

NO. CAAP-13-0000141

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

IN THE MATTER OF THE PROTECTION OF THE PROPERTY OF
MICHAEL A. PEDRO, Protected Person, v. SUSAN PEDRO;
MATTHEW PEDRO, Respondents-Appellants,

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(GUARDIANSHIP NO. 2357)

SUMMARY DISPOSITION ORDER

(By: Nakamura, C.J., Fujise and Reifurth, JJ.)

In this appeal arising out of a guardianship proceeding, Appellants Susan and Matthew Pedro (Susan and Matthew, or collectively the Pedros) appeal from the February 7, 2013 "Order Denying [the Pedros'] Motion for Reconsideration of Order Granting Petition for Approval of Ninth Triennial Accounts and Judgment Pursuant to Order Granting Petition for Approval of Ninth Triennial Accounts" (Order Denying Motion for Reconsideration) and the February 7, 2013 Judgment entered pursuant to the Order Denying Motion for Reconsideration, by the Probate Court of the First Circuit (Probate Court).¹

On appeal, the Pedros allege the Probate Court erred by (1) denying their request for evidentiary hearing on their October 22, 2012 Motion for Reconsideration (Motion for Reconsideration); (2) disregarding Article 3-5.6 of the Michael A. Pedro Trust (Trust), which they claim mandates that the Pedros could live, without charge, in the residence (Residence) purchased for Michael A. Pedro (Michael);

¹

The Honorable Derrick H.M. Chan presided.

(3) concluding that the Pedros were not immediate family members for the purposes of application of Article 3-5.6 of the Trust and that even if Susan qualified, the Residence is not being used for Michael's benefit; and (4) failing to provide specific authority for the Order Denying Motion for Reconsideration and Judgment.

After a careful review of the record on appeal, the points raised and arguments made by the parties, and applicable legal authority, we resolve the Pedros' points on appeal as follows and affirm.

I.

The Trust was created to manage the assets of Michael, who suffered permanent disability as a child due to medical malpractice. Michael was living with and being cared for by Betty Pedro, his adoptive mother and biological grandmother (Betty). Betty and her husband adopted Michael² when he was two years old and in 1984, Betty was appointed guardian over Michael's property, including the proceeds of the settlement of his malpractice claim. Betty was also authorized by the probate court to establish a trust containing all of Michael's guardianship property with First Hawaiian Bank (FHB) and Betty as co-trustees (Trustees).

The Trust was created for Michael as its "sole beneficiary." Pertinent to the issues raised in this appeal, Article 3-5.6 of the Trust empowered the Trustees "[t]o purchase a residence and furnishings with trust assets not to exceed \$175,000.00, to be used for the benefit of [Michael] and his immediate family, and to pay for all maintenance, taxes, insurance, assessments and expenses related thereto, without responsibility for diminution in value or lack of income

² The adoption decree provided, in pertinent part,

(2) From and after the effective date, for all purposes, the adopted child and adopting parents shall sustain towards each other the legal relationship of parents and child and shall have all the rights and be subject to all the duties of that relationship, the same as if said child were the natural child of said adopting parents; and all such duties and rights as between said child and any other person having a legal parental relationship to said child shall be deemed to have ceased.

Betty's husband died before the proceedings at issue here.

production[.]" The Trust also required triennial reports to the court. The Trust was approved by the Probate Court on July 13, 1984.

The Trust immediately purchased the Residence. Although Michael lived with Susan in the Residence for a period of time, by the time the Trustees filed their "Petition for Approval of Ninth Triennial Accounts Covering the Period From July 1, 2008 Through June 30, 2011, and for Instructions" (Petition), he had not lived in the Residence for more than a decade. Susan, however, continued to reside in the Residence.

