

NO. 26023

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the

HELEN HOBROON JONES TRUST CREATED BY WILL,
DATED JULY 19, 1945, AS AMENDED

APPEAL FROM THE FIRST CIRCUIT COURT
(TRUST NO. 03-1-0017)

FILED
2006 JAN -6 AM 9:31
CLERK OF THE SUPREME COURT
STATE OF HAWAII

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

This case centers around the Helen Hobron Jones (Helen) Trust [hereinafter, the Trust], created in Helen's last will and testament, which named her three children as beneficiaries, to wit: Cornelia Jones Slaten; Betty Jones Walsh; and Peter C. Jones, III (Peter). Respondent-appellant Carolyn Courtney Jones Lehman, Peter's daughter, appeals from the July 17, 2003 judgment of the Circuit Court of the First Circuit, the Honorable Colleen K. Hirai presiding, entered pursuant to Hawai'i Probate Rules (HPR) Rule 34 (2003)¹ and Hawai'i Rules of Civil Procedure (HRCP)

¹ HPR Rule 34 provides in pertinent part:

(a) Entry of Judgment. All formal testacy orders . . . shall be reduced to judgment and the judgment shall be filed with the clerk of the court. Such judgments shall be final and immediately appealable as provided by statute. Any other order that fully addresses all claims raised in a petition to which it relates, but that does not finally end the proceeding, may be certified for appeal in the manner provided by [HRCP] Rule 54(b) [.]

(Emphasis added.)

Rule 54 (2003),² granting the trustee's "Petition for Instructions to Include or Exclude Adopted Persons from the Definition of 'Issue' and for Entry of Judgment" [hereinafter, the petition for instructions]. Therein, the circuit court determined that Lehman, who had been "adopted out" of the beneficiary's family, was not entitled to a share of the trust assets.

On appeal, Lehman essentially contends that the circuit court erred by failing: (1) to apply the law in effect when the Trust terminated, thereby resulting in its conclusion that her adoption by her stepfather precludes her from being the "issue" of her natural father, Peter, for purposes of distribution of the trust assets; and (2) to give effect to Hawai'i Revised Statutes (HRS) § 560:2-114 (Supp. 2004), the Hawai'i "ohana adoption" statute,³ under which she is considered Peter's "issue" for

² HRCPC Rule 54 provides in relevant part:

(b) Judgment upon multiple claims or involving multiple parties. When more than one claim for relief is presented in an action . . . or when multiple parties are involved, the court may direct the entry of final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any . . . form of decision . . . which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties[.]

³ The "ohana adoption" statute was originally codified in HRS § 560:2-109 (1993) of the Hawai'i Uniform Probate Code (UPC), allowing an adopted child to take through both of the child's adopted and natural parents by intestate succession. 1992 Haw. Sess. L. Act 148, § 2 at 266. The current ohana adoption statute, HRS § 560:2-114, effective January 1, 1997, contains the same language as its predecessor, HRS § 560:2-109. HRS § 560:2-114 provides in pertinent part:

(continued...)

purposes of construing the Trust. Lehman also challenges the circuit court's August 18, 2003 order denying her "Petition for Approval of Attorneys' Fees and Costs" [hereinafter, the petition for fees].

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we hold that:

(1) the circuit court did not err in concluding that Lehman's "legal adoption precludes her from being considered a beneficiary of the Trust" because the date of Helen's death, August 11, 1953, controls the ultimate determination of the trust beneficiaries. See In re Medeiros Testamentary Trust & Life Ins. Trust, 105 Hawai'i 284, 96 P.3d 1098 (2004) (concluding that "the law in effect at the time of the [testator's] death in 1946 applied in determining whether [the appellant] is a beneficiary under the testamentary trust"). The law in effect at the time of Helen's death, Revised Laws of Hawai'i (RLH) §298-12278 (1953) (renumbered as RLH § 331-16 (1955)), provided in pertinent part:

³(...continued)

(b) An adopted individual is the child of the child's adopting parent or parents and not of the child's natural parents, except that:

- (1) Adoption of a child by the spouse . . . of either natural parent has no effect on:
- (A) The relationship between the child and that natural parent; or
 - (B) The right of the child or descendant of he child to inherit from or through the other natural parent[.]

A legally adopted child shall be considered to be a natural child of the whole blood of the adopting parent or parents. . . relating to the descent of property, and the former parent or parents of an adopted child . . . shall not be considered to be related to such child under such provisions[.]

(Emphasis added.) Lehman, therefore, is not entitled to a share in the trust assets;

(2) the circuit court did not err in declining to retroactively apply the ohana adoption statute to this case. See Medeiros, 105 Hawai'i at 292, 96 P.3d at 1106 (concluding that "[t]here is nothing in the language or legislative history of HRS § 560:2-114 or of its predecessor HRS § 560:2-109 (1992), or in any other provision of Hawai'i Uniform Probate Code (UPC), to indicate that the legislature intended for the ohana adoption statute to apply retroactively") (footnote omitted); and

(3) the circuit court did not abuse its discretion in denying Lehman's petition for fees on the ground that Lehman's participation in the proceedings "did not result in a benefit to the trust estate of the Helen Hobron Jones Trust." See Bishop Trust Co. v. Cooke Trust Co., Ltd., 39 Haw. 641, 651 (1953) ("As a general rule each party to litigation must pay his own counsel fees and such fees are not allowable in the absence of a statute, agreement or stipulation. . . . If any fee is allowable in this case it would be under the rule that those who perform services beneficial to a trust estate will be compensated therefor."); In re Dumaine, 600 A.2d 127, 132 (N.H. 1991) ("The inquiry is

whether her primary motive was the benefits of the trusts as a whole or her own benefit."). Therefore,

IT IS HEREBY ORDERED that the July 17, 2003 judgment of the Circuit Court of the First Circuit granting the petition for instructions and the August 18, 2003 order denying the petition for fees are affirmed.

DATED: Honolulu, Hawai'i, January 6, 2006.

On the briefs:

David C. Larsen, Peter W. Olson, and Joshua A. Wisch (of Cades Schutte), for respondent-appellant Carolyn Courtney Jones Lehman

Raymond K. Okada and Edmund K. Saffery (of Goodsill Anderson Quinn & Stifel), for petitioner-appellee Bank of Hawai'i

