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

IN RE THE MATTER OF THE ESTATE OF LARRY LEE HILLBLOM,
Deceased.

SALLY BAUER, ACTING ON HER OWN BEHALF AND AS GUARDIAN AD LITEM FOR ELIZABETH BAUER AND CHRISTOPHER BAUER,

Petitioners-Appellants,

v.

THE LARRY L. HILLBLOM FOUNDATION, INC., et al.,

Respondents-Appellees.

SUPREME COURT NO. 2008-SCC-0009-CIV
SUPERIOR COURT NO. 95-626

Cite as: 2011 MP 5

Decided May 24, 2011

Sally Bauer, Pro Se, New York for Petitioners-Appellants
William M. Fitzgerald, Robert A. Julian, and Kimberly S. Morris, Saipan, Northern Mariana Islands, for Respondents-Appellees
BEFORE: MIGUEL S. DEMAPAN, Chief Justice; JOHN A. MANGLONA, Associate Justice; EDWARD MANIBUSAN, Justice Pro Tem.

DEMAPAN C.J.:

¶ 1 Appellant Sally Bauer, acting on her own behalf and as guardian ad litem for her children Elizabeth and Christopher Bauer, alleges that Larry Lee Hillblom ("Hillblom"), deceased, fathered her two children, and that as his biological children, they are entitled to a portion of his estate. Appellee, the Larry L. Hillblom Foundation ("Foundation"), disputes that Hillblom fathered Bauer's children, but that regardless of her paternity assertion, the probate court forever closed the estate. We hold that the Hillblom estate is closed, and that Bauer cannot bring any claim against the estate, its distributed assets, or any of the distributees. Therefore, we AFFIRM the trial court's order that denied Bauer's request to reopen the Hillblom probate estate.

I

A. The Hillblom Estate

¶ 2 Hillblom, cofounder of DHL Worldwide Express, died on or about May 21, 1995, in a plane crash between the islands of Saipan and Pagan. The probate of his estate then commenced, and shortly thereafter, litigation arose between the trustees of a charitable trust established by his will and certain children who claimed they were his biological offspring and entitled to a portion of his estate. This Court ordered the estate's executor, the Bank of Saipan, to defend against the heirship claims. *See In re Estate of Hillblom*, 1996 MP 21 ¶ 11. In order to complete the prompt and orderly disposition and settlement of the estate, the trial court ordered the executor to publish extensive notice of the probate proceedings. This notice exceeded the Commonwealth's ordinary statutory requirements by mandating that notice be published in the Commonwealth, Guam, the Republic of Palau, the Federated States of Micronesia, the Republic of the Philippines, Vietnam, California, and Idaho. *In the Matter of the Estate of Larry Lee Hillblom*, No. 95-626-D (NMI Super. Ct. April 4, 1997) (Order at 1).[1] A subsequent notice order stated that "[n]o claim of heirship will be accepted by this Court after (August 3, 1997), and any person not timely filing an appropriate heirship claim within the time frame stated above shall be barred from sharing in the distributions of the assets under this Court's jurisdiction." Order to Appear to All Persons Claiming an Heirship Interest in the Estate of Larry Lee Hillblom at 1, April 4, 1997 ("Notice Order"). The Notice Order explicitly applied "to all persons including infants, minor children and adults." *Id*.

¶ 3 In 1997, the executor negotiated, and the probate court approved, the Heirship Settlement Agreement with the Heir Claimants, which created a mechanism for settling all of the timely filed claims. Order Approving Heirship Settlements, Dec. 17, 2007 ("HSA"). The HSA specified a formula for the

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[1] This appeal concerns numerous orders issued by the trial court regarding the Hillblom probate. In the interest of citation brevity, whenever this opinion cites to a subsequent order emanating from the *In the Matter of the Estate of Larry Lee Hillblom*, No. 95-626-D case, only the title of the order, page reference, and date shall be provided.

distribution of the estate between the charitable trust and the Qualified Heir Claimants ("QHCs"), and it further provided for DNA testing of the Heir Claimants to determine which, if any of them, were QHCs. *Id*. The trial court explicitly stated that "any claim to a share in the Estate as an heir of Hillblom not filed as of August 3, 1997 is barred as untimely." *Id*. at 2.

