

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FILED

SEP 12 2013
SUPREME COURT
OF THE
REPUBLIC OF PALAU

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:
KABITEI KIMO KEE and ELENA TELLEI, :
:
Appellants, :
:
v. :
:
TERRY E. NGIRAINGAS, :
:
Appellee. :
-----X

CIVIL APPEAL NO. 12-031
Civil Action No. 11-231

OPINION

Decided: Sept. 05, 2013

Counsel for Appellant: Raynold B. Oilouch
Counsel for Appellee: Moses Uludong

BEFORE: R. ASHBY PATE, Associate Justice; KATHERINE A. MARAMAN, Part-Time Associate Justice; and RICHARD H. BENSON, Part-Time Associate Justice.

Appeal from the Trial Division, the Honorable ALEXANDRA F. FOSTER, Associate Justice, presiding.

PER CURIAM:

This appeal arises from the Trial Division's Decision and Judgment regarding the disposition of property known as *Cheuang*, which was the only property listed by Petitioner Ngiraingas ("Ngiraingas") as an asset in Akiko Wong's estate. For the

following reasons, the Decision of the Trial Division is **AFFIRMED** in part and **REVERSED** in part.¹

I. BACKGROUND

Two sisters, Akiko Wong (“Wong”) and Huyuko Eledui (“Eledui”), owned a piece of property together called *Cheuang*.² Wong had four children: Kinsiana Bechtel (“Bechtel”), Erica Elechuus (“Elechuus”), Mariana Wong (“Mariana”), and Kabitei Kimo Kee (“Kee”)—the Appellant here.³

In 1996, Wong’s sister Eledui transferred her interest in the property to Wong’s son, Kee. A Certificate of Title soon issued showing that Wong and Kee jointly owned *Cheuang*. Wong died one year later, in 1997. For the next several years, Kee treated *Cheuang* as his property, living on it, improving it, renting it, and ultimately selling it. No one sought to intercede or affect these decisions in any way.

In 2003, Kee sold his interest in the property to Adalbert Eledui (“Adalbert”), who was married to Elena Tellei (“Tellei”). An updated Certificate of Title was issued listing Wong and Adalbert as joint owners of *Cheuang*. Adalbert treated the property as his own, also without objection by anyone.

¹ Although Appellant requests oral argument, under ROP R. App. P. 34(a), it is unnecessary to resolve this matter.

² The property is located in Ikela Hamlet, Koror. It is labeled as Cadastral Lot No. 045 B 20.

³ Hereinafter, for clarity, we refer to Akiko Wong as “Wong” and Mariana Wong as “Mariana.”

In 2011, Ngiraingas petitioned to settle Wong's estate, after having been granted a power of attorney both by Wong's daughter, Bechtel, as well as Wong's granddaughter, Kaia Sasao ("Sasao"), who is the only daughter of Wong's deceased daughter, Mariana.

In a November 17, 2011 Order, the Trial Division appointed Ngiraingas as Temporary Administratrix of the estate and directed her to give general notice to the public of her intention to probate the *Cheuang* property. Such notice was posted at the Koror Post Office and the Supreme Court, published once in the local newspaper, broadcast on the T&AA radio station for two weeks, and served upon all close relatives of the decedent, including Bechtel, Sasao, Elechuus, Kee, and others. Ngiraingas then filed an inventory of assets and liabilities, which listed *Cheuang* as the sole asset of the estate.

Shortly thereafter, Kee filed a timely Notice of Claim. However, rather than making a traditional claim against the estate, Kee argued that *Cheuang* was not an asset of the estate at all. The Court subsequently held a four-day hearing on the matter.

At the hearing, Kee advanced two primary arguments. First, he claimed that Wong orally transferred her interest in *Cheuang* to him before she died. As a result, Kee argued, he became the sole owner of the property, and at the time he sold it to Adalbert, Adalbert then became the sole owner of the property. When Adalbert died, his wife, Tellei, became the sole owner. Thus, Kee argued, Ngiraingas improperly listed *Cheuang* as an asset of the estate.

Alternatively, Kee argued that if Wong's oral transfer of ownership was ineffective, then Kee obtained sole ownership—and subsequently had the power to transfer sole ownership—in another way. Kee argued that, after Wong's death, the property would have normally passed to her four children; however, only Kee and Elechuus's interests in the property survived to the time of trial because (a) Bechtel had become a United States citizen, by virtue of which she had forfeited her right to own property in Palau, and (b) Mariana had passed away in 2010. Thus, when Elechuus's children transferred their mother's interest in the property in 2011 to Tellei, Tellei would have finally obtained full ownership of the property in that way.

Ngiraingas, on the other hand, argued that Wong's one-half interest in *Cheuang* remained with the estate. Thus, she argued that the property should be awarded to Wong's children under 25 PNC § 301(b).

