IN THE SUPREME COURT OF GUAM

IN THE MATTER OF THE ESTATE OF MASATAKA MARUYAMA, Deceased,

By

TRICIA TORRES CANDOLETA,
Petitioner-Appellant,

TAMIO S. CLARK, Administrator,
Respondent-Appellee.

Supreme Court Case No.: CVA12-031
Superior Court Case No.: PR0136-06

OPINION

Cite as: 2013 Guam 23

Appeal from the Superior Court of Guam
Argued and submitted on May 14, 2013
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; KATHERINE A. MARAMAN, Associate Justice; ALEXANDRO C. CASTRO, Justice *Pro Tempore*.

CARBULLIDO, C.J.:

[1] Petitioner-Appellant Tricia Torres Candoleta appeals the probate court's August 2012 order denying her motions for reconsideration and to set aside judgment based on fraud. The probate court had earlier ordered Candoleta removed as administratrix of the estate of Masataka Maruyama, found her liable for fraud, and assessed damages against her to be paid to the estate. We had previously dismissed the appeal as untimely to challenge certain earlier orders and the denial of Candoleta's first motion for reconsideration, leaving only the August 2012 order for review.

[2] We now hold that we also lack jurisdiction to review the August 2012 order, and we dismiss the appeal for lack of jurisdiction.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] In 2007, the probate court issued letters of administration to Tricia Candoleta, appointing her administratrix of the estate of decedent Masataka Maruyama. In April 2009, Seiichiro Maruyama moved the court to remove Candoleta as administratrix and impose damages against her. He alleged that Candoleta embezzled funds from a condominium unit which she was managing on behalf of the estate and that she fraudulently pressured Seiichiro into giving her a warranty deed for the unit.

[4] On June 2, 2009, the probate court ordered Candoleta removed as administratrix. The probate court then appointed Tamio Clark as the new administrator.

[5] On August 18, 2009, the probate court imposed damages against Candoleta. The probate court found that Candoleta fraudulently obtained a deed to the unit and a promissory note by misrepresenting that the estate owed her money as a property manager. It removed her as administratrix, ordered her to turn over possession of the condo, found her liable for double damages under 15 GCA §§ 2355 and 2625, found that the promissory note was null and void, and ordered her to show cause why she should not be held in contempt.

[6] On November 5, 2010, the probate court imposed damages against Candoleta. It found that the unit was appraised at $118,000.00 and imposed double damages, pursuant to 15 GCA § 2355, totaling $236,000.00.

[7] The November 2010 order was entered on the docket on February 3, 2011. The August 2009 order was entered on the docket on February 8, 2011. On February 14, 2011, the probate court entered an "abstract of judgment," which designated that Candoleta owed $236,000.00 to the estate.

[8] On February 17, 2011, Candoleta filed a motion for reconsideration under Guam Rules of Civil Procedure ("GRCP") Rules 59(e) and 60(b)(1) and (6). On March 30, 2012, the probate court denied the motion. The court entered this order on the docket on April 2, 2012.

[9] On April 13, 2012, Candoleta filed a new motion for reconsideration pursuant to GRCP 60(b)(3), (4), and (6). First, she argued that the earlier decisions of the probate court were void under GRCP 60(b)(4) because the court lacked jurisdiction to enter these decisions. Second, under GRCP 60(b)(6), Candoleta argued that the probate court erred by finding that she could have presented evidence when the court first found that she was liable for fraud, contending that her attorney's negligence prevented her from doing so. Finally, under GRCP 60(b)(3), she

argued that Clark's counsel had committed fraud upon the court by moving for damages under a statute that he should have known did not apply to her, but representing to the court that it did.

[10] Candoleta also filed a motion to set aside judgment based on fraud on the court. She argued that Kevin Fowler, attorney for Maruyama and later Tamio Clark, "switched parties" in the case to include Clark as his client, and as the recipient of the damages, but that Clark should not have been eligible to receive such damages.

