IN THE SUPREME COURT OF GUAM

IN THE MATTER OF THE GUARDIANSHIPS OF FRANCIS LESTER MOYLAN AND YUK LAN MOYLAN,
Wards.

RICHARD E. MOYLAN,
Petitioner-Appellant/Cross-Appellee,

v.

KURT MOYLAN, LEIALOHA MOYLAN ALSTON, and FRANCIS LESTER MOYLAN, JR.,
Petitioners-Appellees/Cross-Appellants.

Supreme Court Case No.: CVA08-016
Superior Court Case No.: SP0110-07
(Consolidated with SP0104-07, SP0105-07, SP0106-07, SP0107-07 & SP0111-07)

OPINION

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Appeal from the Superior Court of Guam
Argued and submitted on March 11, 2011
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice; RICHARD H. BENSON, Justice *Pro Tempore*.

TORRES, J.:

[1] The Petitioner-Appellant/Cross-Appellee, Richard E. Moylan ("Richard"), and Petitioners-Appellees/Cross-Appellants, Kurt Moylan ("Kurt"), Leialoha Moylan Alston ("Princess"), and Francis Lester Moylan, Jr. ("JR") (hereinafter collectively referred to as "Majority Siblings"), are the children of Mrs. Yuk Lan Moylan ("Mrs. Moylan") and Mr. Francis Lester Moylan ("Mr. Moylan")[1] (hereinafter collectively referred to as "Wards"). The children filed competing petitions for appointment as guardians of the person or of the estate of the Wards or both. The trial court consolidated the guardianship cases and after extensive hearings, appointed Princess general guardian over the person of Mr. Moylan and "limited guardian" over the person of Mrs. Moylan. Kurt was appointed general guardian of the estate of Mr. Moylan and "limited guardian" of the estate of Mrs. Moylan. In addition to the guardianship appointments, the court made several decisions regarding the Wards' assets. Furthermore, the court ordered the continued sealing of all financial records, evidence, and reports of the Wards.

[2] Richard appeals the guardianship appointments and the trial court's determination that there was an enforceable transfer of real property to Princess and a completed gift of $200,000.00 to JR. He also appeals the trial court's failure to require reimbursement of the Wards' estates of the interest earned during the time that certain Time Certificates of Deposit ("TCDs") were only in the names of JR and Princess and in sealing the financial records, evidence and reports of the Wards. On cross-appeal, the Majority Siblings claim that the trial

[1] Mr. Moylan passed away on August 24, 2010, after this appeal was filed. At oral argument, Appellant's counsel conceded the appeal regarding guardianship of Mr. Moylan was moot because the case below was closed after Mr. Moylan's death. Digital Recording at 10:01:29 (Oral Argument, Mar. 11, 2011).

court erred in finding that F.L. Moylan Company, a corporation substantially owned by the Wards, owed the Wards $1,983,772.75 for shareholder loans and that the use of the TCDs for F.L. Moylan Company was not in the best interest of the Wards. They also argue that the trial court abused its discretion in imposing a constructive trust on the TCDs that were transferred to JR and Princess.

[3] For the reasons set forth herein, we affirm in part, reverse in part, and remand several issues back to the trial court.

I. FACTUAL AND PROCEDURAL BACKGROUND

[4] This appeal arises out of a set of highly contested guardianship cases from the Superior Court of Guam. The trial court proceedings involved the guardianship of both the persons and the estates of Mr. Moylan and his wife, Mrs. Moylan. Over the years, Mr. and Mrs. Moylan amassed a sizeable estate as a result of multiple business ventures. Sometime in 2007, both Mr. and Mrs. Moylan were diagnosed with varying stages of Alzheimer's disease that limited their ability to care for themselves and to manage their own business affairs.

[5] As the Wards' physical and mental condition worsened, their children could not reach a consensus on how best to care for their parents and manage their estates. Three of the four siblings — Kurt, JR, and Princess — were able to agree upon a management plan regarding the estate of their parents. Richard, however, did not agree with the recommendations of his other siblings. Accordingly, the Majority Siblings and Richard both petitioned the Superior Court of Guam for guardianship. Kurt filed separate petitions for the appointment of guardianship over the estates of Mr. Moylan and Mrs. Moylan while Princess and JR petitioned the court for appointment as guardian over the persons of Mr. Moylan and Mrs. Moylan. Richard thereafter filed competing petitions for general guardianship over the person and estate of both Mr. Moylan

and Mrs. Moylan. Richard also filed separate objections to the appointment of Kurt as guardian over the estates of Mr. Moylan and Mrs. Moylan, claiming that Kurt was unsuitable for both roles. Additionally, Richard filed an objection to Princess and JR being appointed as guardians over the persons of Mr. Moylan and Mrs. Moylan. The trial court conducted a bifurcated hearing in which it first made a determination as to the competency of Mr. and Mrs. Moylan, and then addressed the issue of who should be appointed guardian.

[6] The trial court later appointed Kurt and Richard as temporary co-guardians over the estates of both Mr. and Mrs. Moylan. The court also appointed Kurt as temporary guardian of the persons of both Mr. and Mrs. Moylan. In its order of appointment, the court temporarily waived the cash bond and surety for the guardians, pending the appointment of permanent guardians. Kurt, Princess, and JR timely appealed, and we subsequently vacated and remanded the trial court order because the determination of the necessity of whether bonds were required of the co-guardians was a prerequisite to issuing letters of guardianship. *In re Guardianships of Moylan*, CVA08-003 (Order at 8 (June 24, 2008)). In response, the trial court issued a decision requiring each petitioner to post a surety bond of $1.7 million, which Kurt posted but Richard conceded he was unable to provide.

[7] Following an extensive evidentiary hearing spanning eleven trial days, the trial court issued its Findings of Fact and Conclusions of Law. In the Findings of Fact, the court made clear that it did not want to appoint a third-party guardian for the Wards' estates, finding such an appointment would be a drain on the estate, and determined that Kurt did not have a conflict of interest, was a better manager of his parents' estates than Richard, and his appointment as guardian of the estates of the Wards was in the best interests of the Wards. In concurrent

appointment orders, Kurt was made general guardian of the estate of Mr. Moylan and limited guardian of the estate of Mrs. Moylan.

[8] Additionally, the trial court stated that Richard could not "assume responsibilities of guardian for his parents," based on evidence that Mr. and Mrs. Moylan had been estranged from Richard for over thirty-five years and had strong feelings against Richard being appointed as their guardian. Appellant's Excerpts of Record ("ER") at 464 (Finds. Fact & Concl. L., Nov. 10, 2008).[2] The trial court "conclude[d] that the preference of [Mrs. Moylan] for her daughter Princess to be guardian of her person, as well as guardian of [Mr.] Moylan, is in the best interests of the Wards." *Id.* at 465. Princess was appointed general guardian over the person of Mr. Moylan and limited guardian over the person of her mother, Mrs. Moylan.[3] The court did not appoint Princess general guardian over the person of Mrs. Moylan even though the court had declared Mrs. Moylan to be incompetent in its earlier order appointing temporary guardians, relying in part on the testimony of Dr. Claire K. Ashe, a psychiatrist. The court explained that when Dr. Ashe first examined Mrs. Moylan, she found Mrs. Moylan "not able to make major life decisions and that it would be in her best interest to have a guardian to protect her rights and interests." ER at 258 (Letter from Dr. Claire K. Ashe to Joyce Tang, *Esq.* re: Mrs. Moylan, June 22, 2007). However, after treatment of Mrs. Moylan about seven months later, Dr. Ashe examined Mrs. Moylan again and wrote, "it appears that she is able to retain more information than previously noted," determining that Mrs. Moylan should have more autonomy than originally recommended. ER at 260-62 (Letter from Dr. Claire K. Ashe to Joyce Tang, *Esq.* re:

[2] We recognize this document is mislabeled in the header as "Majority Siblings Amended (Proposed) Findings of Fact and Conclusions of Law."