Even a cursory review of the controlling law reveals that the Trial Division was faced with a Hobson's choice. If the Court accepted Kee's argument that Tellei was the sole owner of the property, it would have been forced to ignore either the Republic's well-settled Statute of Frauds or the applicable inheritance statutes. If the Court accepted Ngiraingas's arguments that the property should go to all of Wong's children, the decision would entail a similar rejection of the inheritance statutes. The choice was made even more difficult by the fact that neither party presented adequate customary testimony to support their positions.

Ultimately, the Trial Division determined that it had an insufficient basis to choose either of the options it faced. Instead, it held that the property was jointly owned by Tellei and Wong's estate because the oral transfer of the property from Wong to Kee ran afoul of the Statute of Frauds. Regarding Kee's argument in the alternative, the Trial Division expressed skepticism about Elechuus's children's purported transfer of the property and determined that it likewise failed. The Trial Division instead determined that Wong's interest in the property was never effectively transferred from her possession and remained part of her estate. In many ways, this validated Ngiraingas's primary position at trial, but the Court nonetheless rejected Ngiraingas's argument that the property should be distributed to Wong's children, stating that Ngiraingas had presented no basis in law or Palauan custom to justify an award to the children.

In the end, the Trial Division only determined that *Cheuang* was part of Wong's estate. It appointed Ngiraingas as Permanent Administratrix, rejected Kee's objection to her appointment as untimely, and directed her to administer *Cheuang* for Wong's beneficiaries, who to this day remain unidentified.⁴

⁴ The parties stipulated during the hearing that Wong's interest in one additional, uncontested property should go to her four children: Bechtel, Elechuus, Mariana, and Kee. Although the Court was imprecise in its final direction, we speculate that its direction to administer *Cheuang* for Wong's "beneficiaries" was meant as a direction to administer it for her children's benefit.

STANDARDS OF REVIEW

Kee and Tellei argue that the Trial Division erred in failing consider evidence that Wong's other children—Bechtei, Elechuus, and Mariana—have no ownership interest in *Cheuang*. An attack on the sufficiency of the evidence is an attack on the Trial Division's factual findings, which are reviewed for clear error and will not be overturned unless a reasonable trier of fact could not have come to the same conclusion. *Ongidobel v. ROP*, 9 ROP 63, 65 (2002).

Kee and Tellei also assert that the Trial Division abused its discretion in appointing Ngraingas as Administratrix and ordering her to administer the estate. We will not disturb this ruling in the absence of clear error. See *Ngeremlengui State Pub. Lands Auth. v. Tenungalk Ra Melilit*, 18 ROP 80, 83 (2011) (“An abuse of discretion occurs when a relevant factor that should have been given significant weight is not considered, when an irrelevant or improper factor is considered and given significant weight, or when all proper and no improper factors are considered, but the court in weighing those factors commits a clear error of judgment. . . . Under this standard, a trial court's decision will not be overturned unless that decision was clearly wrong.” (citations and internal quotation marks omitted)).

DISCUSSION

I. The Trial Division did not err in rejecting Kee and Tellei's argument that Wong's other children have no interest in *Cheuang*.

Kee and Tellei assert that the Trial Division erred by rejecting their argument that Wong's other children had no interest in the property. In order to overturn the decision of the Trial Division on this issue, we must determine that a reasonable fact finder *must* have concluded that neither Mariana, Elechuus, nor Bechtel had any interest in the property. See *Ongidobel*, 9 ROP at 65. We consider these individuals in turn and hold that there was no clear error on this point.

First, Kee and Tellei argue that Mariana died in 2010 and, thus, could not have any interest in the property. However, the Trial Division noted that Kee and Tellei cited no law to support the contention that Mariana's death extinguished her interest. On appeal, Kee and Tellei still cite to no law to support this contention. Moreover, their position regarding Mariana's interest contradicts their position regarding Elechuus's interest. That is, Kee and Tellei argue that Elechuus's children transferred whatever interest Elechuus had in the property to Tellei. Importantly, the property was never sold to Elechuus and there was never any explicit transfer to her. Thus, Kee and Tellei's argument assumes that Elechuus's interest in the property must have been transferred to her by mere nature of her relation to her mother.

Mariana was alive at the time of her mother's death, just as Elechuus was. Thus, if this Court were to accept Kee and Tellei's argument that Elechuus's children transferred

their mother's interest in the property to Tellei, this Court would have to accept that Mariana's estate had the same interest in the property. And this interest would not have been extinguished and passed to Tellei at Mariana's death. We can see no reason simply to assume that Mariana's interest in the property extinguished or automatically vested with Tellei when she died. Indeed, the descent laws of Palau suggest otherwise. See 25 PNC § 301 (providing for inheritance of fee simple interests). Thus, the Trial Division did not commit clear error in dismissing Kee and Tellei's argument that Mariana's estate has no interest in the property as an heir to Wong's interest.

Next, the Trial Division considered Kee and Tellei's argument that Elechuus's incapacity extinguished her interest in the property or somehow caused it to pass to her children, and, as a result, her children were able to transfer or "release" their mother's interest to Tellei. The Trial Division did not accept this, explaining that it was not satisfied that Elechuus was unable to "think, reason and reach a decision concerning her interest in *Cheuang*."

