IN THE SUPREME COURT OF GUAM

IN THE MATTER OF THE GUARDIANSHIP OF YUK LAN MOYLAN,
Ward.

RICHARD E. MOYLAN,
Appellant,

v.

KURT MOYLAN, LEIALOHA MOYLAN ALSTON, and FRANCIS LESTER MOYLAN, JR.,
Appellees.

Supreme Court Case No.: CVA16-016
Superior Court Case No.: SP0106-07
(consolidated with SP0104-07, SP0105-07, SP0107-07, SP0110-07, & SP0111-07)

OPINION

Cite as: 2018 Guam 8

Appeal from the Superior Court of Guam
Argued and submitted on August 4, 2017
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Presiding Justice; ROBERT J. TORRES, Associate Justice; JOHN A. MANGLONA, Justice *Pro Tempore*.

CARBULLIDO, J.:

[1] Appellant Richard E. Moylan ("Richard") appeals from a Decision and Order of the Superior Court that denied his request for attorney's fees. For the reasons set forth below, we reverse in part and vacate in part, with instructions.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] This case arises out of the same highly-contested guardianship case we previously addressed in *In re Guardianships of Francis Lester Moylan & Yuk Lan Moylan*, 2011 Guam 16 (hereinafter, "*Moylan I*"), and, more recently, in *In re Guardianship of Yuk Lan Moylan*, 2017 Guam 28 (hereinafter, "*Moylan II*"). As noted in the court's prior opinions in this case, Mrs. Yuk Lan Moylan ("Mrs. Moylan") and Mr. Francis Lester Moylan ("Mr. Moylan")[1] (collectively, the "Wards") were successful businesspeople who amassed a large set of assets. In 2007, each was diagnosed with varying stages of Alzheimer's disease, which limited their ability to care for themselves and their assets. Mr. and Mrs. Moylan had four children, including Richard and Appellees Kurt Moylan ("Kurt"), Leialoha Moylan Alston ("Princess"), and Francis Lester Moylan, Jr. ("JR") (Kurt, Princess, and JR collectively, the "Majority Siblings").

[3] Faced with competing petitions to be appointed guardian of the Wards, the trial court 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. We affirmed these appointments on appeal in *Moylan I*.

[1] Mr. Moylan has passed away. *See Moylan I*, 2011 Guam 16 ¶ 1 n.1.

[4] During the course of this guardianship litigation, Richard alleged that his siblings orchestrated a scheme to put more than $1.5 million worth of Time Certificates of Deposit ("TCDs") that belonged to the Wards into the names of Princess and JR. Following the eleven-day evidentiary hearing, the court ordered that "[a]ll sums originally transferred into the names of Princess and JR shall be transferred as soon as is practicable back to the names of the Wards." Record on Appeal ("RA"), tab 285C at 22 (Finds. Fact & Concl. of L., Nov. 10, 2008). The trial court, however, did not require reimbursement of interest on the TCDs from Princess and JR to the Wards. Subsequently, the court issued another order requiring "Guardian Kurt S. Moylan . . . to remove the names of [Princess] and [JR] from any and all" of the TCDs, which had been placed into a joint account over which Princess and JR continued to maintain co-ownership following the court's November 2008 decision. RA, tab 328C (Order, Apr. 24, 2009).

[5] Among other issues, Richard appealed that portion of the trial court's findings that Princess and JR were not required to reimburse the Wards for interest on the TCDs while they were in Princess's and JR's names. We found this issue moot. *See Moylan I*, 2011 Guam 16 ¶ 45. Nevertheless, we noted that in resolving this issue below, the trial court "did not base this conclusion on any prior bad act on the behalf of any of the Majority Siblings" and "found no ill will or deceitful motives on the part of" any of the Majority Siblings. *Id.* ¶ 20 (citations and internal quotation marks omitted). Thus, we observed that "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." *Id.*

[6] Separately, the Majority Siblings cross-appealed from the trial court's order imposing a constructive trust on the TCD transfers. We affirmed this order, finding that Princess and JR would be unjustly enriched were a constructive trust not imposed. We further stated that "[t]he

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." *Id.* ¶ 70 n.12.

[7] Richard filed a motion for attorney's fees, which asserted that his role in the litigation helped to protect estate assets properly belonging to the Wards. Princess and Kurt, as court-appointed guardians of the Wards, opposed this motion.

