counsel to properly present issues on appeal. New issues generally cannot be raised for the first time in an appellant's reply brief. In violation of this rule, Concepcion and Borja's Reply Brief raised the new issue of whether the probate court abused its discretion in first allowing untimely motions to proceed and then denying them for untimeliness. Thus, we find that Concepcion and Borja waived this issue. Under the facts of this case, we are constrained to find that the probate court did not err in denying Concepcion and Borja's motions to revoke letters of administration and set aside quitclaim deeds. Further, we find that the probate court did not violate the due process rights of Concepcion and Borja in not allowing Borja's objections at trial. Last, we find that the probate court did not err in refusing to award extraordinary attorney's fees to Concepcion and Borja's counsel and in refusing to order the sale of the estate. The decisions of the probate court are **AFFIRMED**.