[3] The trial court declined to appoint JR as guardian "because he did not testify at trial [and as a result] the Court is unable [to] thoroughly assess his fitness to serve as a guardian . . . ." ER at 465 (Finds. Fact & Concl. L.).

Mrs. Moylan, Jan 23, 2008). An updated assessment of Mrs. Moylan conducted by James Kiffer, Ph.D., a psychologist appointed by the court, likewise supported "that Mrs. Moylan appears to have the ability to exercise adequate judgment for the most part; that, so long as her preferences are reasonable, it is important to her continued well-being." ER at 452 (Finds. Fact & Concl. L.).

[9] In the Findings of Fact, the trial court also made several decisions regarding the Wards' assets, specifically that (1) F.L. Moylan Company, a Guam corporation substantially owned by the Wards, owed the Wards the amount of $1,983,772.75 in shareholder loans; (2) the lot and house Princess lived in, although in the Wards' name, was an enforceable transfer to Princess in fee simple without condition; (3) the $200,000.00 JR received from the Wards for the purchase of a condominium in Hawaii was a completed gift; (4) the transfers of Time Certificates of Deposit ("TCDs") from the Wards to Princess and JR were subject to a constructive trust and should be transferred back to the Wards as soon as practicable; and (5) any interest earned on the TCDs during the period Princess and JR held the TCDs would not be reimbursed to the Wards' estate but deemed acceptable compensation for JR and Princess's care of the Wards. Furthermore, the court ordered the continued sealing of all financial records, evidence, and reports of the Wards "in order to prevent any threat to [their] financial well fare [sic] and security." *Id.* at 467.

[10] Richard timely filed a Rule 52(b) Motion to Reconsider the Findings of Fact in the Superior Court. Before the motion was heard, Richard also filed an appeal of the Findings of Fact in this court.[4] The Majority Siblings filed a cross-appeal in response to Richard's appeal to

[4] While the first appeal was still pending, Richard filed a Motion to Remove Guardians in the Superior Court. A hearing was held, and a Decision and Order denying the motion was issued. Richard timely filed an appeal of this Decision and Order, but we dismissed the appeal because: the Decision and Order was a post-

the Supreme Court and further requested that the same appeal be stayed pending the outcome of Richard's Rule 52(b) motion. Richard did not oppose the Majority Siblings' request for a stay. Because Richard timely filed his Rule 52(b) motion and pursuant to Rule 4(a)(4) of the Guam Rules of Appellate Procedure, we ordered that a stay was unnecessary because the notice of appeal would become effective only when the order disposing of Richard's Rule 52(b) motion has been entered. Subsequently, the trial court issued a Decision and Order disposing of Richard's Rule 52(b) motion.[5]

II. JURISDICTION

[11] This court has jurisdiction over appeals of orders granting letters of guardianship pursuant to 48 U.S.C.A. § 1424-1(a)(2) (West Supp. 2008); 7 GCA §§ 3107(b) and 3108(a) (2005); and 15 GCA § 4801 (2005).

III. STANDARD OF REVIEW

[12] The trial court's appointment of a guardian is reviewed for an abuse of discretion. *See In re Guardianship of Rich*, 520 N.W.2d 63, 65-66 (S.D. 1994) (reviewing guardianship appointment for abuse of discretion). A trial court's findings of fact following a bench trial are reviewed for clear error. *Mendiola v. Bell*, 2009 Guam 15 ¶ 11. Under the clear error standard, this court will "only look at whether the trial court's finding of fact is supported by substantial evidence," and the trial court's decision will only be reversed if this court has a "definite and

judgment order that was encompassed by the issues presented in the first appeal; the order was not appealable under the relevant guardianship statutes because the appeal was not based on the denial of Richard's motion to remove the guardians; the appeal was not filed as an interlocutory appeal; and supervisory jurisdiction was not warranted. *In re Guardianships of Moylan*, CVA08-016 (Order at 18-26 (Sept. 27, 2010)).

[5] After the issuance of the Decision and Order disposing of Richard's Rule 52(b) motion, the Superior Court clerk did not forward the record or file a certificate of record in accordance with the Guam Rules of Appellate Procedure. Therefore, a briefing schedule was not issued by the Supreme Court clerk, and this court was subsequently required to order the Superior Court clerk to immediately forward the record. *In re Guardianships of Moylan*, CVA08-016 (Order (Sept. 14, 2010)). Thereafter, the transcripts and certificate of record were filed and a briefing schedule issued.

firm conviction that a mistake has been committed [by the trial court]." *Fargo Pac., Inc. v. Korando Corp.*, 2006 Guam 22 ¶¶ 30, 32. We will not substitute our judgment for that of the trial court. *See id.* ¶ 22.

[13] Whether a bond is required to be posted by a guardian over a person is a question of statutory interpretation, reviewed by this court *de novo*. *Castino v. G.C. Corp.*, 2010 Guam 3 ¶ 14. If the statute of frauds is violated by the lack of a written instrument transferring the house and lot to Princess is also an issue of statutory construction reviewed by this court *de novo*. *See id.* The imposition of a constructive trust is reviewed for an abuse of discretion. *GHK Assocs. v. Mayer Grp., Inc.*, 274 Cal. Rptr. 168, 182 (Ct. App. 1990) ("The propriety of granting equitable relief of imposition of a constructive trust rests within the sound discretion of the trial court." (citation omitted)).

[14] The United States Supreme Court has stated, "the decision as to access [to court records] is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 599 (1978); *see also Wash. Post. Co. v. Hughes (In re Application & Aff. for a Search Warrant)*, 923 F.2d 324, 326 (4th Cir. 1991); *Bank of N.Y. v. Bell*, 993 A.2d 1022, 1032 (Conn. App. Ct. 2010) (noting that a trial court's decision to seal documents is reviewed for an abuse of discretion). Thus, we adopt the abuse of discretion standard in deciding the propriety of orders sealing court records.

IV. ANALYSIS

[15] We will initially address the issues raised by Richard on appeal, and then examine the Majority Siblings' cross-appeal issues.

A. Richard's Appeal

1. Appointment of Kurt and Princess as Guardians

[16] "A [g]uardian is a person appointed to take care of the person or property of another. The latter is called the ward of the guardian." 15 GCA § 3501 (2005). Thus, guardianship is "a relationship created by . . . law in which a court gives one person or entity (the guardian) the duty and power to make personal and/or property decisions for another (the ward or incapacitated person)." Naomi Karp & Erica F. Wood, *Guardianship Monitoring: A National Survey of Court Practices*, 37 Stetson L. Rev. 143, 146 (2007).