[8] The trial court denied Richard's motion in its entirety. In doing so, the trial court reasoned that Guam's guardianship statutes permit only the guardian to apply for attorney's fees. The court also found that Richard's actions did not rise "to the level of 'protection' needed to invoke the equitable circumstances exception" because there was "no evidence of bad faith or egregiousness by the guardians to warrant protection." RA, tab 495C at 5 (Dec. & Order, July 26, 2016). Therefore, no equitable circumstances existed to warrant the grant of attorney's fees. Richard filed a timely appeal of this final order.

II. JURISDICTION

[9] This court has jurisdiction over appeals from final orders entered by the Superior Court of Guam. 7 GCA § 3107(b) (2005); 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 115-196 (2018)).

III. STANDARD OF REVIEW

[10] "[A] determination of the legal basis for an award of attorney fees [is reviewed] de novo as a question of law." *Fleming v. Quigley*, 2003 Guam 4 ¶ 14 (alteration in original) (quoting *Sessions Payroll Mgmt., Inc. v. Noble Constr. Co.*, 101 Cal. Rptr. 2d 127, 131 (Ct. App. 2000)). This includes any inquiry into whether the lower court properly applied or departed from the American Rule for the award of attorney's fees. *See id.*

IV. ANALYSIS

[11] "The award of attorney's fees in United States jurisdictions is governed by what is commonly referred to as the 'American Rule.' Under the American Rule, parties bear their own litigation expenses, including attorney's fees." *Fleming*, 2003 Guam 4 ¶ 7 (citing *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 247 (1975)). "[T]he American Rule applies in Guam," *Fleming*, 2003 Guam 4 ¶ 35, and is codified at 7 GCA § 26601(f), *id.* ¶ 12 (citation omitted). Even in jurisdictions adhering to the American Rule, however, fee-shifting is allowed in certain limited instances, including where: "(1) authorized by statute, (2) authorized by contract, or (3) allowed in judicially-established equitable circumstances." *Fleming*, 2003 Guam 4 ¶ 7 (citation omitted). "[D]epartures from the American rule are narrowly drawn exceptions." *In re Guardianship & Protective Placement of Evelyn O.*, 571 N.W.2d 700, 702 (Wis. Ct. App. 1997) (citation omitted). Thus, "[a] statute allowing attorney fees is in derogation of the common law and must be strictly construed." *Belton v. State*, 529 S.E.2d 4, 5 (S.C. 2000) (citation omitted); *see also Sule v. Guam Bd. of Dental Exam'rs*, 2008 Guam 20 ¶ 53 (finding that "absent specific statutory or contractual language to the contrary, the term 'costs' does not include attorney's fees").

[12] On appeal, Richard argues that the trial court erred in refusing to award attorney's fees because applicable guardianship statutes and equitable considerations justify the award of fees. *See* Appellant's Br. at 11-25 (Oct. 19, 2016). In opposition, the Majority Siblings argue that under Guam's guardianship statutes only guardians are permitted to seek recovery of attorney's fees and no equitable exception applies because the court found that the Majority Siblings did not act in bad faith. *See* Appellees' Br. at 10-17 (May 26, 2017). We hold that while no statute

provides for the recovery of attorney's fees in this case, Richard should nevertheless be entitled to recover his attorney's fees under the "substantial benefit" doctrine.

A. Guam's Guardianship Statutes Do Not Permit Richard to Recover Attorney's Fees

[13] Richard first argues on appeal that he is entitled to recover his attorney's fees under Guam's guardianship statutes, including 15 GCA §§ 4101-4104. *See* Appellant's Br. at 11-18. The Majority Siblings assert in opposition that only a guardian may recover from a ward's estate under Guam law. *See, e.g.*, Appellees' Br. at 15. Determining whether statutory authority permits deviation from the American Rule is a question of law, properly resolved by reference to "the statute's plain meaning and the legislature's intent." *Macris v. Swavely*, 2008 Guam 18 ¶ 17 (citation omitted); *see also Sule*, 2008 Guam 20 ¶ 53 (interpreting the term "costs" to exclude attorney's fees); *Cruz v. Cruz*, 2005 Guam 3 ¶¶ 17-23 (interpreting term "pending" to encompass appellate attorney's fees).