¶ 4 Following the issuance of the HSA, the distributees decided to purchase an indemnity insurance policy from American International Specialty Lines Insurance Company ("AISLIC"). The policy named the following parties as insureds: The Larry L. Hillblom Charitable Trust, the Larry L. Hillblom Foundation, the Qualified Heir Claimants, and the Bank of Saipan as the estate's executor. Appellee's Supplemental Excerpts of Record ("SER") at 298. The policy indemnifies the insureds "for any and all claims, settlements, or judgment on any claims that the claimant has a right to the Estate or proceeds thereof as a biological child of Larry L. Hillblom." *Id*. The indemnity policy pays for the defense of any claim after the insureds' payment of a self-insured retention ("SIR") of $250,000 per late claim is exhausted. *Id*. The SIR applies to the first four claims. *Id*. The policy is not general liability insurance covering untimely claims made by children fathered by Hillblom. Instead, the insureds' purchased the policy to protect themselves from litigation costs stemming from a late claimant attempting to obtain proceeds from the estate or its distributees.

¶ 5 Three years later, in April 2000, the distributees and the executor entered into a Global Settlement Agreement ("GSA") for the purpose of distributing the estate assets and closing the probate estate. The trial court approved the GSA, closed the probate estate, discharged the executor, and guaranteed the distributees "everlasting peace." Order Approving Global Settlement Agreement and Final Distribution of Estate Assets and Liabilities at 6, April 7, 2000; Order Acknowledging Distributions, Discharging Executor, and Granting Exoneration of Executor, May 11, 2000; *see also* SER at 347-509 ("Estate Closure Orders"). By closing the probate estate and discharging the executor, the trial court formally ruled that the executor fulfilled its duties to defend the estate against pretermitted heirship claims; thus, there is no longer any estate representative to defend against late claims. Furthermore, the trial court made a final distribution of estate assets, leaving nothing in the estate for a late claimant to receive. In the event that a late claimant succeeded in winning a judgment against the estate, the distributees would be jointly and severally liable for that award.[2] The trial court also certified the Estate Closure Orders for immediate appeal, and in the certification order it explicitly noted that "interested parties might take a contrary position as to when the time to appeal expires. Good cause exists to remove any uncertainty on that question, given that a number of parties reasonably seek to rely on the finality of this order in making arrangements for future contingencies." Order Approving Global Settlement Agreement and Final

[2] If a pretermitted heir late claimant did win a judgment against the estate, however, the indemnity policy would protect the insureds for up to $30,000,000.

Distribution of Estate Assets and Liabilities at 7. While the publication of the Estate Closure Orders occurred throughout the world, no person or entity filed an appeal.

¶ 6 Then, in March 2002, the trial court found that late claims could not reach distributed estate assets, as a matter of law, and issued an injunction barring and enjoining any claims against the estate, distributed assets, the executor, or the distributees. Order Approving Termination of Liquidating Trust Pursuant to Final Estate Closure Orders, Mar. 8, 2002 ("Injunction Order"). The trial court issued the Injunction Order after the Liquidating Trustee Jose R. Lifoifoi gave notice of Bauer's claim against the estate, and the Injunction Order mentioned Bauer by name in explicitly barring her claim.[3] Injunction Order at 10. Like the rest of the trial court's orders pertaining to the estate, neither Bauer nor anyone else appealed the Injunction Order. In summary, the trial court issued three sets of orders that bar the filing of late claims: (1) the 1997 HSA Order; (2) the 2000 Estate Closure Orders; and (3) the 2002 Injunction Order (collectively referred to as the "Bar Orders"). These orders were never appealed.

B. Sally Bauer's Claims

¶ 7 Bauer has made several unsuccessful attempts to receive monetary compensation from the Hillblom estate and/or the indemnity policy. She has never, however, provided any evidence demonstrating that she knew Hillblom or that he fathered her two children. Background research conducted by the Foundation indicates that Hillblom never visited Buffalo, New York, which is where Bauer lives. The estate made numerous requests to Bauer and her various attorneys since 2001 to produce evidence substantiating her claim, but she never provided anything to prove that Hillblom fathered her children.