[17] Under Guam law, the Superior Court shall appoint a guardian "whenever necessary or convenient." 15 GCA § 3506 (2005); *see also* Karp & Wood, *supra*, at 143 (a guardian is appointed when an adult individual is found to lack the capacity to make a decision for himself). Appointment of a guardian provides much needed protections while simultaneously drastically reducing a ward's fundamental rights. Karp & Wood, *supra*, at 146. As a result, courts have a duty to protect the best interests and welfare of a ward. In *Guardianship of Brown*, 546 P.2d 298 (Cal. 1978), the California Supreme Court recognized that the statutory provisions dealing with the appointment of guardians for incompetent persons contained no explicit legal standard "to be applied by a court in the selection of a guardian for an incompetent." *Guardianship of Brown*, 546 P.2d 298, 303 (Cal. 1978). However, the court also recognized that "the paramount consideration guiding the trial court is the best interest of the incompetent" and held this to be the standard for guardianship appointments. *Id.* at 303-04; *see also In re Conservatorship of Browne*, 370 N.E.2d 148, 150 (Ill. App. Ct. 1977) ("The paramount concern in the selection of a conservator is the best interest and well being of the incompetent." (citing Peter G. Guthrie, Annotation, *Priority and Preference in Appointment of Conservator or Guardian for an*

Incompetent, 65 A.L.R.3d 991 (1975))). Guam law provides that "[i]n appointing a general guardian of a minor, the court is to be guided by what appears to be for the best interest of the child in respect to its temporal and mental and moral welfare . . . ." 15 GCA § 3507 (2005); *see also* 19 GCA § 9108(a) (2005) ("[I]n appointing a general guardian, the court . . . is to be guided by . . . what appears to be for the best interest of the child in respect to its temporal and its mental and moral welfare . . . ."). Although this statute relates to the establishment of a guardian over a minor ward, we hold that the best interest standard also applies to the appointment of a guardian over an adult ward.

[18] Richard argues that the trial court abused its discretion by appointing Kurt and Princess as guardians. Richard asserts that Kurt and Princess acted inappropriately with regard to the Wards' estate in the past, and that "[e]vidence of bad faith or fraud in prior dealings between a proposed guardian and ward precludes [the proposed guardian's] selection as a guardian." Appellant's Br. at 9 (Nov. 10, 2010); *see also In re Estate of Robertson*, 494 N.E.2d 562, 570 (Ill. App. Ct. 1986). Richard contends that Kurt and Princess "had adverse pecuniary interests to that of the Wards because they want[ed] the Wards' life savings" and it was inappropriate to appoint Kurt and Princess as guardians. Appellant's Br. at 11.

[19] Richard further believes that the trial court's decision to impose a constructive trust on the Wards' estate is inconsistent with awarding Kurt and Princess guardianship because for a constructive trust to be formed, there necessarily must have been a prior bad act. *Id.* at 7 (quoting *In re Guardianship of Pearson*, No. CA 91-466, 1992 WL 121766, at *4 (Ark. Ct. App. May 27, 1992)). Regarding constructive trusts, this court has previously held that a constructive trust "is often imposed . . . in cases of fraud, duress, undue influence or mistake, the wrongful disposition of another's property, or where there is a breach of a fiduciary duty." *Guam Bar*

Ethics Comm. v. Maquera, 2001 Guam 20 ¶ 31. The relevant Guam statute related to constructive trusts, 18 GCA § 65110, was borrowed from section 2224 of the California Civil Code. When Guam statutes are based upon identical California laws, California case law is persuasive when there is no compelling reason to deviate from California's interpretation. *See Castino*, 2010 Guam 3 ¶ 22; *Zurich Ins. (Guam), Inc. v. Santos*, 2007 Guam 23 ¶ 7. California courts have ruled that a constructive trust need not be based on fraud or intentional misrepresentation. *See Calistoga Civic Club v. City of Calistoga*, 191 Cal. Rptr. 571, 575-76 (Ct. App. 1983).

[20] The trial court "conclude[d] that the 2007 TCD transfers are a constructive trust for the benefit of the Wards," ER at 466 (Finds. Fact & Concl. L.), but did not base this conclusion on any prior bad act on the behalf of any of the Majority Siblings. Instead, the trial court found no "ill will or deceitful motives on the part of either Princess or JR." *Id.* at 456. Similarly, the trial court made no finding that Kurt acted with ill will or deceitful motives. Consequently, the imposition of a constructive trust by the trial court was not based on any finding of prior bad acts and was not necessarily inconsistent with the appointment of Kurt and Princess as guardians. The trial court also found "no evidence of a pecuniary conflict of interest on the part of [Kurt] with his parent's [sic] estates." *Id.* at 466. Richard also presents no evidence that Kurt and Princess desire the life savings of their parents out of ill will. Absent evidence of adverse pecuniary interests and ill will on the part of Kurt and Princess, the trial court did not abuse its discretion in appointing Kurt and Princess as guardians notwithstanding the imposition of the constructive trust.

[21] When an adult ward has more than one child, determining which child would be the best guardian of a ward is a question of fact to be determined by the trial court. *See, e.g., In re Swett*,

286 So. 2d 667, 668 (La. Ct. App. 1973). Given our holding that the best interest of the ward standard is to be applied in guardianship cases, the trial court did not abuse its discretion in deciding that the appointments of Kurt and Princess as guardians were in the best interest of the Wards. The trial court carefully analyzed the relationships between the Wards and their children, as well as the preference of Mrs. Moylan, before deciding that Princess and Kurt were best suited to serve as guardians. Although Richard claims it is in the Wards' best interest for him to become guardian, Richard fails to mention that he has apparently been estranged from the Wards since as early as 1972.[6] ER at 464 (Finds. Fact & Concl. L.). The trial court found that the Wards' "feelings of estrangement are deep rooted, precede the onset of any mental impairment, and are not the product of undue influence by the Majority Siblings." *Id.* While Richard is correct that a constructive trust was formed, Richard is incorrect in his belief that a constructive trust is proof of a prior wrongful act, discussed *infra* part B.3. We do not have a definitive and firm conviction that a mistake has been committed by the trial court, and we find that it did not abuse its discretion in deciding that it was in the best interest of the Wards to have Princess and Kurt serve as their guardians.

2. Limited Guardianship over Mrs. Moylan

[22] Richard next asserts that the trial court abused its discretion by not finding a need for a general guardian over Mrs. Moylan, particularly because the trial court initially determined that Mrs. Moylan required a general guardian. ER at 263-66 (Order, Mar. 21, 2008). The trial court revised its initial determination in its Findings of Fact and Conclusions of Law, stating that the court's "decision of March 21, 2008, declaring [Mrs.] Moylan incompetent is modified." ER at

[6] Although Richard returned to the family business for brief periods, the Majority Siblings contend that Richard has been estranged from the Wards "for over 35 years, [and] that there was a rational basis for the estrangement." Appellees' Br. at 18 (Dec. 13, 2010).