[14] Pursuant to 15 GCA § 4102, "[e]very guardian must pay the ward's just debts out of the ward's personal estate and the income of his real estate, if sufficient . . . ." 15 GCA § 4102 (2005). Richard asserts that because his efforts resulted in the return of more than $1.5 million in TCDs to the Wards, his costs in doing so are a "just debt" of the Wards' estate. Nothing in the text of this specific provision, elsewhere in the text of Guam's guardianship statutes, or in the legislative history indicates what debts are considered "just" or what debts properly belong to the estate.

[15] We have been able to find only one case that addressed a similar argument to that put forth by Richard on appeal, and that court rejected Richard's proffered interpretation of the term "just debts." In *Evelyn O.*, the Court of Appeals of Wisconsin rejected the argument that a statute calling for the guardian to "pay the just debts of the ward" required the payment of

attorney's fees for a government agency that successfully petitioned for the appointment of a guardian. 571 N.W.2d at 702-04 (citing Wis. Stat. Ann. § 880.22 (West 1997)). The court found that "[t]he legislature is aware of the American rule" and that the guardianship statute "is replete with provisions for the payment of attorney's fees." *Id.* at 704 (citations omitted). Thus, the court held that, without specific legislative authorization, the trial court was without authority to award attorney's fees. *Id.*

[16] Similarly here, Guam's legislature has permitted the payment of attorney's fees in multiple instances within the guardianship context. *See* 15 GCA § 4110 (2005) (permitting payment of attorney's fees from minor's estate where "a judgment is recovered by or on behalf of a minor"); 15 GCA § 4112 (2005) (determining who pays for minor's attorney's fees); *see also* 15 GCA § 4103 (2005) (allowing payment to guardian for funds advanced on behalf of ward); 15 GCA § 4307 (2005) (allowance for expenses and costs of guardian in executing trust). The legislature has not, however, provided by statute for the recovery of attorney's fees by a non-guardian that pursues litigation in furtherance of a non-minor ward's interests.[2]

[17] In contrast, other states specifically permit a non-guardian to recover attorney's fees in conservatorship, guardianship, or estate proceedings pursuant to statutory authority. *See, e.g.*, Cal. Probate Code § 2640.1 (West 2007); N.Y. Mental Hygiene Law § 81.16(f) (attorney's fees may be awarded "where the court otherwise deems it appropriate"); S.D. Codified Laws § 29A-3-720 (permitting recovery of attorney's fees for anyone that "prosecutes any proceeding in good

[2] Title 15 GCA § 4104 does appear to permit payment to a non-guardian, but only where the original funds expended by the non-guardian are spent "at the request of a ward . . . and it is shown to have been done after the refusal or neglect of the guardian to supply the same. . . ." 15 GCA § 4104 (2005). Richard has made no attempt to argue that he has satisfied the requirements of this statute. Moreover, Richard failed to cite to or rely upon this provision in his opening brief, *see* Appellant's Br. at iv-v (table of authorities), nor did he raise these arguments below, *see* RA, tab 485C (Mem. Supp. Mot. for Reasonable Att'y's Fees & Costs, Mar. 11, 2016); RA tab 488C (Reply to Opp'n to Mot. for Reasonable Att'y's Fees & Costs, Apr. 22, 2016). Therefore any argument that this section applies has been waived. *Cf. In re Estate of Concepcion*, 2003 Guam 12 ¶ 10; *People v. Taitano*, 2015 Guam 33 ¶ 36.

faith, whether successful or not"). The absence of any particular provision specifically permitting the award of attorney's fees to a non-guardian, coupled with the existence of multiple attorney's fees provisions in Guam's guardianship statutes, is strong evidence that Guam's legislature did not wish to provide a statutory exception to the American Rule in the context presented by this appeal. *Cf. Green v. Potter*, 416 N.E.2d 1030, 1032-33 (N.Y. 1980) (finding that where legislature provided for recovery of attorney's fees in multiple analogous situations but not in the exact situation presented by facts of case, exclusion by legislature was intentional and award of attorney's fees was improper), *superseded by statute as stated in In re James "AA"*, 594 N.Y.S.2d 430, 431-32 (App. Div. 1993).