¶ 8 Bauer claims that she first learned of Hillblom's death from the May 2000 *Dateline* television program that discussed his life, the probate claims made by women he allegedly met when they worked as exotic dancers, and the settlements received by the children of four of the women. In October 2001, Bauer first made herself known by sending a letter to the Foundation's legal counsel, Robert Julian, claiming that she too used to be an exotic dancer, and that Hillblom may have fathered her daughter and possibly her son. The letter stated, however, that she was "uncertain about the issue." SER at 7-8. Julian promptly notified Liquidating Trustee Lifoifoi, who subsequently notified the Commonwealth Superior Court. Julian also notified AISLIC of the claim, which triggered the distributees' SIR obligation. Julian contacted Bauer and informed her that she should retain counsel. She acted on his advice and hired Mark Williams, an attorney licensed in the Commonwealth. Williams notified AISLIC that Bauer was weighing all of her options in moving forward, but Bauer failed to file anything in 2001 or 2002. When the matter

[3] The Injunction Order was not issued in response to a claim made by Bauer because even though she was known to the estate and the court at that time, she was not formally before the court until 2003.

came before the trial court, it found that Bauer was not properly before it, as she had not filed anything, and the court took no action.

¶ 9 In 2003, Bauer first came before the trial court when she filed a petition asking that it enter a declaratory judgment stating that Hillblom fathered her children. She never pursued the motion, however, and the trial court never ruled on it. Then in 2005, Bauer filed a second petition with the court, which sought to modify the Injunction Order. Her motion recognized that the Bar Orders barred her claim, but nevertheless asked the trial court to modify its injunction so that she could proceed against the indemnity policy. The trial court denied her petition. Order Denying Motion to Modify Permanent Injunction, Mar. 8, 2005. The order noted that Bauer did not provide an explanation for why she waited several years to initiate her claim, and that she failed to provide the court with any factual or legal reason for ignoring the injunction or the statute of limitations.

¶ 10 Unsatisfied with the trial court's decision to not modify the injunction, Bauer filed a pro se motion in 2006 to reopen the Hillblom probate estate. The trial court made numerous requests that Bauer clarify her motion, and eventually held a full hearing one year later. Counsel represented Bauer at the hearing. In January 2008, the trial court issued its Order Denying Motion to Reopen Probate Estate, January 17, 2008 ("2008 Order"). The 2008 Order denied Bauer's request to reopen the estate, and it affirmed the Notice Order as well as all of the previous Bar Orders. The 2008 Order found that "[t]he notice procedures ordered by this court and undertaken by the Executor properly invoked this Court's *in rem* jurisdiction and put all persons in the world on notice, either actually or constructively, of their rights and corresponding duty to file claims of Heirship in the Probate Estate proceedings in a timely manner," reiterated the validity of the Bar Orders under the court's properly invoked *in rem* jurisdiction, and emphasized the finality of the probate proceedings. *Id*. at 2. The order also specifically reaffirmed the Injunction Order and the 2005 Order, which barred Bauer from asserting a claim directly against the indemnity policy.[4] Bauer now appeals from the 2008 Order. This Court has jurisdiction over appeals from judgments and appealable orders pursuant to 1 CMC § 3102(a). Bauer timely filed her Notice of Appeal from the Superior Court's Order Denying Motion to Reopen Probate Estate, and thus, the instant appeal is properly before the Court.

II

¶ 11 The sole issue before us is whether the trial court properly decided to not reopen the Hillblom probate estate. Bauer did not introduce any evidence in support of her position either at trial or on appeal, and thus, her arguments for reopening the estate are purely legal in nature. Therefore, our review is de novo as we only address questions of law. *In re Estate of De Castro*, 2009 MP 3 ¶ 23.

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[4] Bauer attempted to remove her case to federal court, but the district court dismissed her petition.