In their Petition, Trustees stated,

8. Michael has asked that [Trustees] allow [Susan] to continue to live in the Residence without paying rent. Although [Trustees] want to accommodate Michael's wishes, they have concerns about (a) whether such rent-free occupation is truly in Michael's best interest, and (b) their ability to manage the Residence while Susan Pedro and other family members (Michael's brother, Matthew, for example) occupy the Residence. The Residence comprises almost 40% of the total Trust portfolio. Therefore, the Trustees need the flexibility to sell the Residence to provide for Michael['s] needs, if necessary. There have also been instances where Susan Pedro and Matthew Pedro have shown hostility to [FHB] employees who have attempted to inspect the Residence and to vendors sent by the [Trustees] to make repairs to the Residence. [Trustees] are concerned that Susan Pedro and other family members will continue to interfere with the [Trustees'] duty to protect and preserve the Residence for Michael's benefit.

In the event that the Probate Court ruled the Trust allowed Susan to continue to live in the Residence rent-free, the Trustees asked that certain conditions, including requiring Susan to pay for the costs of use and upkeep of the Residence, be authorized. They also asked that, if Susan did not comply with such conditions, they be authorized to terminate Susan's occupancy and, if she failed to vacate, that she would be liable for fair-market-value rent.

On August 21, 2012, the Pedros filed their "Partial Objection to Co-Trustees' [Petition]" (Partial Objection) primarily taking issue with the Trustees' request for authority to (1) require that Susan obtain approval for guests staying at the Residence for more than fourteen days and (2) terminate Susan's rent-free occupancy in the event she failed to comply with the Trustees' requested conditions. The Pedros maintained that they should be allowed to live rent-free in the Residence as

they are "immediate family by any definition." In support of their allegations, a declaration by Matthew was attached, in which he alleged that FHB had been "unscrupulous" and averred, amongst other things, that FHB had a conflict of interest as over fifty percent of Michael's assets were being held in a mutual fund owned by FHB.

On September 24, 2012, the Probate Court granted the Trustees' Petition and entered judgment thereon. In its order granting the Petition, the Probate Court answered the Trustees' request for instructions regarding the Residence as follows:

a. The Court finds that the purpose of the Trust is to provide for [Michael's] support, maintenance, health, and education;

b. The Court also finds that Article 3-5.6 is only one of the Trustee[s'] many enumerated powers, and is not a requirement of the Trust.

c. The Court finds that Susan Pedro does not qualify as an "immediate family member" for purposes of Article 3-5.6 of the Trust. Even if Susan Pedro qualified as an "immediate family member," the [Residence] is currently not being used as [Michael's] residence and is not being used for his benefit. Therefore, [Michael's] immediate family members are not entitled to live at the Property rent-free.

No party appealed from this judgment. Instead, on October 22, 2012, the Pedros filed their HPR Rule 36(b)³ Motion for Reconsideration. The Pedros sought reconsideration and asked that the Trust be amended to remove the requirement of a corporate trustee and to replace Betty with Susan and Matthew as co-trustees. They argued that

[t]his request is appropriate because of the unique, historical circumstances that resulted in the provision for and appointment of a corporate trustee have long since passed. It is also appropriate because of the numerous

³ Our review of the record reveals that two motions for reconsideration were filed by the Pedros on the same date, October 22, 2012. The first, a fourteen-page document, also bears a "Received" stamp on the lower right corner and a date of October 18, 2012. The second is a three-page document without a "Received" stamp. We treat the second as amending the first and refer to them collectively as the Motion for Reconsideration.

Although the Pedros cite to Hawai'i Rules of Civil Procedure (HRCP) Rule 60, HPR Rule 36(b) authorizes a probate court to set aside a judgment for certain enumerated reasons. Rather than rigidly adhering to the form of a movant's motion, appellate courts look to the substance of the motion to determine its nature. Madden v. Madden, 43 Haw. 148, 149-50 (1959) ("Under the rules, the substance of the pleading controls, not the nomenclature given to the pleading."). In any event, the Commentary to HPR Rule 36 notes that it "complies substantially with HRCP [Rule] 60" and thus case law construing HRCP Rule 60 is useful to our analysis.

violations of the Trust terms by [FHB] and its egregious breach of it's [sic] fiduciary duty in self-dealing, as later more fully described herein.