[11] On August 2, 2012, the probate court denied the motions. The court stated the filing was a "second, successive 'Motion for Reconsideration'" and that Candoleta had provided no authority for the proposition that the court could entertain the motion. It found that pursuant to GRCP 60(b), it had no authority to address arguments already made in a previous motion or that were available for presentation at that time. The court found that the arguments Candoleta raised in her new motion were either the same arguments she had raised in her first motion or available for presentation at that time. Accordingly, the court denied her motions for reconsideration.[1]

[12] Candoleta filed a notice of appeal on August 30, 2012, challenging four orders: the August 2009 order, the November 2010 order, the March 2012 order, and the August 2012 order denying her later motions for reconsideration.

[13] Upon a motion filed by Respondent-Appellee Tamio Clark, this court dismissed the appeal in part. *In re Estate of Maruyama*, Supreme Court Case No. CVA12-031, Order (Dec. 14,

[1] The court referred to a singular "motion" throughout the order, except at the end where the court denied Candoleta's "motions for reconsideration." RA, tab 148 at 1-2 (Dec. & Order Re; Mot. Recons., Aug. 2, 2012) ("August 2012 order"). As no other disposition of Candoleta's Motion to Set Aside Judgment is apparent in the record, Candoleta has assumed the order disposed of both motions, and the probate court's language referred to denying the "motions," we believe the order is best read as disposing of both of Candoleta's outstanding motions. *See* Trial Ct. Docket Sheet (July 19, 2013); Appellant's Br. at 22 (Jan. 15, 2013) ("[T]he Probate Court denied all of those April 13, 2012 motions in the Probate Court's August 2, 2012 Order."); RA, tab 148 at 2 (Dec. & Order).

2012). Specifically, we held that the notice of appeal was timely only as to the August 2, 2012 order, but was untimely to appeal all other orders in the case.

II. JURISDICTION

[14] We have jurisdiction to review certain interlocutory orders in probate cases. 7 GCA § 25102(k) (2005); 15 GCA § 3433 (2005); *see also* 48 U.S.C.A. § 1424-1(a)(2) (Westlaw current through Pub. L. 113-36 (2013)). However, the parties dispute whether we have jurisdiction over the present appeal. *See infra* Part IV.

III. STANDARD OF REVIEW

[15] We may review our own jurisdiction at any time and will dismiss an appeal if we find our jurisdiction to be lacking. *People v. Angoco*, 2006 Guam 18 ¶ 2.

IV. ANALYSIS

A. Scope of the Appeal

[16] At the outset, we note that only the August 2012 order is before us, as we previously dismissed the appeal as to the earlier orders. *In re Estate of Maruyama*, Supreme Court Case No. CVA12-031, Order (Dec. 14, 2012). Candoleta argues for the first time in her reply brief that our decision on that matter was incorrect. Appellant's Reply Br. at 5-9 (Mar. 7, 2013). She states her intent to file a petition for rehearing, under Guam Rules of Appellate Procedure ("GRAP") Rule 31, once we issue an opinion, but also states that delay would cause her irreparable harm, and thus she asks us to reconsider that decision now. *Id.* at 5.

[17] Generally, issues raised for the first time in a reply brief are deemed waived. *Guam Greyhound, Inc. v. Brizill*, 2008 Guam 13 ¶ 7 n.3 (quoting *In re Estate of Concepcion*, 2003 Guam 12 ¶ 10). Even assuming Candoleta did not waive the issue, to the extent she requests

reconsideration of our December 14, 2012 order dismissing the appeal in part, we decline to do so. First, GRAP 6 provides for a motion to be filed, but does not permit reconsideration of a non-procedural motion. Guam R. App. P. 6(b). Second, GRAP 2 permits us to suspend the rules "in the interest of justice." Guam R. App. P. 2. However, we decline to do so here. Accordingly, the scope of the present appeal is limited to the probate court's August 2012 order.