A. In rem Jurisdiction, Notice, and the Bar Orders

¶ 12 The trial court found that the probate court issued the Bar Orders closing the Hillblom Probate Estate pursuant its *in rem* jurisdiction, and *in rem* jurisdiction existed because the probate court complied with the Commonwealth's statutory notice provisions. *See* NMI R. Pro. P. 6, 11, 16 and 21.[5] The court

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[5] Rule 6. Notice of Hearing on Petition:

When the petition is filed, the clerk of the court shall set the same for hearing by the Court upon some day not less then ten (10) days thereafter. The petitioner shall:

(l) Prepare the notice of hearing;

(2) Cause the notice of hearing to be served personally upon or mailed to the heirs of the testator and the devisees and legatees named in the will at least ten (10) days before the hearing; but in the case of any such person known to be residing neither in the Northern Mariana Islands nor Guam, said notice shall be given at least 25 days before the hearing;

(3) Cause the notice of hearing to be published in a newspaper published in the Commonwealth at least once, said publication to be at least five days before the hearing;

(4) File with the Court before the hearing affidavits proving compliance with this Rule 6.

Rule 11. Creditor Claims:

The notice required to be published pursuant to Rule 6(3) shall include a notice to creditors of the decedent or his estate that they must file their claims with the Clerk of Courts within 60 days of the first publication of said notice.

In addition to notice by publication, the executor shall, within 20 days of the executor's appointment, give notice by personal delivery, or by mail to the last known address, to each creditor for whom the whereabouts or last known address is known as listed in the petition filed under Rule 5, as well as any other creditor of the deceased whose identity, whereabouts, and address is known to or reasonably ascertainable by the executor at that time.

Notice by mail shall be sent by first class, certified mail, return receipt requested. The executor shall file a certificate of delivery or mailing in accordance with this section, together with Post Office receipts if vailable (sic) provided that notice shall be considered complete notwithstanding the notice may have been returned undeliverable, address changed, or for similar reasons by the Post Office or the receipt shall have been signed by a person other than the creditor.

The personally delivered or mailed notice shall advise the creditor that claims must be filed no later than 60 days after the date of first publication as above provided, and that any claims not presented within such times shall be forever barred.

The executor may approve or disapprove any claims and the Court may set such hearing on the claim or claims as it deems necessary and set such priority of payment as is consistent with justice and the efficient and expeditious closing of the estate.

Rule 16. Notice of Hearing on Petition:

When the petition is filed, the Clerk of the Court shall set the same for hearing by the Court upon some day not less than ten (10) days thereafter. The petitioner shall:

1. Prepare the Notice of Hearing;

2. Cause the Notice of Hearing to be personally served upon or mailed to the heirs of the decedent at least ten (10) days before the hearing; but in the case of any such person known to be residing neither in the Northern Mariana Islands nor Guam, said notice shall be given at least 25 days before the hearing; Provided, however, that notice of hearing may be waived by any heir by filing with the court an affidavit which acknowledges the contents of the petition and waives notice of hearing.

3. Cause the Notice of Hearing to be published in a newspaper published in the Commonwealth at least once; said publication to be at least five (5) days before the hearing;

4. File with the Court before the hearing, affidavits proving compliance with this Rule 16.

Rule 21. Creditor Claims:

Creditor claims shall be handled and processed in the same manner as is prescribed in Rule 11 of these rules.

also found that Bauer's childrens' status as minors did not enlarge or toll the statutory notice period contained in the rules. As a result, the trial court found that the probate court gave adequate notice to vest it with *in rem* jurisdiction over the Hillbom estate, properly issued the Bar Order, and that those orders prevented Bauer from bringing this claim.

¶ 13 A court enjoys *in rem* jurisdiction when it oversees the disposition of property. *Pennoyer v. Neff*, 95 U.S. 714, 734 (1878). "It has long been settled that a probate proceeding is one *in rem*, and that if the statutory provisions regarding constructive service and notice are observed, it is binding upon all persons in the world." *Henrickson v. Baker-Boyer Nat'l Bank*, 139 F.2d 877, 881 (9th Cir. 1944) (citing *In re Broderick's Will*, 88 U.S. 503, 509 (1875)). In other words, probate proceedings invoke a court's *in rem* jurisdiction as a specialized proceeding *in rem*, the proceedings determine the right of heirship and distribution, and the proceedings are binding on the whole world regardless of whether a claimant is named in the complaint or personally served with a summons. *See In re Radovich's Estate*, 308 P.2d 14, 17 (Cal. 1957). To invoke a court's *in rem* jurisdiction, proper notice must be given in accordance with the jurisdiction's notice requirements, and when proper notice is given the:

> Entire world is called before the court, and the court acquires jurisdiction over all persons for the purpose of determining their rights to any portion of the estate, and every person who may assert any right or interest therein is required to present his claim to the court for its determination. Whether he appears and presents his claim, or fails to appear, the action of the court is equally conclusive upon him, subject only to [being] reversed, set aside, or modified on appeal. The decree is as binding upon him if he fails to appear and present his claim, as if his claim, after presentation, had been disallowed by the court.