[18] Richard relies upon *In re Guardianship of Bombrys*, an unpublished opinion from the Ohio Court of Appeals decided on an accelerated basis, to support his position regarding the payment of a ward's "just debts." No. L-08-1069, 2008 WL 2940798 (Ohio Ct. App. Aug. 1, 2008). There, although the court ultimately determined an award of fees was inappropriate, it found that a probate court had plenary power to consider an application for an award of attorney's fees from an unsuccessful petitioner seeking to be appointed guardian. *Id.* ¶ 22. As Richard notes, Ohio permits the payment of the "just debts" of a ward from his or her estate, similar to 15 GCA § 4102. *See Bombrys*, 2008 WL 2940798 ¶ 20 (citing Ohio Rev. Code Ann. § 2111.14(c), (e) (West 2008)). This case, however, is irrelevant to our statutory analysis. The *Bombrys* court did *not* rely upon Ohio's statutory laws to reach its decision that an award of fees is permissible; it relied upon the probate court's inherent authority (i.e., its "plenary power") to reach its conclusion. *See id.* ¶¶ 18, 22. We cannot rely on *Bombrys* to interpret our applicable guardianship statutes.

[19] Richard next argues that one basis for finding his attorney's fees are a "just debt" of the Wards' estate can be found in the text of 15 GCA § 4103. Under this statute, "[w]hen a *guardian* has advanced, for the suitable support, maintenance or education of his ward, an amount not disproportionate to the value of the ward's estate or his condition of life, . . . the guardian must be allowed credit therefor in his settlements." 15 GCA § 4103 (emphasis added). By its terms, this statute applies only to funds advanced by a ward's guardian. In analyzing an analogous provision permitting the payment of certain expenses by a "guardian," the New Hampshire Supreme Court found the phrase "the support, care, and education of the ward" does not "encompass[] legal fees incurred by an unsuccessful petitioner for guardianship . . . ." *In re Guardianship of Eaton*, 42 A.3d 799, 803 (N.H. 2012) (citing N.H. Rev. Stat Ann. § 464-A:26(I) (2011)).

[20] In *In re Guardianship of Donley*—another case heavily relied upon by Richard—the Nebraska Supreme Court found that a similar statute in Nebraska authorized the payment of attorney's fees from the assets of a ward's estate "when a good faith petition results in the appointment of a conservator." 631 N.W.2d 839, 844-45 (Neb. 2001). The court based its holding on the ground that "the cost of initiating a good faith petition for the appointment of a guardian or conservator, where such appointment is determined to be in the best interests of the protected person, constitutes a necessary expenditure on behalf of the protected person." *Id.* at 844. Richard focuses on the *Donley* court's use of the term "good faith petition," argues that his petition and subsequent litigation has all been conducted in good faith, and asserts that his petition resulted in the appointment of a guardian for the Wards. Thus, in Richard's view, the reasoning in *Donley* is fully applicable here.

[21] While the general language used by the court in *Donley* may appear to support Richard's position, a closer reading indicates that *Donley* is distinguishable. Unlike the facts presented here, where only certain of the petitioning parties were appointed guardian, the court in *Donley* was presented with a situation in which the parties stipulated to the appointment of co-conservators of the wards' estate, one of whom was the petitioner. *Id.* at 842. The *Donley* court indicated that the payment of attorney's fees would be appropriate only where the "appointment is determined to be in the best interests of the protected person"—in other words, where a petition seeking appointment of a guardian or conservator is successful. *Id.* at 844. Later in its opinion, the court appeared to qualify its general language to apply only to "a successful petitioner." *Id.* at 845. This is consistent with the text of the relevant statute at issue, which provided that a "*conservator* is to expend or distribute sums reasonably necessary for the support, education, care or benefit of the protected person . . . ." Neb. Rev. Stat. § 30-2654(a)(2) (1995) (emphasis added). This statute, like Guam's analogous statute, specifically limits its application to the "conservator"—another term for "guardian." *See Conservator*, *Black's Law Dictionary* (10th ed. 2014) ("*Conservator* is the modern equivalent of the common-law *guardian*.").

[22] In this case, the Superior Court consolidated the competing guardianship petitions. RA, tab 25C (Order to Consolidate, Oct. 2, 2007). Although this consolidated litigation did lead to the appointment of a guardian, for all practical purposes, Richard prosecuted a petition that was not successful, as he was not appointed guardian. Therefore, even under *Donley*, Richard was not a "successful petitioner" entitled to fees. *Cf. Dowaliby v. Chambless*, 544 S.E.2d 646, 647-49 (S.C. Ct. App. 2001) (finding no statutory basis to award attorney's fees to petitioner that succeeded in having guardian appointed but was not named guardian herself); *Nelkin v. Panzer*,

833 S.W.2d 267, 269 (Tex. App. 1992) (finding that statute only permitted recovery for "personal representative" of ward, which included only a successfully appointed petitioner, not the unsuccessful cross-petitioner). We find the other cases relied upon by Richard similarly distinguishable and not helpful to the court's analysis.