B. Jurisdiction over the August 2012 Order

[18] On appeal, Clark now argues that we also lack jurisdiction to consider the appeal of the August 2012 order. Appellee's Br. at 11-18 (Feb. 27, 2013). He argues that the order denying Candoleta's second motion for reconsideration is an interlocutory order that is not among the types of orders listed in 15 GCA § 3433, which lists orders that are immediately appealable under the Probate Code. *Id.* at 11-13; *see also* 15 GCA § 3433. Further, he argues that California courts have held that such orders are not appealable under its provision for motions for reconsideration, California Probate Code section 473, because they are not listed as appealable orders under the California Probate Code. Appellee's Br. at 13. Clark also contends that an order denying a motion to vacate a judgment as void is not appealable here or under the similar laws in California. *Id.* at 14-15. In addition, he argues that the order is not appealable under 7 GCA § 25102(b) because it is not an "order made after a judgment made appealable by" 7 GCA § 25102(a), as the earlier orders in this case are not appealable under section 25102(a). *Id.* at 16.

[19] In her Statement of Jurisdiction, which was filed prior to our dismissal of the appeal in part, Candoleta argued that we had jurisdiction pursuant to 7 GCA §§ 3107(a), 3108(b), and 25102(a) and (b). Statement of Jurisdiction at 2 (Sept. 7, 2012). In her opening brief, Candoleta

states that we have jurisdiction under 7 GCA § 25102(b), as an appeal of an order made after an appealable judgment. Appellant's Br. at 1.

[20] While we have jurisdiction over appeals from final judgments, all parties agree that the present order is not appealable as a final judgment. *See* Reply Br. at 1-2; Appellee's Br. at 16. Further, there has been no final judgment in this case. *See generally* Trial Ct. Docket Sheet. Thus, we consider whether the order might be appealable interlocutorily pursuant to statute.

1. 15 GCA § 3433

[21] Though not explicitly listed by Candoleta in her Statement of Jurisdiction, we have jurisdiction over orders made appealable under the Probate Code. 7 GCA § 25102(k). In turn, 15 GCA § 3433 of the Probate Code provides a list of orders which are immediately appealable in a probate case:

> An appeal may be taken to the Supreme Court of Guam from an order of the Superior Court of Guam granting or revoking letters testamentary, letters of administration with the will annexed or letters of administration; admitting a will to probate or revoking the probate thereof; setting aside an estate claimed not to exceed $20,000.00 in value; setting apart property as a homestead or claimed to be exempt from execution; confirming a report of an appraiser or appraisers in setting apart a homestead; granting or modifying a family allowance; directing or authorizing the sale or conveyance or confirming the sale of property; settling an account of an executor, administrator with the will annexed, administrator, special administrator or trustee, or instructing or appointing a trustee; directing or allowing the payment of a debt, claim, legacy, commission or attorney's fee; determining heirship or the persons to whom distribution should be made or trust property should pass; distributing property; refusing to make any order heretofore mentioned in this Section; fixing an inheritance tax or determining that none is due; or made in the circumstances mentioned in Section 721 of this Title.

15 GCA § 3433 (2005). Notably, the section does not make appealable an order denying a motion for reconsideration, to vacate or set aside judgment, or for fraud upon the court. *See id.*

[22] This section of the Probate Code was originally codified under Guam Probate Code section 1240, which, when first enacted in 1953, was based upon the California Probate Code. 15 GCA § 3433; Guam Prob. Code § 1240 (1970); Guam Prob. Code § 1240 (1953); *see also In re Estate of Durham*, 238 P.2d 1057, 1060 n.2 (Cal. Dist. Ct. App. 1951) (quoting California Probate Code section 1240, which is virtually identical to the 1953 version of Guam Probate Code section 1240); *In re Estate of Perez*, 2005 Guam 27 ¶ 31 n.11 (generally noting the derivation of many of Guam's Probate Code sections from California). Where a Guam statute is based on a California statute, California case law interpreting the statute will be deemed persuasive. *In re Estate of Hemlani*, 2008 Guam 25 ¶ 16 (citations omitted).