452 (Finds. Fact & Concl. L.). In large part, this modification occurred because Dr. Ashe, the psychiatrist who examined Mrs. Moylan, had a change in opinion about Mrs. Moylan's level of competency. Dr. Ashe testified that pharmaceutical treatment of Mrs. Moylan helped significantly, and improved her alertness and mental well-being. Dr. Ashe also opined that Mrs. Moylan was more competent than Dr. Ashe originally had thought. The updated assessment of Mrs. Moylan conducted by Dr. Kiffer, a court-appointed psychologist, "is likewise supportive that Mrs. Moylan appears to have the ability to exercise adequate judgment for the most part" and "[h]er cognitive functioning is relatively intact." *Id.*

[23] Before reversing its own decision declaring Mrs. Moylan incompetent, the trial court went through a detailed analysis of Mrs. Moylan's physical and mental condition. The trial court determined that "despite [Mrs. Moylan's] mild Alzheimer's and short term memory problem, [Mrs. Moylan] continues to enjoy a significant degree of cognitive functioning and self awareness." *Id.* at 450. As a result of these findings, the court issued an order appointing Kurt as the limited guardian of Mrs. Moylan's estate and appointing Princess as the limited guardian over Mrs. Moylan's person.

[24] The limited guardianship of Mrs. Moylan's estate authorized Kurt to assist his mother in managing a limited set of functions, including hiring legal counsel, assisting in the management of her financial affairs, and assisting in payment of all bills and expenses. The limited guardianship over Mrs. Moylan's person allowed Mrs. Moylan to live at her own house and to perform a number of tasks individually, including handling her own hygiene, attending religious functions, and cooking. As Mrs. Moylan's limited guardian over her person, Princess was ordered to act on behalf of her mother only when custodial care is required. Recognizing the balance between the need for the ward's protection and the ward's right to autonomy, *see*

Lawrence A. Frolik & Alison P. Barnes, *An Aging Population: A Challenge to the Law*, 42 Hastings L.J. 683, 706 (1991), we find that the limited guardianship set up for Mrs. Moylan by the trial court adequately addressed her need for protection and right to autonomy. The trial court developed a guardianship plan that protects Mrs. Moylan's autonomy as much as possible, while still affording her the assistance she needs. As a result, the trial court did not abuse its discretion in appointing a limited guardian for the estate and for the person of Mrs. Moylan.

[25] Additionally, we do not accept Richard's argument that the trial court erred in awarding limited guardianship over Mrs. Moylan because "[l]imited guardianships do not exist on Guam." Appellant's Br. at 13. While Richard is correct that the term "limited guardian" does not appear in the Guam code, the Guam code allows for "special guardians." *See* 15 GCA § 3502 (2005); 19 GCA § 9105 (2005). Guam classifies general guardians as "guardian[s] of the person or of all of the property of the ward within Guam," and special guardians as every other guardian. 19 GCA § 9104 (2005); *see also* 15 GCA § 3502; 19 GCA § 9105. Though it may be more appropriate to consider Kurt and Princess to be special guardians over Mrs. Moylan, the trial court did not err in appointing Kurt and Princess as limited guardians. The trial court closely and carefully analyzed Mrs. Moylan's mental and physical condition while making its guardianship decision and did not abuse its discretion in finding that a limited guardianship over the person and estate of Mrs. Moylan was appropriate.

3. Personal Guardianship Without a Bond

[26] Richard contends the trial court erred by appointing Princess as guardian over Mrs. Moylan's person without requiring Princess to pay a bond. Whether a bond is required for a guardian of the person is a question of statutory interpretation and is reviewed by this court *de novo*.

[27] A guardian may be appointed over a ward's person, estate, or both. *See* 15 GCA § 3502. In general, a guardian of the estate has authority over the property interests of the ward, while a guardian of the person has authority over the personal interests of the ward. *In re Guardianship of Hedin*, 528 N.W.2d 567, 572 (Iowa 1995). In the context of an adult ward, "[a] guardian of the ward's person has authority over health and medical decisions, while a guardian of the ward's estate has authority over various aspects of the ward's property . . . ." Patricia C. McManus, Comment, *A Therapeutic Jurisprudential Approach to Guardianship of Persons with Mild Cognitive Impairment*, 36 Seton Hall L. Rev. 591, 600 (2006).

[28] The Guam statutes governing guardianships were borrowed from sections of the California Probate Code prior to their amendment. *See In re Guardianships of Moylan*, CVA08-003 (Order, June 24, 2008). In analyzing Guam's bond requirement in guardianships, it is appropriate to look to prior California cases interpreting California's analogous statutes. *See Zahnen v. Limtiaco*, 2008 Guam 5 ¶ 17. Additionally, when Guam adopts a statute from California, California case law is persuasive when there is no compelling reason to deviate from California's interpretation. *See Castino*, 2010 Guam 3 ¶ 22; *Zurich Ins. (Guam), Inc.*, 2007 Guam 23 ¶ 7.

[29] Guam codified the need for a guardian to post a bond in 15 GCA §§ 4001 and 4002, which were taken from California Probate Code sections 1480 and 1481. Richard relies on *Guam Greyhound, Inc. v. Brizill*, 2008 Guam 13 ¶ 29, to argue that "[if] a statute is unambiguous, then the judicial inquiry into the meaning of the statute is complete." Appellant's Br. at 15. Conversely, the Majority Siblings argue that "[b]oth 15 GCA §[§] 4001 and 4002 are generally worded with regard to the bond requirement, and do not explicitly distinguish between guardians over the person and guardians over the estate." Appellees' Br. at 46 (Dec. 13, 2010).

[30] Title 15 GCA § 4001 states, in relevant part:

> Before the order appointing a guardian takes effect . . . the person appointed [as guardian] . . . must furnish a bond to the ward . . . which sum shall be not less than twice the value of the personal property and twice the value of the probable annual rents, issues and profits of all property belonging to the ward . . . .

15 GCA § 4001 (2005).

[31] Title 15 GCA § 4002 states, in pertinent part, "Upon filing the bond, duly approved, letters of guardianship shall issue to the person appointed . . . ." 15 GCA § 4002 (2005). Neither section 4001 nor section 4002 differentiates between guardians over a person, guardians of an estate, or guardians of both a person and estate. The statutes are ambiguous, and further judicial inquiry into the meaning and purpose of the bond requirements is necessary.

[32] California, in interpreting California Probate Code sections 1480 and 1481, has ruled that bonds are necessary for guardianships over the estate of an incompetent person, but not for guardianship over the person. *Brainard v. Brainard*, 62 P.2d 403, 405 (Cal. Dist. Ct. App. 1936) ("As to a guardian of the person, a bond is of little, if any, importance . . . ."). The purpose of requiring a guardian of an estate to post a bond is to ensure faithful administration by the guardian. *See id.*; C. Raymond Radigan, *Investments by Guardians*, N.Y. St. B.J., July/August 1996, at 40 (explaining purpose of bond is to prevent guardian from abandoning estate and to insure prudent investment).

[33] Following California's decision, we are not persuaded that a bond should be required to be posted by guardians who are to look after the person and not the estate of a ward. The trial court's decision to appoint Princess as guardian over the person of Mrs. Moylan without requiring Princess to pay a bond is affirmed because the law does not require a guardian of the person to post a bond.

4. Residential Property Conveyed to Princess

[34] We next address Richard's claim that the statute of frauds precludes the residential property transfer to Princess and the trial court's finding that "the transfer of the real property by the Wards is an enforceable conveyance in fee simple without condition," ER at 461 (Finds. Fact & Concl. L.). According to Richard, the trial court violated Guam's statute of frauds because no writing was produced conveying the property to Princess. This issue is one of statutory construction and reviewed by this court *de novo*.