[23] On the facts presented here, we cannot find that Richard's attorney's fees are a "just debt" of the Wards' estate under section 4102. The other statutory provisions implicated by Richard's appeal permit payments from a ward's estate solely to the guardian. Richard is therefore not entitled to recover his attorney's fees under any guardianship statute.

B. Richard May Recover His Attorney's Fees Under the "Substantial Benefit" Doctrine, Which is a "Commonly Recognized" Equitable Exception to the American Rule

[24] While no applicable statute permits recovery by Richard, "attorney's fees may" nevertheless "be awarded if authorized by . . . equitable circumstances." *Duenas v. George & Matilda Kallingal, P.C.*, 2012 Guam 4 ¶ 48; *see also Fleming*, 2003 Guam 4 ¶ 7. "The commonly recognized equitable exceptions to the American Rule include the common fund, substantial benefit, private attorney general, third-party tort, and bad faith theories of recovery." *Fleming*, 2003 Guam 4 ¶ 7 n.3 (citing *Trope v. Katz*, 902 P.2d 259, 263 (Cal. 1995) (en banc); *Young v. Redman*, 128 Cal. Rptr. 86, 92 (Ct. App. 1976)); *see also Deleon Guerrero v. Commw. Dep't of Pub. Safety*, 2013 MP 17 ¶ 27 (Manglona, J.). While we noted the existence of the "substantial benefit" doctrine in *Fleming*, 2003 Guam 4 ¶ 7 n.3, we have not yet determined whether this exception applies in Guam.

[25] The substantial benefit doctrine is "an extension of the common fund doctrine," which "applies when no common fund has been created, but a concrete and significant benefit . . . has nonetheless been conferred on an ascertainable class." *Consumer Cause, Inc. v. Mrs. Gooch's*

Nat. Food Mkts., Inc., 25 Cal. Rptr. 3d 514, 520 (Ct. App. 2005), *disapproved of on other grounds*, *Hernandez v. Restoration Hardware, Inc.*, 409 P.3d 281 (Cal. 2018). This doctrine "rests on concepts of unjust enrichment: those enriched by an economic windfall should bear their fair share of the costs expended to create the benefits obtained." *Ciani v. San Diego Tr. & Sav. Bank*, 30 Cal. Rptr. 2d 581, 590 (Ct. App. 1994); *Pipefitters Local No. 636 Defined Benefit Plan v. Oakley, Inc.*, 104 Cal. Rptr. 3d 78, 81 (Ct. App. 2010) ("principal purpose [of substantial benefit doctrine] is to avoid enriching one party whose legal action has substantially benefitted the other"). "Exercising its equitable discretion, the trial court determines whether the interests of justice require those who received a benefit to contribute to the legal expenses of those who secured the benefit." *Pipefitters*, 104 Cal. Rptr. 3d at 81.

[26] When "one individual's action has . . . obtained a decision providing substantial pecuniary benefits to other persons . . . , courts can reasonably conclude that although an award of attorney fees . . . will render the benefited parties 'involuntary clients' of the attorneys, equitable considerations justify charging those who have obtained an economic windfall with the costs of obtaining such benefits." *Woodland Hills Residents Ass'n, Inc. v. City Council*, 593 P.2d 200, 215 (Cal. 1979) (citation omitted). Thus, "[s]o long as the costs bear a reasonable relation to the benefits, the 'involuntary client' who retains a substantial gain from the litigation will generally have no just cause to complain." *Id.* at 215-16 (citation omitted).