[23] California courts have held that appeals from probate decisions are explicitly governed by the Probate Code, and only orders of the type listed in the statute may be appealed. *See In re Estate of Muller*, 82 Cal. Rptr. 531, 533 n.1 (Ct. App. 1969). In *Estate of Muller*, the court held that California's statute did not provide for appeals from postjudgment motions to set aside and vacate judgment, for judgment notwithstanding the directed verdict, or for a new trial, and consequently the court could not consider such orders on appeal. *Id.*; *see also Estate of Wilhelm*, 313 P.2d 161, 163 (Cal. Dist. Ct. App. 1957) (holding that, with the exception of an order granting a motion for a new trial, no appeal will lie from an order denying a motion under California Civil Procedure Code section 473). *Compare* Cal. Civ. Proc. Code § 473, *with* Guam R. Civ. P. 60(b). Another court held that "in probate matters an order denying a motion to vacate a prior order or decree is not an appealable order." *In re Estate of Rouse*, 309 P.2d 34, 37 (Cal. Dist. Ct. App. 1957) (citations omitted). In particular, the appellant in *Rouse* raised extrinsic fraud, among other issues, in his motion to vacate, but the court still maintained it lacked

jurisdiction to hear the appeal. *Id.* Another court held that denial of a *postjudgment* section 473 motion was not appealable because such an order was not listed under the Probate Code as being appealable. *In re Estate of Lawrence*, 151 P.2d 574, 575 (Cal. Dist. Ct. App. 1944). The court held as much even though the motion asserted that the earlier order, from which reconsideration was sought, was void. *Id.*

[24] The order denying Candoleta's successive motions for reconsideration and to vacate judgment is not listed among the orders made appealable by 15 GCA § 3433. *See* 15 GCA § 3433. Further, as California courts have held on similar matters, the types of orders listed are exclusive when bringing an appeal under that section, and even an allegation of fraud or of the lower court orders being void does not otherwise render the order appealable. *See Estate of Muller*, 82 Cal. Rptr. at 533 n.1; *Estate of Rouse*, 309 P.2d at 37; *In re Estate of Lawrence*, 151 P.2d at 575. Accordingly, we do not have jurisdiction for an interlocutory appeal under that provision.

2. 7 GCA § 3107(a)

[25] The first section cited by Candoleta, 7 GCA § 3107(a), provides that we "have authority to review all justiciable controversies and proceedings, regardless of subject matter or amount involved." 7 GCA § 3107(a) (2005). However, jurisdiction under that provision is typically paired with some other provision, giving us jurisdiction over, for instance, final orders, and does not otherwise trump limitations on finality. *See, e.g.*, *Leon Guerrero v. Moylan*, 2002 Guam 17 ¶ 4 (citing 7 GCA § 3107(a) and noting that we have jurisdiction to review all final judgments of the Superior Court). The order here is not appealable, as a final judgment or otherwise, and thus

without a final judgment or an explicit exception to permit an interlocutory appeal, section 3107(a) cannot provide the sole basis for interlocutory appellate jurisdiction.

[26] Further, we have held that "[d]espite statutory provisions expressing a broad grant of jurisdiction, *see* 7 GCA §§ 3107 and 3108 (1994), where other statutory provisions contain specific limitations on the ability of a party to pursue appellate relief, we must respect those restrictions." *People v. Lujan*, 1998 Guam 28 ¶ 9. The Probate Code contains a list of orders which may be appealed prior to a final judgment in probate cases, and we do not read section 3107(a) as otherwise providing an exception to that list.

3. 7 GCA § 3108(b)

[27] We also have jurisdiction over certain interlocutory orders pursuant to 7 GCA § 3108(b). We will hear such an appeal only if we determine that resolution of the questions of law on which the order is based will:

> (1) Materially advance the termination of the litigation or clarify further proceedings therein;
>
> (2) Protect a party from substantial and irreparable injury; or
>
> (3) Clarify issues of general importance in the administration of justice.

7 GCA § 3108(b) (2005). Such an appeal is discretionary, not a matter of right. *Banes v. Superior Court*, 2012 Guam 11 ¶ 18. We exercise our jurisdiction under this provision only in "exceptional circumstances." *Merchant v. Nanyo Realty, Inc.*, 1997 Guam 16 ¶ 6. Further, a party must file a petition to seek permission to appeal under this provision. Guam R. App. P. 4.2(a).

[28] Candoleta has not moved for permission to appeal under this provision. We hold that her failure to argue that this case meets the requirements of section 3108(b) or to file a petition to

seek permission to appeal constitutes a waiver of such argument, and, therefore, she fails to meet her burden to demonstrate that the above-mentioned factors apply.