[35] When Mr. Moylan was alive, the Wards offered to build Princess a house next to where the Wards lived. The house where Princess lives in Maite is in the names of Mr. and Mrs. Moylan, "although Princess testified that she thought her parents had transferred the house to her and that it is always referred to as 'Princesses' [sic] house.'" ER at 460-61 (Finds. Fact & Concl. L.). After considering the evidence, the trial court determined that there was no dispute as to who was legal owner of Princess's house[7] and that "this transfer of real property by the Wards is an enforceable conveyance . . . ." *Id.* at 461.

[36] Guam law requires that certain contracts must be in writing in order to be valid. According to 18 GCA § 86106(5):

> The following contracts are invalid, unless the same, or some note or memorandum thereof, is in writing and subscribed by the party to be charged, or by his agent:
>
> . . .

[7] Interestingly, the trial court did not actually identify who it considered to be the legal owner, although it stated that the house in which Princess lives, which was paid for by Mr. & Mrs. Moylan, is in their name, "but the transfer is a valid and enforceable conveyance." ER at 466 (Finds. Fact & Concl. L.).

> 5. An agreement for . . . the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged . . . .

18 GCA § 86106(5) (2005).

[37] Because there has never been a written document conveying the property from the Wards to Princess, Richard insists the trial court erred in finding that a valid and enforceable gift has been given to Princess by the Wards.

[38] Conversely, the Majority Siblings argue that the statute of frauds did not preclude the real property transfer to Princess, despite the absence of a written document, as the court was merely "effectuating the intent of Mr. & Mrs. Moylan in having the guardian transfer Princess' residence to Princess." Appellees' Br. at 50. In support of this argument, the Majority Siblings rely upon the doctrine of substituted judgment, which can give a court the authority to make allowances from an incompetent's estate, so long as it is probable that the incompetent would have acted similarly if he were of sound mind. *See, e.g.*, *In re Guardianship of Christiansen*, 56 Cal. Rptr. 505, 512 (Ct. App. 1967) (citation omitted). The Majority Siblings fail to appreciate, however, that under the terms of her limited guardianship, Mrs. Moylan has the right to "transfer property or assets with the assistance of legal counsel."[8] ER at 471-72 (Limited Guardianship – Estate of Yuk Lan Moylan, Nov. 10, 2008). We do not agree with the Majority Siblings' characterization of the trial court's order as one of substituted judgment, simply effectuating the desire of an incompetent, because such a result is inconsistent with the court's finding of Mrs. Moylan's competence and ability, with the assistance of legal counsel, to transfer property.

[8] A court can decide, based on an individual's mental capacity, whether an individual has sufficient capacity to engage in specific actions. *See Hedin*, 528 N.W.2d at 571-72 ("Legally, incompetence 'defines when the state may take actions that limit an individual's right to make decisions about [the individual's] person or property based on [the individual's] mental disability.'" (citations omitted)).

[39] Guam law dictates that "[a]n estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing." 21 GCA § 4101 (2005). Clearly, this jurisdiction's statute of frauds was not satisfied in this case because there was never any instrument in writing subscribed by the Wards transferring the property to Princess. However, under the doctrine of estoppel, an oral promise to convey real property is removed from the statute of frauds and is enforceable under extreme circumstances in order to prevent an injustice to the donee. *See Alpha Stores, Ltd. v. Croft*, 140 P.2d 688, 691 (Cal. Dist. Ct. App. 1943). An oral gift of property has been sustained "only upon clear and satisfactory proof of the identity of the property and of an intention on the part of the donor to presently convey title to the real property." *Id.* Moreover, a gift of real property cannot be effected orally unless possession of the property is both given and accepted under the terms of the gift, and the donee performs acts to carry out the purpose of the gift. *Husheon v. Kelley*, 124 P. 231, 235 (Cal. 1912); *Bakersfield Town Hall Ass'n v. Chester*, 55 Cal. 98, 102-03 (1880). Thus, the donee must perform acts in reliance on the parol gift that change the donee's position to his substantial detriment, which must be of a sufficient degree to make it unjust not to effect the attempted transfer to him. *See Andreotti v. Andreotti*, 36 Cal. Rptr. 709, 712 (Ct. App. 1964). For example, any expenditure made in reliance on the gift must add improvements to land tending to enhance its value over and above value of property to the promisee. *See, e.g., Green v. Brown*, 232 P.2d 487, 492 (Cal. 1951).

[40] The trial court found that there was no dispute as to the legal owner of the house in which Princess lives. ER at 460-61 (Finds. Fact & Concl. L.). The trial court further stated that "this transfer of real property by the Wards is an enforceable conveyance in fee simple without

condition" and concluded that "the purchase[] of the home for Princess . . . [is a] valid and enforceable gift[] from the Wards." *Id.* at 461, 466. However, the trial court did not adequately set forth its findings as to why any oral conveyance to Princess should be removed from the statute of frauds under the doctrine of estoppel. Accordingly, we reverse the court's holding that the transfer is an enforceable conveyance in fee simple.[9] We remand the issue involving the transfer of residential property from the Wards to Princess back to the trial court to determine whether there was an oral gift by the Wards which can be enforced by Princess under the doctrine of estoppel.

5. Transfer of $200,000.00 from the Wards to JR

[41] Richard's next argument on appeal is that the trial court erred in finding that the Wards gave JR a gift of $200,000.00, which was used to help JR purchase a condominium in Hawaii.

[42] The crux of Richard's contention is that JR was a caretaker of the Wards and the $200,000.00 transfer from the Wards to JR occurred in August 2003, after the Wards had been diagnosed with Alzheimer's in 2002. According to Richard, "[JR] was a caretaker and had [Mr. Moylan] sign a check to himself . . . . Fiduciaries cannot benefit from [their] acts of self-dealing . . . ." Appellant's Br. at 18-19. Richard also reasons that the finding of a gift of $200,000.00 to JR is contrary to the trial court's constructive trust determination regarding the TCDs, and it was an abuse of discretion not to order the $200,000.00 be returned to the Wards' estates. We disagree.

[43] Although the Wards were diagnosed with Alzheimer's in 2002, no evidence supports Richard's contention that either Mr. or Mrs. Moylan was incompetent when the check was issued

[9] We recognize that Mrs. Moylan has the competence and ability, with the assistance of legal counsel, to transfer property, and nothing herein is intended to restrict Mrs. Moylan's ability to execute an instrument transferring her interest in the property to Princess, if that is Mrs. Moylan's desire.

in 2003. Being diagnosed with Alzheimer's does not automatically make a person incompetent; rather, "Alzheimer's victims suffer a slow deterioration of mental capabilities as the disease progresses . . . . As [the disease] progresses, the victim gradually loses mental competency. Traditionally the legal response to an individual's loss of competency has been court ordered guardianship." Frolik & Barnes, *supra*, at 698. It was not until June 2007 that Dr. Ashe determined that Mr. Moylan was incompetent and in need of a guardian. ER at 66 (Letter from Dr. Claire K. Ashe to Joyce Tang, *Esq.* re: Mr. Moylan, June 22, 2007). Additionally, although Dr. Ashe determined that Mrs. Moylan was incompetent in June 2007, ER at 71 (Letter from Dr. Claire K. Ashe to Joyce Tang, *Esq.* re: Mrs. Moylan, June 22, 2007), Dr. Ashe updated her findings in January 2008 to reflect that Mrs. Moylan was able to function better than was stated in the June 2007 report, ER at 260-62 (Letter from Dr. Claire K. Ashe to Joyce Tang, *Esq.* re: Mrs. Moylan, Jan. 23, 2008). Even though the Wards may have been diagnosed with Alzheimer's when the check to JR was written, this court must respect the autonomy of those with mild cognitive impairments whenever possible.[10]

[44] The evidence did not suggest that either of the Wards was incompetent or being manipulated when either decided to give the $200,000.00 gift to JR. Consequently, the trial court did not commit clear error in upholding the $200,000.00 gift.