Id. (citation and quotation omitted). Thus, as long as compliance with the jurisdiction's statutory notice provisions occurs, a probate court's orders bind the whole world regardless of whether a claimant receives actual notice of the proceedings.

¶ 14 In *Stevens v. Torregano*, 192 Cal. App. 2d 105, 114 (1997), the court went further and explained that probate judgments are actually afforded a greater degree of finality than regular judgments. This is because probate proceedings "are and always have been, *in rem*, binding upon all persons interested." *Id*. The court then explained that:

> Constructive notice is sufficient even though it may not in fact give actual or personal notice, in a particular case, to a particular heir, devisee, legatee or other interested person. This is because the proceeding is *in rem*, and also because the right to take as heir or by will is really a privilege, completely within legislative control.

Id. Thus, when notice is given pursuant to statute, "the court acquires jurisdiction over all persons entitled to assert any claim to the estate, and, whether they appear and present their claim for adjudication, or fail to appear and suffer default, the judgment is conclusive upon them." *Id*. at 115 (citation and quotation omitted). *See also Parage v. Couedel*, 60 Cal. App. 4th 1037, 1042 (1997) ("In *in rem* proceedings, constructive notice authorized by statute satisfies the requirements of due process."). Furthermore, the

particular finality that is afforded to probate court orders was sanctioned by the United States Supreme Court when it stated that: "[a]fter an estate has been finally distributed, the interest in finality may provide an additional, valid justification for barring the belated assertion of claims, even though they may be meritorious and even though mistakes of law or fact may have occurred during the probate process." *Reed v. Campbell*, 476 U.S. 852, 855-56 (1986).

¶ 15 A probate court's orders are equally binding on minors. *Neville v. Kenney*, 28 So. 452, 453 (Ala. 1900). The *Neville* court stated: "the failure to make an heir a party to the proceeding, whether adult or infant, is immaterial." *Id*. Similarly, in *Palmer v. Palmer*, 31 F. Supp. 861, 865-66 (D. Conn. 1940), the court refused to allow a claimant to proceed with a petition to reopen a probate estate when he reached adulthood on the ground that notice was insufficient as to him because he was a minor when the probate estate was closed. In *In re Daigle*, 634 P.2d 71, 76 (Colo. 1981), the court recognized the finality of *in rem* probate proceedings, even though the minor's claims were filed one month after the conclusion of the statutory notice period. The court held that the minor's claims were not subject to any tolling period. *Id*. Succinctly stated, orders issued pursuant to a court's valid *in rem* jurisdiction, as determined by the jurisdiction's notice statutes, bind the whole world—including minors.[6] Thus, when a court properly closes a probate estate, a late claimant cannot reopen it—even if that claimant is a minor.

¶ 16 In the Commonwealth, 9 CMC § 2923 provides that the Commonwealth's Rules of Probate Procedure will "govern the administration and probate of wills and intestacy proceedings." Commonwealth Probate Procedure Rule 6(3) requires that the petitioner publish notice of the hearing at least once in a newspaper of the Commonwealth and at least five days prior to the hearing. Rule 11 specifies that "creditors of the decedent or his estate . . . must file their claims with the Clerk of Courts within 60 days of the first publication of the notice." NMI R. Pro. P. 11. None of the rules mention what notice must be given to pretermitted heirs, but the sixty day timeframe for creditors is the longest mandated by the rules. Furthermore, Commonwealth Probate Procedure Rules 25 and 26,[7] which are applicable when a guardian ad litem is appointed, do not create any special notice requirements. Thus, under our probate rules, the probate petitioner must post notice in one Commonwealth newspaper, and an estate's creditors must file their claims within sixty days from the posting of such notice. For the probate of the Hillblom estate, the trial court required the executor to publish notice in the Commonwealth,

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[6] Furthermore, any claim that Bauer makes that she acted negligently as guardian ad litem for her children is similarly not a ground to reopen the probate estate because the trial court gave proper notice that was binding on her and her minor children.

