

IN THE  
**SUPREME COURT**  
OF THE  
**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

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**In the Matter of:**

ALFRED F. FLEMING, ROSALIA A. FLEMING,  
MICHAEL A. FLEMING, DEBORAH A. FLEMING and  
ELLEN F. IKEHARA,

Petitioners-Appellants,

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Supreme Court Appeal No. 03-038-GA  
Superior Court FCD Case No. 03-0044(T)

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**OPINION**

**Cite as: *In re Fleming, 2005 MP 13***

Argued and submitted on August 20, 2004  
Tinian, Northern Mariana Islands

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BEFORE: MIGUEL S. DEMAPAN, *Chief Justice*; JOHN A. MANGLONA, *Associate Justice*; JESUS C. BORJA, *Justice Pro Tem*

DEMAPAN, Chief Justice:

¶1 Appellants Deborah A. Fleming, Michael A. Fleming, and Ellen Fleming Ikehara appeal the trial court's November 5, 2003 Order in this guardianship matter denying their petition to partition and distribute Lot 25 T 04 located on Tinian. The Co-guardians appeal on the grounds that their Constitutional right to due process of law under the Fifth and Fourteenth Amendments to the US Constitution and Article I, Section 5 of the NMI Constitution as to the property rights of Appellant Rosalia A. Fleming were violated. We AFFIRM the decision of the trial court.

## I.

¶2 Deborah A. Fleming, Michael A. Fleming, and Ellen Fleming Ikehara were appointed co-guardians to care for their parents Alfred F. and Rosalia A. Fleming (the "Wards") by the trial court on March 12, 2003. The court provided that Deborah A. Fleming would be lead co-guardian for purposes of any filings or petitions with the court, but all co-guardians (collectively, "Co-guardians") would act jointly on matters relating to the wards. The court gave the Co-guardians power to transfer, sell or lease the Wards' property, but required that any transfer be presented to the court for "review, consideration and approval." *In re Fleming*, FCD Civ. No. 03-0044 (N.M.I. Super. Ct. Mar. 12, 2003) ([Unpublished] Order of Guardianship at 3).

¶3 The Co-guardians subsequently brought a petition for court approval of several real property transactions, including a request to partition and distribute Lot 25 T 04 located on Tinian. The Co-Guardians sought to issue and convey (10) warranty deeds from Rosalia as Grantor to her siblings and their issue, as well as an eleventh warranty deed for Rosalia and her immediate family. *In re Fleming*, FCD Civ. No. 03-0044 (N.M.I. Super. Ct. Nov. 5, 2003) ([Unpublished] Order Denying Guardian-Petitioner's Petition for Approval of Disposition of Ward's Property at 1) ("Order of Denial").

¶4 On August 22, 2003, at the scheduled hearing, Manuela Aldan Demapan appeared with an unrecorded deed of gift (the "Deed of Gift") allegedly executed by Rosalia on or about December 14, 1981, which conveyed Lot 025 T 04 to the same siblings in undivided shares except for Ursula Untalan

Fleming, who was not included. The deed was subsequently recorded, with the Commonwealth Recorder's Office, during the pendency of this action. The trial court did not hear evidence or make findings regarding the 1981 Deed of Gift. The hearing was continued to September 26, 2003, and in the interim, the Co-guardians, expecting the court to rule on the legitimacy of the Deed of Gift, published a Notice of Continued Hearing regarding Lot 025 T 04 (Tinian) in the Marianas Variety News on September 17 and 24, 2003.

¶5        The hearing was eventually held on October 24, 2003. At that time, the court decided not to hear the issue of title to the real property in the context of the guardianship proceeding. Instead, the trial court issued a decision dated November 5, 2003, in which it directed the parties to pursue an action to quiet title to the land, or, alternatively, to settle the dispute amongst the family without resort to further litigation by negotiating a series of quitclaim deeds. Order of Denial at 2.

¶6        The Co-Guardians filed a timely appeal.

## II.

¶7        We review *de novo* that portion of the Superior Court's decision in which the Co-guardians have alleged a violation of their constitutional rights. *See, Ada v. Sablan*, 1 N.M.I. 415, 422 (1990); *Estate of Taisacan v. Hattori*, 4 N.M.I. 26, 29 (1993). We review under an abuse of discretion standard the question of whether the Superior Court erred in severing the issue of title. *See Dilutaoch v. C & S Concrete Block Products*, 1 N.M.I. 478, 482 (1991).