[27] Many jurisdictions have adopted the substantial benefit exception to the American Rule. *See, e.g.*, *id.*; *Crandon Capital Partners v. Shelk*, 157 P.3d 176, 181 (Or. 2007); *Thomas v. City of N. Las Vegas*, 127 P.3d 1057, 1063-64 (Nev. 2006) (adopting rule but finding it inapplicable to facts of case). In California, courts "have applied the 'substantial benefit' theory in a wide variety of circumstances . . . ." *Serrano v. Priest*, 569 P.2d 1303, 1309 (Cal. 1977). At least one

California court has applied this doctrine in the context of conservatorship proceedings where the petitioner personally received no benefit from the litigation. *See In re Moore's Estate*, 65 Cal. Rptr. 831, 833-34 (Ct. App. 1968). Other courts have reached similar conclusions. *See In re Lux's Estate*, 389 A.2d 1053, 1061 (Pa. 1978) (finding that where attorney's efforts resulted in recovery of assets for estate and litigation was not purely adversarial, lower court properly ordered estate to pay his fees); *In re Estate of Perry*, 978 S.W.2d 28, 32-33 (Mo. Ct. App. 1998) (petitioner, a potential beneficiary, was entitled to attorney's fees from estate after securing substantial benefit of an accounting of the estate even though petitioner failed in attempt to remove personal representative of estate). In *Moore's Estate*, the court was presented with an appeal from the guardian of a decedent's estate asserting that the estate should not be required to pay the attorney's fees of a petitioner who unsuccessfully sought to be appointed guardian. 65 Cal. Rptr. at 832. The court found that as a general principle, an unsuccessful petitioner could not recover attorney's fees because no statute permitted recovery. *Id.* As the court stated, "[o]ur question then becomes whether in the absence of statutory authorization, one who in good faith initiates caretaker proceedings in which a guardian or conservator other than the initiator is appointed may be awarded his costs and counsel fees." *Id.* at 833. The court answered this question in the affirmative. *Id.*

[28] The *Moore's Estate* court reasoned that "a petitioner performs a service to the disabled by notifying the court of the disabled's condition and need for protection. If compensation were not available, responsible parties might be discouraged from initiating effective action and becoming parties to caretaker proceedings whose primary benefits accrue to other persons." *Id.* The court noted prior California precedent that expressed "[a] policy of encouraging prospective guardians to act in appropriate cases . . . ." *Id.* (citing *In re Bundy's Estate*, 186 P. 811 (Cal. Dist. Ct. App.

1919)). Further, "[i]n analogous situations the broad policy of encouraging persons acting in good faith in the interests of an incompetent has been followed, and compensation has been generally allowed for professional services." *Id.* (collecting cases). For example, the California Supreme Court had previously applied the "common fund" doctrine in the context of estate litigation. *Id.* at 834 (citing *In re Estate of Stauffer*, 346 P.2d 748, 752 (Cal. 1959)); *see also In re Lundell's Estate*, 237 P.2d 62, 63 (Cal. Dist. Ct. App. 1951). The court thus found that, although petitioner did not stand to personally benefit, "[i]n a very real sense[,] [petitioner's] action preserved a fund for the benefit of the [ward] and her heirs." *Moore's Estate*, 65 Cal. Rptr. at 834. To be entitled to attorney's fees, a "petitioner[] for fees from an estate must convince a court—which in most instances will have firsthand knowledge of the services performed—that they have rendered services of value in order to collect." *Id.* "In representative and derivative suits these matters have been capably handled by the courts for many years, and we see no reason why similar success may not accompany comparable activities in the probate field." *Id.*[3]

[29] This court has already recognized many of the same policy considerations underlying the reasoning of the court in *Moore's Estate*. In *Moylan v. Citizens Security Bank*, for example, we recognized that the legislature has "establishe[d] a clear, definite public policy to 'recognize that abuse, neglect and exploitation of elderly or adults with a disability are problems that require attention and intervention.'" 2015 Guam 36 ¶ 29 (quoting 10 GCA § 21001 (amended by Pub. L. 31-278:2 (Dec. 28, 2012))). We therefore hold that the "substantial benefit" exception to the American Rule applies in Guam and may be applied in the context of guardianship proceedings.

[3] Since the decision in this case, the California Legislature has passed legislation that permits an unsuccessful petitioner to recover attorney's fees under certain circumstances. *See* Cal. Probate Code § 2640.1 (West 2007).