6. Interest from the Ward's Life Savings Being Paid as Fees

[45] In the Findings of Fact, the trial court did not require reimbursement of the interest earned on the TCDs during the period the TCDs were solely in the names of Princess and JR. The trial court "view[ed] any interest gained by Princess or JR during this period as acceptable

[10] *See, e.g.*, McManus, *supra*, at 595 ("[M]ildly cognitively impaired persons are particularly capable of assuming an active role in decisions about their person and property, [and] a legal system that disenfranchises this group will not produce optimal outcomes . . . .").

compensation for their efforts in taking care of their parents." ER at 466 (Finds. Fact & Concl. L.). Richard maintains that the trial court erred by allowing Princess and JR to keep the approximately $30,000.00 in interest generated by the TCD accounts during this time. Although the Majority Siblings believe the trial court acted well within its discretion regarding the interest earned on the TCD accounts, Princess and JR have transferred all of this money into the TCD accounts, including the accrued interest in question, to their parents' names, pursuant to the trial court's April 24, 2009 Order directing the removal of Princess and JR from the TCD accounts. Guardian's Report Re April 24 Order (Apr. 29, 2009). Therefore, the Majority Siblings argue, the transfer of the amounts in the TCD accounts together with interest earned renders this issue moot. We agree and this issue need not be decided by this court.

7. Sealing the Financial Records, Evidence, and Reports Concerning the Wards

[46] Richard contends that the trial court erred when it ordered that all financial records, evidence, and reports of the Wards be sealed. We review the sealing of records for abuse of discretion.

[47] Richard argues that these records should not be sealed as "guardianship proceedings rely upon the public to protect wards against negligent or intentional damaging actions by guardians against their wards." Appellant's Br. at 23-24. Richard is particularly concerned that Kurt and Princess may mismanage, waste, and/or have an interest adverse to the faithful performance of their duties, in violation of 15 GCA § 4501(1) and (5). According to Richard, unless the Wards' guardianship information is open for public inspection, the Wards' best interest and welfare will be put in jeopardy.

[48] In *Guam Publications, Inc. v. Superior Court of Guam*, 1996 Guam 6, we stated that "[a] presumption exists that the press and public have the right of access to criminal proceedings and

documents." *Guam Publ'ns, Inc. v. Super. Ct. of Guam*, 1996 Guam 6 ¶ 13. "Although the right of access may attach to a particular proceeding, it is not absolute. The presumption of openness may be overcome and result in closure of proceedings. Based on demonstrated findings, closure will occur in order to preserve higher values and if narrowly tailored to serve that interest." *Id.* ¶ 14 (internal citations omitted).

[49] Similarly, other courts have stated that courts generally possess the power to seal judicial proceedings in appropriate circumstances. *See, e.g.*, *United States v. Mann*, 829 F.2d 849, 853 (9th Cir. 1987); *Danco Lab., Ltd. v. Chem. Works of Gedeon Richter, Ltd.*, 711 N.Y.S.2d 419, 423 (App. Div. 2000); *In re Browning-Ferris Indus., Inc.*, 267 S.W.3d 508, 512 (Tex. App. 2008). Although there is a strong presumption in favor of public access to court records, a court may deny access to these records after considering all relevant factors, including "the risk of harm to the individual's privacy rights . . . maximum public access to court records, governmental accountability, public safety, and the use of the courts to resolve disputes and the effective use of the court's staff." *In re Estate of Carpenter*, 804 N.E.2d 1059, 1063 (Ohio 2004). Further, "[a]fter taking all relevant factors into consideration, the [trial] court must base its decision on a compelling reason and articulate the factual basis for its ruling, without relying on hypothesis or conjecture." *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995) (citation omitted). Failure to do so will cause the order sealing the documents to be vacated and remanded back to the trial court. *See id.* at 1434-35 (reversing and remanding matter back to trial court after failure to articulate factual basis for ruling). In stating the basis of its ruling, the trial court must weigh a party's interest in having records sealed "in the light of the public interest and the duty of the courts." *Valley Broad. Co. v. U.S. Dist. Ct. for Dist. of Nev.*, 798 F.2d 1289, 1294 (9th Cir. 1986) (internal citations and quotation marks omitted).

[50] Here, the trial court sealed the records in question, stating:

> The Wards have been an extremely private couple in their personal affairs, as well as their business dealing. Their circle of comfort is defined primarily by their family, their few friends still alive, and their employees. The evidence presented in these proceedings are public record[s]. However, in order to prevent any threat to financial well fare [sic] and security of the Wards, the Court will continue to seal all financial records, evidence and reports of the Wards.

ER at 467 (Finds. Fact & Concl. L.). In its twenty-three-page Findings of Fact, this is the only mention of the trial court's decision to seal the records.

[51] The trial court failed to clearly articulate the factual basis for its decision to seal the records. Though the trial court mentioned that the Wards valued their privacy, the court merely declared that the Wards were a private couple without discussing the reasons for this conclusion. Additionally, the court did not weigh the Wards' value of privacy against the public's right of access.

[52] "Historically, courts have recognized a 'general right to inspect and copy public records and documents, including judicial records and documents.'" *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citations omitted). This court recognizes that although there is a presumption of openness in court proceedings, particular cases may warrant a sealing of the record from the general public. Some Guam statutes specifically exempt certain records from the public realm. *See, e.g.*, 8 GCA § 11.11 (2005); 19 GCA §§ 5123-5124, 7109 (2005). However, there is no statute that exempts adult guardianship records from the public realm. We hold that the public interest in protecting the elderly from abuse and mistreatment by court-appointed fiduciaries generally outweighs a ward's privacy interest. As a result, where there is no showing of any compelling reason that guardianship records should be sealed in a specific case, the presumption of openness applies to adult guardianship records.

[53] During oral arguments, the Majority Siblings argued that the records needed to be sealed, in part to protect trade secrets of the family business because Richard's family was engaged in a competing business. Digital Recording at 10:37:25 (Oral Argument, Mar. 11, 2011). While trade secrets are routinely afforded confidential treatment, *see State ex rel. Ampco Metal, Inc. v. O'Neill*, 78 N.W.2d 921, 925-26 (Wis. 1956), "bank customers have no proprietary interest in the records kept by the banks with which they do business, the records being the property of the bank," *Norkin v. Hoey*, 586 N.Y.S.2d 926, 928 (App. Div. 1992). Thus, while the protection of trade secrets may be a legitimate reason to seal those records related to the trade secrets, the trial court did not determine all records to relate to the trade secrets, nor did the trial articulate this as a reason for sealing the records.