## III.

### **1. Constitutional Issue**

¶8        The Co-guardians argue that they have two constitutionally protected property rights at issue: the ownership of Lot 025 T 04 by Rosalia and the Co-guardians' duty to refute, defend or be heard on legal claims on behalf of Rosalia. Even assuming the Co-guardians are correct in their statement of relevant case law, they appear to be under a grave misconception that somehow the trial court has deprived Rosalia of her property interest in the land. The trial court has done no such thing. It denied the petition, to partition and distribute parcel 025 T 04, brought during the course of the guardianship proceeding because a question arose regarding the title to the land. It made no substantive findings.

¶9       The Co-Guardians cite to cases in which a party was denied the opportunity to present evidence before a court which then made a substantive decision affecting that party. See *Anderson Fed. Sav. and Loan Ass'n v. Davidson*, 364 N.E.2d 781, 784 (Ind. Ct. App. 1977); *Kelly v. Kelly*, 732 A.2d 808 (Conn. App. Ct. 1999). What the Co-guardians fail to see is that the trial court did not deny the Co-guardians the opportunity to litigate the issue of title. The only substantive finding the trial court made was that “the quitclaim deed, Agricultural Tract Homestead Lot 025 T 04, clearly convey[ed] this interest, property to Rosalia Fleming for herself and her heirs.” *In re Fleming*, FCD Civ. No. 03-0044, *Transcript of Superior Court Proceedings Before the Honorable Robert Naraja, Presiding Judge*, Aug. 22, 2003 at 17 (Excerpts of Record at 81). This finding was not contested by any of the parties. The trial court has made no finding regarding the validity of the 1981 Deed of Gift, nor has it made any finding regarding the current status of the ownership of Lot 25 T 04. There has been no substantive finding which has in any way deprived Rosalia or the Co-guardians of any property right. Accordingly, we find that there has been no violation of the Co-guardians’ or their Wards’ rights under the U.S. and N.M.I. Constitutions.

## **2. Procedural Issue**

¶10       Rule 42(b) of the Commonwealth Rules of Civil Procedure provides as follows: “[t]he court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, . . . or of any separate issue . . . .” Com. R. Civ. P. 42(b). A trial court has discretion to sever claims or order separate trials in the interest of effective judicial administration. *Dilutaoch*, 1 N.M.I. at 484.

¶11       As our Rule 42(b) has a federal counterpart, it is appropriate to consult interpretations of the federal rule as well. See *Ada v. K. Sadhwani's, Inc.*, 3 N.M.I. 303, 311 n.3; *Bank of Saipan v. Superior Ct. (Carlsmith)*, 2001 MP 7 ¶ 19 n.5, 6 N.M.I. 264, 268-69. While a court should consider the convenience of both the parties and itself, as well as avoid prejudice and minimize expense and delay, the court is expected to consider a choice most likely to result in a just and final disposition of the litigation. *In re Bendectin Litigation*, 857 F.2d 290, 307 (6th Cir. 1988). However, in the end, “[i]t is the interest of efficient judicial administration that is to be controlling, rather than the wishes of the parties.” *Id.*; 9 CHARLES ALAN WRIGHT, ET AL., FEDERAL PRACTICE AND PROCEDURE § 2388 at 473-74 (1995).

¶12 While it is true that at one point the court indicated it would take testimony on the issue of the title to Lot 25 T 04, the trial court clearly changed its mind. While the Co-guardians brought the petition to partition and distribute Lot 25 T 04 during the course of the guardianship, they never filed a separate petition to quiet title. Pursuant to Rule 42(b), the trial court was entitled to either consolidate a quiet title proceeding with the guardianship proceeding or require the quiet title proceeding to be brought separately. Here, the trial court decided to require the quiet title proceeding to be brought separately. In either case, the law is clear that a judge has discretion as to how to handle his or her cases, and we do not see that the trial judge has committed any abuse of his discretion which could have caused undue prejudice in this case. Com. R. Civ. P. 42(b).

#### IV.

¶13 In conclusion, we AFFIRM the trial court's decision and order which denied the petition to partition and distribute Lot 25 T 04 because the issue of title had not yet been determined.

SO ORDERED this 14th day of September 2005.

/s/

MIGUEL S. DEMAPAN  
Chief Justice

/s/

JOHN A. MANGLONA  
Associate Justice

/s/

JESUS C. BORJA  
Justice *Pro Tem*