[7] Rule 25 concerns under what circumstances a guardian ad litem should be appointed, and Rule 26 discusses the requirements for the appointment of a guardian. One of those criteria is publication of the proposed guardianship in a Commonwealth newspaper. Nothing in either rule expands or modifies the notice that must be given before an estate that a minor or incompetent person has a claim to may be probated.

Guam, the Republic of Palau, the Federated States of Micronesia, the Republic of the Philippines, Vietnam, California, and Idaho, and allowed heirship claims to be filed within sixty days. The trial court's publication requirements for the probate of the Hillblom estate *far* exceeded what our rules of probate procedure require, and therefore, it properly exercised *in rem* jurisdiction over all of the proceedings.

¶ 17 Since the probate court possessed valid and binding *in rem* jurisdiction over the Hillblom estate, it possessed the authority to issue all necessary orders—including all of the Bar Orders. Those orders applied to all claimants, including minors, by their own terms and pursuant to the general principles of the common law. Therefore, the Bar Orders are binding on Bauer and her children, and those orders prevent her from bringing this claim.

¶ 18 Furthermore, while Bauer may have been entitled to challenge the Bar Orders on appeal, she failed to do so. As a result, she cannot collaterally challenge the orders now, and they are entitled to full and unequivocal enforcement by this Court. *In Sik Chang v. Norita*, 2006 MP 2 ¶ 16 (holding that when a court enjoys jurisdiction and renders a decision, that decision becomes final and unassailable after the time to file an appeal has past). Explicitly stated, the HSA Order, the Estate Closure Orders, and the Injunction Order all prevent Bauer from proceeding with a claim against the Hillblom estate, its distributed assets, or any of the distributees. There is absolutely nothing Bauer can do to bring a claim.[8] Therefore, the Hillblom probate estate was properly closed in 1997, and Bauer is barred from reopening it.[9]

B. Res Judicata

¶ 19 The trial court also found that the doctrine of *res judicata* barred Bauer's claim. In 2005, she attempted to proceed directly against the indemnity policy,[10] but the trial court denied her on the ground that she could not circumvent the Bar Orders. Then, in its 2008 Order, the trial court found that Bauer's attempt to reopen the probate estate also required overturning the Bar Orders, and that since it already determined that she could not do so because the orders applied to her, *res judicata* prevented her from proceeding.

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[8] The Court also notes that even if Bauer had properly challenged the closure of the probate estate in 2001, her claim would still have been untimely as the estate closed in 1997.

[9] The Foundation also argues that Bauer's failure to challenge the Bar Orders pursuant to the requirements contained in Commonwealth Rule of Civil Procedure 60(b), the statute of limitations, 7 CMC § 2504, and the doctrine of laches all prevent her claim from moving forward with her claim. Since these issues were neither discussed in the 2008 Order, nor in Bauer's briefs, we find no need to address them in this opinion.

[10] It is unclear from the record whether, when Bauer attempted to proceed against the AISLIC policy, she understood that it was not a liability policy but instead an indemnity policy. The AISLIC policy is not a sum of money that exists to pay late claimants, but rather a policy to indemnify the distributees and certain other parties affiliated with the Hillblom probate estate for litigation expenses in the event of the filing of a late claim by an alleged Hillblom heir.

¶ 20 The doctrine of *res judicata*, a well-established legal principle, was discussed by this Court in *In Sik Chang*, 2006 MP 2 ¶ 16, where we stated that *res judicata*:

> Stands for the proposition that once a valid judgment has been entered, the parties may not relitigate those claims actually decided or which should have been brought. Additionally, in any subsequent litigation, parties are bound by each issue decided if the determination of that issue was necessary to the previous action's outcome. Although *res judicata* does not limit a party's ability to appeal, after those appeals have been exhausted, or after the time to appeal has past, the court's decisions may no longer be challenged on the merits. This doctrine embodies the important policy that recognizes litigation must come to an end, and when that end occurs, the parties are forever bound by the outcome.

