

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 26474

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

THE ESTATE OF ARABELLA MAE ILIHIA ROBERTS MOORE, Deceased

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(P. NO. 03-1-0253)

FILED
CLERK OF APPELLATE COURTS
STATE OF HAWAI'I
FK HAMAKADO

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FILED

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Watanabe and Fujise, JJ.)

In this special administration probate matter,

Beneficiary-Appellant William Lee Moore (Moore) appeals from the Final Judgment Closing Proceeding entered by the Circuit Court of the Third Circuit (circuit court)¹ on February 23, 2004. After a careful review of the issues raised, arguments advanced, the law relied upon and the record in the instant case, we resolve Moore's points on appeal as follows, and affirm.

1. The circuit court did not err in "refusing" to allow Moore to review "the settlement documents." As Moore admits, the circuit court did not specifically rule on his more general request for discovery, nor does the record reveal that he pursued a ruling on these documents specifically. Moreover, Moore does not provide any authority for discovery of such "settlement documents" in a probate case, nor does he provide the transcript of the hearing on his request. In any event, we take judicial notice of the record in Civil Number 03-1-0077K, the lawsuit to which Moore refers, which reveals that Moore had

¹ The Honorable Ronald Ibarra presided.

possession of both fax and "certified" copies of the sealed order approving the settlement before he was ordered to return these copies to the circuit court. Thus, Moore did have the opportunity to review the terms of the settlement.

2. The circuit court did not err in "failing or refusing to appoint an independent person as personal representative." No "personal representative" was appointed in this case. Rather, Carol Roberts (Roberts), natural mother of Arabella Mae Ilihia Roberts, decedent herein, sought appointment as a special representative for the purpose of compromising the decedent's personal injury claim. Pursuant to Hawaii Revised Statutes (HRS) § 560:3-614 (Supp. 2005), which provides for the appointment of "any interested person" as special administrator, the circuit court appointed Roberts for this purpose. An "interested person" may include an heir or others having claims against the estate. Thus, the statutory scheme does not require the appointment of an "independent person" as a special administrator.

The removal of special representatives for cause, governed by HRS § 560:3-611 (Supp. 2005) via HRS § 560:3-618 (Supp. 2005), provides for removal where (1) removal would be in the best interests of the estate; (2) the appointment of the special representative was based on intentional misrepresentation of material facts; (3) the special representative disregarded an order of the court; (4) the special representative has become incapable of discharging the duties of the office; or (5) the

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special representative has mismanaged the estate or failed to perform any duty pertaining to the office. While unclear, Moore appears to argue in his opening brief that Roberts failed to perform her fiduciary duty to the estate when she approved the allocation of \$6,000 of the settlement amount to the decedent's estate. This allocation was endorsed by the mediator who brokered the settlement and was based on what the parties, the mediator and, ultimately the circuit court, understood the law would allow for "enjoyment of life" damages to an infant born unconscious and who died a few days later. The reason the circuit court increased the allocation to \$50,000 is unclear as the transcript of the hearing to approve the allocation and to remove Roberts was not included in the record. Moore has failed, on this record, to show misconduct warranting removal.

Therefore,

The Circuit Court of the Third Circuit's February 23, 2004 Final Judgment Closing Proceeding is hereby affirmed.

DATED: Honolulu, Hawai'i, November 8, 2006.

On the briefs:

Phillip L. Carey,
for Beneficiary-Appellant.


Chief Judge

Jerry M. Hiatt, and
David R. Harada-Stone,
for Petitioner-Appellee.


Associate Judge


Associate Judge