[30] In determining whether the "substantial benefit" doctrine applies, the focus of the court's analysis is not upon the opposing parties' bad faith (or lack thereof). *See B & P Constr. Co.*, 759 P.2d 208, 209 (Okla. 1988) (noting that whether the "opponent acted in bad faith, vexatiously, wantonly, or for oppressive reasons, or if the successful litigant has conferred a substantial benefit on a class of persons" are separate "circumstances" to be considered by the court). Rather, the relevant question is whether a substantial benefit has been conferred on an ascertainable class, which is generally decided on a case-by-case basis. *Bosch v. Meeker Coop. Light & Power Ass'n*, 101 N.W.2d 423, 426-27 (Minn. 1960) ("As to what is a 'substantial benefit' is for the trial court to determine in the light of the facts and circumstances of the particular case.").[4]

[31] Here, Richard has undoubtedly conferred a "substantial benefit" on the Wards through his litigation efforts that resulted in more than $1.5 million in TCDs being returned to the Wards. Title to these funds was originally taken out of the Wards' names, but ultimately returned through Richard's efforts. *See* RA, tab 328C (Order, Apr. 24, 2009). The Wards are clearly identifiable and plainly benefited from having misappropriated funds returned to their name. *Cf. Moylan I*, 2011 Guam 16 ¶¶ 69-70 (finding that transferring TCDs to anyone other than the Wards would result in unjust enrichment). The reasonable attorney's fees expended by Richard in his effort to have the TCDs returned (as opposed to the fees Richard incurred undertaking other aspects of his petition) are therefore properly shifted to the Wards. On remand, the trial court should calculate the amount that Richard is entitled to in the first instance.

[4] The court is aware that jurisdictions have articulated various alternative tests in determining whether the substantial benefit doctrine applies. These alternative tests vary in relatively minor respects. *Compare Ciani*, 30 Cal. Rptr. 2d at 590, *with Thomas*, 127 P.3d at 1063 (quoting *Kinney v. Int'l Bhd. of Elec. Workers*, 939 F.2d 690, 692 n.1 (9th Cir. 1991)), *with Polonski v. Trump Taj Mahal Assocs.*, 137 F.3d 139, 145 (3d Cir. 1998). We are satisfied that Richard has conferred a "substantial benefit" upon the Wards under any of these various tests and therefore do not address today which (if any) of the alternative articulations of this test applies in Guam.

[32] In addition to his efforts regarding the return of the TCDs to the Wards, Richard has also requested attorney's fees for his efforts: (i) in maintaining title in the name of the Wards to the residence where Princess currently resides; and (ii) in recovering shareholder loans payable to the Wards. *See* RA, tab 485C at 3-4 (Mem. Supp. Mot. for Reasonable Att'y's Fees & Costs, Mar. 11, 2016). Both of these issues were addressed in our prior opinion in *Moylan I*. *See Moylan I*, 2011 Guam 16 ¶¶ 34-40, 56-59. At the time that Richard filed his motion for attorney's fees in the Superior Court, however, these issues were not ripe for determination because they were not subject to final resolution. *See generally People v. Gay*, 2007 Guam 11 ¶ 8 (The court will "decline to hear . . . question[s]" where issuing an order and mandate "would exceed prudential limits imposed by the ripeness doctrine."). Indeed, both issues were the subject of Richard's appeal filed in *Moylan II*, 2017 Guam 28. For this reason, we vacate the trial court's order to the extent that it resolved Richard's claim of attorney's fees with respect to the transfer of real property to Princess or loans owing to the Wards and remand with instructions to either: (i) dismiss that portion of Richard's motion without prejudice; or (ii) upon final resolution of those issues, determine whether Richard is entitled to attorney's fees in accordance with the legal principles set forth above. *See Graham v. Hartford Life & Accident Ins. Co.*, 501 F.3d 1153, 1161-63 (10th Cir. 2007).

V. CONCLUSION

[33] For the reasons discussed above, we **VACATE** that portion of the trial court's July 26, 2016 Decision and Order to the extent that it resolved Richard's claim for attorney's fees based upon litigation that was the subject of the court's opinion in *Moylan II*, 2017 Guam 28. We **REMAND** those issues and direct the Superior Court to dismiss that portion of Richard's motion without prejudice or, upon final resolution of those issues, determine whether Richard is entitled

to attorney's fees in accordance with the legal principles enunciated by the court in this Opinion. Additionally, we **REVERSE** that portion of the trial court's July 26, 2016 Decision and Order regarding the payment of attorney's fees for Richard's litigation efforts that resulted in the return of the TCDs to the Wards and **REMAND** the matter to the Superior Court so that it may calculate the appropriate amount of attorney's fees in the first instance.

/s/
ROBERT J. TORRES
Associate Justice

/s/
JOHN A. MANGLONA
Justice *Pro Tempore*

/s/
F. PHILIP CARBULLIDO
Presiding Justice