(citation and quotation omitted). The United States Supreme Court formulated a similar definition of *res judicata* when it held:

> The rule provides that when a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit and their privies are thereafter bound not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.

Commissioner v. Sunnen, 333 U.S. 591, 597 (1948) (citation and quotation omitted). Similarly, the Restatement (Second) of Judgments § 17(2): Effects of Former Adjudication (1982), states: "[i]f the judgment is in favor of the defendant, the claim is extinguished and the judgment bars a subsequent action on that claim." *See also Santos v. Santos*, 3 NMI 39, 48 (1992). Thus, a valid judgment will bind a party if it attempts to relitigate the same issue.

¶ 21 *Res judicata* prevents Bauer from succeeding in her current attempt to reopen the estate. While her 2005 case concerned the indemnity policy, and the current cause of action pertains to the estate, both claims require the suspension of the Bar Orders for her to proceed. Since the trial court already decided that she could not overcome those orders, and she failed to appeal that decision, she is barred from relitigating the issue before this Court. Therefore, in accordance with the doctrine of *res judicata*, we will not allow Bauer to circumvent the Bar Orders and bring a claim against the Hillblom probate estate, its distributed assets, or the distributees.

C. The Hillblom Law

¶ 22 Bauer is also statutorily prevented from receiving a share of the Hillblom estate. Title 8 CMC § 2702(e), or the Hillblom law, as it is commonly referred to, provides that a pretermitted child who fails to establish paternity prior to the father's death is barred from inheriting unless "it is established by clear and convincing evidence that the father openly and notoriously held the child out as his own during his lifetime." Bauer fails to provide any evidence to this Court, or to any Commonwealth court, that she ever met Hillblom, much less that he fathered her children and publicly held them out as his own; despite the trial court's request that she substantiate her claim. Bauer makes claims that Hillblom fathered her

children, but she has not backed up those claims with even a scintilla of proof. Therefore, 8 CMC § 2702(e) also prevents Bauer's children from receiving a portion of the estate because she has not provided the Court with any evidence that Hillblom openly and notoriously held out either Christopher or Elizabeth as his own during his lifetime.

d. Ineffective Assistance of Counsel

¶ 23 Bauer also argues that this Court should allow her to proceed because her previous attorneys ineffectively represented her, and thus, she lost her right to bring her claim. As stated above, the probate court properly closed the estate in 1997, and even if Bauer had adequately presented her claim in 2001, she would still have been barred as a late claimant. Nevertheless, if any attorney malpractice did negatively impact her rights, it is not a ground for allowing her to proceed with this action. The U.S. Supreme Court has recognized that when an attorney's conduct "falls substantially below what is reasonable under the circumstances, the client's remedy is against the attorney in a suit for malpractice." *Link v. Wabash R.R. Co.*, 370 U.S. 626, 633-34 (1962). In *Link*, the Supreme Court upheld the trial court's dismissal of a civil action based on the party's counsel's failure to appear at a scheduled hearing. The Court reasoned that to allow the party to proceed with its claim would effectively punish the opposing party for the other party's error. *Id*. at 634. Similarly, to allow Bauer to proceed with her claim even though she filed it after the estate closed would punish the estate and the distributees for an error that they did not make. If Bauer's various attorneys prejudiced her rights, her remedy is a malpractice action against those lawyers. Therefore, her claim of ineffective assistance of counsel does not constitute grounds for circumventing the Bar Orders and reopening the Hillblom estate.

III

¶ 24 For the foregoing reasons, Bauer cannot reopen the Hillblom probate estate. The statutory notice provisions were fully satisfied, and the trial court properly exercised *in rem* jurisdiction over the estate. As a result, all of the orders it issued were valid and binding on the whole world—including Bauer and her children. Additionally, her claim is barred under the doctrine of *res judicata* and 8 CMC § 2702(e). Finally, if any of her various attorneys committed malpractice in representing her, the remedy is a malpractice action and not the reopening of the estate. Therefore, we AFFIRM the trial court's order that denied Bauer's petition to reopen the Hillblom estate.

SO ORDERED this 24th day of May, 2011.

/s/
MIGUEL S. DEMAPAN
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
EDWARD MANIBUSAN
Justice Pro Tem