

NICHUN NEMEK, Plaintiff-Appellant

v.

ANNANI, et al., Defendants-Appellees

Civil Appeal No. 180

Appellate Division of the High Court

Truk District

November 12, 1980

Appeal from judgment determining rights in land. The Appellate Division of the High Court, per curiam, held that where credibility of various witnesses was crucial to outcome of case, there was no basis for a determination that the Trial Court was wrong in deciding whom to believe, and since counsel for appellant was not entirely honest in the Notice of Appeal, Trial Court would not be "second guessed" in light of misrepresentations of counsel, and therefore judgment was affirmed.

1. Appeal and Error—Evidence—Conflicting

Where credibility of various witnesses was crucial to outcome of case, there was no basis on appeal to reverse the decision on the basis that the Trial Court was wrong in deciding whom to believe.

2. Appeal and Error—Discretion To Review

Appellate Division of the High Court would refuse to "second guess" the evidence from the Trial Court where misrepresentations were made by counsel in his Notice of Appeal.

Before BURNETT, *Chief Justice*, NAKAMURA, *Associate Justice*, and GIANOTTI, *Associate Justice*

PER CURIAM

Judgment in the Trial Court determined rights in the lands Nepor and Winiman, Machon Village, Uman Island, Truk. In addition to the plaintiff and defendant, four parties intervened and appeared on trial. Defendant has appealed from that part of the judgment which finds for plaintiffs as to all of Nepor and one-half of Winiman; she does not contest the claim of the intervenor Mara to the remaining one-half of Winiman.

Notice of Appeal was timely filed, but completely ignores T.T. R. App. 3, in that it does not “contain a concise statement of the questions presented by the appeal.” Instead, it does no more than assert that the judgment was wrong, and sets out what appellant claims was the testimony on her behalf.

No briefs have been filed for either appellant or appellee, and the appeal would, ordinarily, be subject to dismissal for failure of appellant to prosecute as provided for by T.T. R. App. 20. The Court elected not to do so, solely because appellant was represented by a Trial Assistant, rather than by trained counsel.

We have, therefore, examined the entire record, including the transcript of evidence on trial, to determine whether the findings of fact of the Trial Court were so “clearly erroneous” as to warrant our setting them aside 6 TTC Sec. 355(2). This Court has consistently refused to depart from that standard.

[1] As stated in the judgment “The evidence presented by each of the parties is very conflicting, and it becomes extremely important to judge the credibility of the various witnesses” It is for this reason that the statutory standard was adopted. We are in no position to observe the witnesses and judge their credibility; we have no basis for a determination that he was wrong in deciding whom to believe.

A further point must be made. Counsel for appellant has not been “entirely” honest with us, and we can only assume that he did not understand that a full transcript of the trial was available. The claims made in the Notice of Appeal are, very simply, not supported by the transcript.

Paragraphs one through five of the Notice of Appeal recite the testimony of Nichun. The fact is that Nichun did not testify.

Paragraph seven refers to testimony that the witness Encher performed certain acts. His testimony, as it appears in the transcript, is entirely different, and does not suggest this claim.

[2] Under the circumstances, even if we were permitted to "second guess" the Trial Court, we would refuse to do so in light of misrepresentations of counsel.

The Judgment is AFFIRMED.