[54] Additionally, the trial court failed to articulate why the records should be sealed from Richard, who may have a prospective interest in the Wards' estates under Guam's intestacy statutes. *See* 15 GCA §§ 903, 905 (2005). Although the Wards and Richard have been estranged for some time, Richard is still their child and appears to be an "other person interested in the ward's estate, or having a prospective interest therein as heir or otherwise" under 15 GCA § 4303, authorizing such persons to investigate suspicion of fraud. 15 GCA § 4303 (2005). Thus, a person interested in a ward's estate has legal rights under Guam law, including the ability to have the court investigate his suspicions of fraud committed on the ward and the ability to remove a guardian. *See* 15 GCA §§ 4303, 4501 (2005). Section 4303 provides an important safeguard against abuse in the guardianship arena, and this safeguard must be preserved. It is incongruous to suggest that one who has an interest in the ward's estate should be prevented from having access to all of the guardianship records. Because Richard is potentially an interested person under the statute, he is entitled to inspect the guardianship records to

investigate whether fraud is being committed against his parents, the wards. By sealing the records from Richard, the trial court has made it near impossible for Richard to determine if Princess and Kurt are faithfully performing their duties as guardians. Thus, because no evidence has been presented to show that Richard does not have an interest in the Wards' estate, it is unjust to deny him access to the records.

[55] As a result of the above analysis, the trial court's decision to seal the financial records, evidence and reports of the Wards is vacated and remanded back to the trial court to make appropriate findings as to why the records should be sealed. Until and unless the trial court issues a decision otherwise, the records in this case shall be unsealed and open to public inspection.

B. Majority Siblings' Cross-Appeal

1. Finding that F.L. Moylan Company Owes the Wards $1,983,772.75

[56] On cross-appeal, the Majority Siblings contend that the trial court erred in finding that F.L. Moylan Company ("FLMCO"), a Guam corporation substantially owned by the Wards, owes the Wards $1,983,772.75. This finding of fact is reviewed for clear error.

[57] The trial court determined that "there was no distinction in the minds of the Wards between their personal assets and the assets of [FLMCO]" and that Mr. Moylan "operated [FLMCO] with a lack of attention to the distinction between corporate assets and personal assets." ER at 454-55 (Finds. Fact & Concl. L.). The trial court further found that "the evidence strongly suggests that [Mr. Moylan] put whatever money he had into the corporations when they needed a cash infusion, and he freely took money out when he felt there was a surplus or he wanted to acquire more property." *Id.* at 455. The trial court had a "Look Back Report" prepared by Robert Steffy, CPA, "which summarized the major assets and obligations of the

[Wards'] estates." *Id.* at 453. The trial court was "satisfied that the Look Back report [was] *generally accurate*, subject to such revisions as may be appropriate based on a more detailed review in the future." *Id.* (emphasis added). Relying on the Look Back Report, the trial court found that FLMCO "owes to its major shareholders, the Wards, $1,983,772.75 as of October 31, 2007." *Id.* at 454.

[58] The Majority Siblings argue that the evidence did not support the trial court's finding that $1,983,772.75 is owed to the Wards by FLMCO. Among their reasons, the Majority Siblings point to Mr. Moylan's "unorthodox methods" of commingling his and FLMCO's assets and that the evidence used by the trial court failed to "differentiate between or trace the monies that had been paid in by Mr. and Mrs. Moylan, Kurt, Princess and JR." Appellees' Br. at 63. Additionally, the Majority Siblings had an interest in the rental properties, with two-thirds belonging to them, so the rents received from the rental properties that were deposited into FLMCO accounts cannot be credited entirely to the Wards, as was done in the Look Back Report. ER at 333-50 (Moylan Lookback). The Majority Siblings submit that the evidence shows that:

> (1) the Look Back Report is a tracing of funds and not an audit; (2) at least 45% of the rentals treated as loans from Mr. and Mrs. Moylan belong to Kurt, Princess and JR; (3) the TCDs were transferred into 4 names in June 2005, (4) the commingling and lack of distinction between FLMCO and personal funds makes it impossible to properly account for the fund transfers and balances; and (5) due to the fact that this practice has been ongoing for at least 10-15 years, the absence of records makes it extremely difficult to verify the accuracy of the Shareholders Loan.

Appellees' Br. at 29.

[59] We agree with the Majority Siblings that the trial court committed a clear error in determining that FLMCO owed the Wards $1,983,772.75. In making this finding, the trial court seemed to rely entirely on the Look Back Report which the trial court acknowledged was only

generally accurate and subject to revision after a more detailed review. The Look Back Report also did not appear to separately account for the rental income deposited into FLMCO based on the Wards' and Majority Siblings' respective ownership interests in the rental properties. ER 333-50 (Moylan Lookback). There was also no credible evidence submitted that the amounts transferred to FLMCO were actually intended to be shareholder loans instead of additional contributions to capital. As a result, we reverse the trial court's award of $1,983,772.75 and remand the matter back to the trial court to determine the amount of the Wards' shareholder loan account with FLMCO.

2. Finding that Use of TCD Funds for FLMCO Was Not in the Wards' Best Interest

[60] The Majority Siblings argue that the trial court erred in finding that the transfer of TCDs originally in the Wards' name to Princess and JR was "inconsistent with [Mr.] Moylan's business and personal practices," ER at 455 (Finds. Fact & Concl. L.). They assert that the transfers of funds to FLMCO was a practice instituted by Mr. Moylan, that the continuation of FLMCO was needed to provide Princess and JR with employment so that they can continue to be caregivers for their parents, and that FLMCO paid for Mr. and Mrs. Moylan's living expenses.

[61] According to the Majority Siblings, the TCD transfers were in the Wards' best interest:

> Considering the benefits of having Princess and JR take care of their parents, and the fact that it was always [the Wards'] intent that FLMCO provide a source of income to allow for Princess and JR to be full time care givers [sic] for them, it is very much in the best interest of Mr. and Mrs. Moylan to continue to support FLMCO.

Appellees' Br. at 65.

[62] We review the trial court's findings of fact for clear error. In its findings, the trial court expressly discussed why it believed the transfers were inconsistent with Mr. Moylan's business practices, stating:

> [Mr. Moylan] became a self-made millionaire by managing every aspect of his wealth, not letting go of any control, even in those instances when he did make outright legal transfers to his children . . . [W]hen [Mr.] Moylan wanted to use, lease, or transfer property deeded to any of his children, they were to concede to his wishes.