No request for an evidentiary hearing, affidavits, nor proffers of evidence were included in or with the Motion for Reconsideration.

The Trustees filed an objection to the Motion for Reconsideration, arguing that the motion should be denied because it contained no argument or evidence that could not have been previously presented. On February 7, 2013, the Probate Court entered its Order Denying Motion for Reconsideration, ruling in pertinent part that, "[t]he Court is unable to conclude that there has been a mistake, newly discovered evidence which by due diligence could not have been discovered in time before the order and judgment were issued, or any other reason justifying relief from the order and judgment." From this February 7, 2013 order, the Pedros timely appealed.

II.

The purpose of a motion for reconsideration is to allow the parties to present new evidence and/or arguments that could not have been presented during the earlier adjudicated motion. Reconsideration is not a device to relitigate old matters or to raise arguments or evidence that could and should have been brought during the earlier proceeding.

Cho v. State, 115 Hawai'i 373, 384, 168 P.3d 17, 28 (2007) quoting Sousaris v. Miller, 92 Hawai'i 505, 513, 993 P.2d 539, 547 (2000) (reviewing motion for reconsideration based on HRCF Rule 60). Our review of the Pedros' Motion for Reconsideration leads us to the conclusion that all of the arguments they made could, and should, have been made in litigating the Petition.

The Pedros argued that FHB ought to be removed as a trustee by removing the corporate trustee requirement of the Trust, that the Pedros are "immediate family" members as defined by the Hawai'i Supreme Court, and that the Trust language providing for the purchase of the Residence, Article 3-5.6, is mandatory and not precatory language.

The Pedros argued that FHB should be removed as a trustee because it violated its fiduciary duties by "seeking to sell" the Residence because FHB would place the proceeds in its own subsidiary. The Pedros presented no evidence in support of the allegation that FHB had a present intention or had taken steps to sell the Residence or explain why any evidence of the same could not have been discovered prior to the hearing on the Petition. Moreover, to the extent the Pedros' allegation was more about FHB adding assets to its subsidiary, this point was already unsuccessfully raised in Matthew's declaration in support of their Partial Objection; it was not a "new" matter.

The Pedros argued that they were "immediate family" for the purposes of application of Article 3-5.6 and "by any definition" in their Partial Objection. Therefore, the Pedros' arguments not only could have been made, but were made and rejected prior to their Motion for Reconsideration.

Similarly, whether the Trust language providing for a residence for the benefit of Michael's immediate family was mandatory was before and decided by the Probate Court in ruling on the Petition. Again, this argument was not newly discovered and therefore did not qualify as a basis for relief under HPR Rule 36.

As each of the arguments made in the Motion for Reconsideration was not based on "newly discovered evidence which by due diligence could not have been discovered in time before the order was issued," HPR Rule 36(b)(2), the Pedros have failed to show the Probate Court's denial of their Motion for Reconsideration "clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party-litigant." Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 114, 839 P.2d 10, 26-27 (1992). As a result, it is unnecessary to address the Pedros' other arguments on appeal.

III.

Based on the foregoing, the Probate Court of the First Circuit's February 7, 2013 Order Denying Respondents Susan and Matthew Pedro's Motion for Reconsideration of Order Granting

Petition For Approval of Ninth Triennial Accounts and Judgment Pursuant to Order Granting Petition For Approval of Ninth Triennial Accounts is affirmed.

DATED: Honolulu, Hawai'i, April 26, 2016.

On the briefs:

John S. Carroll
for Respondents-Appellants.

Chief Judge

Rhonda L. Griswold and
Cheryl A. Kinoshita,
(Cades Schutte)
for Co-Trustees-Appellees.

Associate Judge

Associate Judge