[29] Candoleta does make reference to irreparable harm in not being able to challenge the earlier orders in the case. Reply Br. at 5. Even construing this as an argument to permit an appeal under section 3108(b), it lacks merit. Irreparable harm must be demonstrated, not assumed. *HongKong & Shanghai Banking Corp. v. Kallingal*, 2005 Guam 13 ¶ 22. Irreparable harm is defined as injury for which there is no adequate remedy at law. *Shin v. Fujita Kanko Guam, Inc.*, 2007 Guam 18 ¶ 11. We have considered this to be the case in instances involving the purchase and sale of real property, where specific performance may be appropriate when money damages are inadequate. *Id.* ¶ 16. Here, this case fundamentally involves an order and judgment imposing monetary damages, and there is no indication Candoleta could not otherwise obtain relief upon appeal from a final judgment. Thus, the case is not appealable as an interlocutory order under 7 GCA § 3108(b).

4. 7 GCA § 25102(a) and (b)

[30] Title 7 GCA § 25102(a) permits appeals from judgments, except interlocutory judgments "other than as provided in subdivisions (h), (i) and (j) . . . ." 7 GCA § 25102(a). Those subdivisions deal, respectively, with an interlocutory judgment in an action to redeem property from a mortgage or lien, an interlocutory judgment in an action for partition, and an interlocutory decree of divorce. 7 GCA § 25102(h)-(j). As the present order denying successive motions for reconsideration in a probate case does not fit within any of these subdivisions, we do not have jurisdiction under these provisions.

[31] Section 25102(b) provides for appeals "[f]rom an order made after a judgment made appealable by subdivision (a)." 7 GCA § 25102(b). None of the orders in this case was appealable as a final judgment or pursuant to the aforementioned interlocutory exceptions; accordingly, the August 2012 order is not appealable as an "order made after a judgment made appealable by" section 25102(a). *Id.*

5. Other Bases for Jurisdiction

[32] Finally, we note that there are no other bases for jurisdiction in this case. Certain jurisdictions recognize the collateral order doctrine, which permits appeals from non-final orders in certain situations. *Nunag-Tanedo v. E. Baton Rouge Parish Sch. Bd.*, 711 F.3d 1136, 1138 (9th Cir. 2013) (holding that to be immediately appealable under the collateral order doctrine, the order being appealed must "[1] conclusively determine the disputed question, [2] resolve an important issue completely separate from the merits of the action, and [3] be effectively unreviewable on appeal from a final judgment." (citation and internal quotation marks omitted)); *Smith v. Smith*, 146 Cal. Rptr. 3d 135, 142 (Ct. App. 2012) ("Where the trial court's ruling on a collateral issue is substantially the same as a final judgment in an independent proceeding, in that it leaves the court no further action to take on a matter which . . . is severable from the general subject of the litigation, an appeal will lie . . . ." (first omission in original) (citations and internal quotation marks omitted)). Even assuming *arguendo* we chose to recognize the collateral order doctrine, Candoleta made no request that the appeal proceed under that theory, and we will not consider it.

[33] Candoleta notes that she moved for certification before the probate court under GRCP Rule 54(b), which allows the trial court to certify an order or issue for immediate appeal "only

upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." Guam R. Civ. P. 54(b). Absent such a determination, an appeal under that provision is not proper. *See Special Invs. Inc. v. Aero Air Inc.*, 360 F.3d 989, 993 (9th Cir. 2004) (dealing with analogous Federal Rules of Civil Procedure Rule 54(b)). No such determination has been made at all in this case, let alone prior to the appeal being filed. Accordingly, we lack jurisdiction under this provision as well.

V. CONCLUSION

[34] Accordingly, we lack jurisdiction over the appeal from the August 2012 order, and we **DISMISS** the appeal. As a consequence, we will not address the merits of the case.

Original Signed By: **Katherine A. Maraman**
KATHERINE A. MARAMAN
Associate Justice

Original Signed By: **Alexandro C. Castro**
ALEXANDRO C. CASTRO
Justice *Pro Tempore*

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