ER at 455-56 (Finds. Fact & Concl. L.). The trial court also spoke of Mr. Moylan's "tight fisted control" over his property, explaining that the chasm between the Wards and Richard was caused by Richard's refusal to "give back that which [Mr. Moylan] had given him." *Id.* at 456. Additionally, the trial court found that "[t]he transfers significantly depleted the only source of retirement income for the Wards by nearly 95%. There is no convincing evidence that [Mr.] Moylan ever intended 95% of his liquid cash assets, amounting to his sole lifetime savings, to be controlled by anyone other than himself during his lifetime." *Id.*

[63] In her defense, Princess argued that the "TCD transfers were intended to take advantage of prevailing interest rates at the recommendation of bank officials, to permit ease of access to [the] funds to support the on-going business affairs, and to be used for the personal needs of the Wards." *Id.* Princess testified that "the money was viewed by her parents as 'our money,' part of a family goal that each of them . . . would make a million dollars in their lifetimes." *Id.* Despite Princess's testimony, the trial court did not agree that "the funds were part of a 'family affair' of money." *Id.* Though the trial court did not find any "ill or deceitful motives on the part of either Princess or JR" and believed that it was "likely that the TCDs were transferred because of the growing difficulty of the Wards to manage their [finances]," *id.*, the trial court nevertheless concluded that the transfers were inconsistent with Mr. Moylan's business practices.

[64] Given the trial court's finding that the transfers depleted the Wards' retirement income by nearly ninety-five percent, we do not find that the trial court made a clear error in its determination. As a result, the trial court's finding that the TCD transfers were inconsistent with

Mr. Moylan's business and personal practices and that use of the TCDs for FLMCO was not in the Wards' best interest is affirmed.[11]

3. Imposition of a Constructive Trust on the 2007 TCD Transfers

[65] The Majority Siblings' final issue on cross-appeal is their belief that the trial court erred in imposing a constructive trust on the TCD transfers, which is reviewed for an abuse of discretion.

[66] We adhere to the general principle that "[t]he primary reason for imposing a constructive trust is to avoid unjust enrichment." *Easterling v. Ferris*, 651 P.2d 677, 680 (Okla. 1982); *see also Simonds v. Simonds*, 380 N.E.2d 189, 194 (N.Y. 1978); *Dice v. White Family Cos.*, 878 N.E.2d 1105, 1112 (Ohio Ct. App. 2007); *Tupper v. Roan*, 243 P.3d 50, 57 (Or. 2010). A constructive trust "is imposed against one who . . . in any way . . . holds the legal right to property which he ought not, in equity and good conscience, hold and enjoy." *Easterling*, 951 P.2d at 680. Additionally, "[f]raud or intentional misrepresentation is not required for a constructive trust to be imposed." *GHK Assocs.*, 274 Cal. Rptr. at 182.

[67] Importantly, although the trial court imposed a constructive trust on the TCD transfers, the court did not find any ill will or deceitful motives "on the part of either Princess or JR." ER at 456 (Finds. Fact & Concl. L.). Rather, the trial court stated, "It is likely that the TCDs were transferred because of the growing difficulty of the Wards to manage their financial affairs." *Id.* at 456-57. As stated earlier, these transfers depleted the retirement income of the Wards by

[11] At oral argument, the Majority Siblings proffered that contributions of funds to FLMCO was necessary to underwrite the costs of the Wards' health insurance under FLMCO's company plan and alternative insurance with comparable coverage was not reasonably available. Digital Recording at 10:49:29 (Oral Argument, Mar. 11, 2011). There was nothing in the record to support this statement, and we decline to consider this argument apparently raised for the first time on appeal. *Tanaguchi-Ruth + Assocs. v. MDI Corp. (Leo Palace)*, 2005 Guam 7 ¶ 78 ("[A]s a matter of general practice, 'this court will not address an argument considered for the first time on appeal.'" (internal citations omitted)).

ninety-five percent, which the trial court determined was against the intent of Mr. Moylan and is the reason the court imposed the constructive trust.

[68] In his brief, Richard argues that a constructive trust cannot be formed without "wrongdoing on the part of the person against whom recovery is sought." Appellant's Br. at 22-23 (citing *Easterling*, 951 P.2d at 681). However, contrary to Richard's assertions, there need not be wrongdoing in order for a court to impose a constructive trust. In *Rawlings v. Rawlings*, 240 P.3d 754 (Utah 2010), the Supreme Court of Utah held that "unjust enrichment, in the traditional sense of an inequitable retention of benefits, will support imposition of a constructive trust, *even absent wrongful conduct*." *Rawlings v. Rawlings*, 240 P.3d 754, 769 n.62 (Utah 2010) (emphasis added). The Court of Appeals of New York similarly held that "[u]njust enrichment . . . does not require the performance of any wrongful act by the one enriched. Innocent parties may frequently be unjustly enriched." *Simonds*, 380 N.E.2d at 194 (citations omitted).

[69] In determining whether a person has been unjustly enriched, one examines whether there was:

> (1) a benefit conferred on one person by another; (2) an appreciation or knowledge by the conferee of the benefit; and (3) the acceptance or retention by the conferee of the benefit under such circumstances as to make it inequitable for the conferee to retain the benefit without payment of its value.

Rawlings, 240 P.3d at 763. Analyzing the trial court's implementation of a constructive trust using this test, we do not believe that the trial court abused its discretion. First, there was a benefit conferred onto Princess and JR — that being that Princess and JR had their names placed on the TCD accounts. Second, the evidence clearly shows that Princess and JR were aware of the benefit of being named on the TCD accounts. Finally, the trial court determined that only the interest earned on the TCD accounts during the period after the transfer was "acceptable compensation for [Princess and JR's] efforts in taking care of their parents," and it would be

inequitable for Princess and JR to have their names on the TCD accounts. ER at 466 (Finds. Fact & Concl. L.).

[70] Consequently, the trial court did not abuse its discretion in imposing a constructive trust on the TCD transfers and ordering that the TCDs be returned to the Wards.[12]

V. CONCLUSION

[71] We **AFFIRM** the trial court's appointment of Princess and Kurt as guardians with the limitations imposed by the court, and Princess may serve as the guardian over the person of Mrs. Moylan without a bond. We also **AFFIRM** the trial court's findings that (1) the transfer of $200,000.00 from the Wards to JR to purchase the condominium in Hawaii was a gift, (2) the use of the TCD funds for FLMCO was not in the Wards' best interest, and (3) the 2007 TCD transfers are a constructive trust for the benefit of the Wards. The issue involving the interest from the TCDs being paid as caregiver fees is moot and will not be considered by this court. We **VACATE** the trial court's decision to seal the financial records, evidence, and reports concerning the Wards and **REMAND** this matter back to the trial court to make a decision consistent with this opinion. We also **REVERSE** the finding that FLMCO owes the Wards $1,983,772.75 and **REMAND** this matter back to the trial court. Finally, we **REMAND** the issue involving the transfer of residential property from the Wards to Princess back to the trial

[12] The property that was put into a constructive trust has been transferred back to the Wards and, therefore, the constructive trust may no longer exist. "[A] constructive trust is a remedial device with dual objectives: to restore property to the rightful owner and to prevent unjust enrichment." *Provence v. Palm Beach Taverns, Inc.*, 676 So. 2d 1022, 1025 (Fla. Dist. Ct. App. 1996) (internal citations omitted). The act of restoring the property to the rightful owner, as was done in this case, both restored the property back to the Wards and prevented any future unjust enrichment.

court to determine whether there was an oral gift by the Wards that can be enforced by Princess under the standards previously enunciated.

Original Signed By: **Robert J. Torres**
ROBERT J. TORRES
Associate Justice

Original Signed By: **Richard H. Benson**
RICHARD H. BENSON
Justice *Pro Tempore*

Original Signed By: **F. Philip Carbullido**
F. PHILIP CARBULLIDO
Chief Justice