The Trial Division noted that Kee approached Elechuus's children and did not approach Elechuus herself with the request to transfer her interest to Tellei. Because Elechuus apparently was able to communicate with her husband, the Trial Division concluded that there was insufficient proof that Elechuus's incapacity extinguished her interests. Because of this, the Trial Division refused to take the additional leap in accepting that Elechuus's potential interest in the property could be transferred or

“released” without her knowledge or approval. This was a reasonable factual determination and we have no reason to conclude that it was made in clear error.

Finally, Kee and Tellei assert that, because Bechtel was not a citizen of Palau at the time of Wong’s death, she has no interest in the property. The Trial Division did not consider this argument because it decided that Elechuus and Mariana’s rights to the property had not extinguished, and thus Kee’s argument would fail irrespective of Bechtel’s interest. We do not have reason to overturn this decision. Furthermore, there is insufficient evidence (and a lack of anything resembling a sufficient legal argument) in the record regarding Bechtel’s forfeiture of citizenship and her right to own property in the Republic. Accordingly, the Trial Division did not err when it rejected Kee and Tellei’s arguments that Tellei had acquired full ownership of the property.

II. The Trial Division abused its discretion in refusing to consider Kee’s objection to Ngiraingas as Administratrix.

Kee and Tellei also appeal the Trial Division’s determination that Kee failed to timely object to Ngiraingas’s appointment as Administratrix. In its November 17, 2011 Order, the Trial Division explained, “[i]n the event that there is a timely objection to the appointment of Terry Eledui Ngiraingas as Administratrix, the Court will set a hearing. In the absence of such an objection, she shall become permanent Administratrix.” In the very next sentence, it added, “[t]hose individuals who have already filed claims need not file an additional claim.”

Kee and Tellei argue that Kee preserved his objection to Ngiraingas's appointment and that his objection was ignored by the Trial Division. In his Notice of Claim, filed just three days prior to the Order, he stated, "Ngiraingas has no rights in Decedent's estate and Claimant objects to her actions herein." Kee contends that this statement constituted his objection and that he was unaware that the Trial Division expected him to file an objection to her appointment again, particularly considering its note that anyone "who ha[s] already filed claims need not file an additional claim."

While we are cautious not to suggest that an objection, especially one that predates an order calling for objections, is somehow preserved into perpetuity, in these circumstances, the Trial Division expressly preserved prior claims.⁵ Kee, a pro se litigant, very clearly objected to Ngiraingas's appointment and did so within a few days of her appointment.⁶ Accordingly, we find that the Trial Division failed to consider Kee's objections to Ngiraingas's appointment and, as a result, abused its discretion. We instruct the Trial Division on remand to consider Kee's objections regarding Ngiraingas's appointment as Administratrix.

⁵ To be fair, the Trial Division only specifically preserved prior claims, as opposed to prior objections. From a purely technical standpoint, claims are made against the estate and objections are made to the appointment of the administrator. In practice, however, given the number of pro se litigants involved in estate matters and the way in which the two terms are used interchangeably in pro forma notices, this distinction is honored more in the breach.

⁶ The courts of the Republic have been instructed to employ a heightened duty to liberally construe pro se litigants' pleadings. See *Whipps v. Nabeyama*, 17 ROP 9, 12 (2009).

III. The Trial Court erred in failing to identify the proper heirs of the property and should not have closed the estate without more specific direction.

Finally, Kee makes a broader argument concerning the role of the Trial Division in probate proceedings, specifically its duties in closing and adequately supervising an estate. Kee and Tellei assert that the Trial Division erred by failing to determine to whom the property should pass. This, they argue, left the case unsettled, as it failed to resolve the very dispute for which the parties sought resolution.

We are not prepared to state that it is the duty of the Trial Division to list the specific names of each beneficiary for whose benefit the administrator must distribute the assets of the estate. However, under these circumstances, we are concerned about the practical implications of the Court directing the Administratrix to administer the estate for the benefit of beneficiaries, whom the Court itself was unable to identify. Closing an estate with so little direction invites future litigation.

The precise duty of the Trial Division in closing and supervising probate matters is largely undefined by the decisional law in the Republic. However, 35 PNC §1317 (b) and (c) specifically address the transfer of land in probate matters. Subsection (c) reads, “[t]he Trial Division of the Supreme Court shall make a determination of the devisee(s) or heir(s), and the interest or respective interests to which each is entitled.” 35 PNC §1317 (b)-(c). Although the statute does not state explicitly that the Trial Division is required to list individual devisees or heirs in order to close an estate, it mandates that the Trial Division make *some* “determination” of the heirs and their interests.

Of relevance here, we are satisfied that a trial court fulfills its duties under §1317 when it determines that a certain class of heirs shall receive some designated portion of an estate (i.e., the children of decedent shall receive a particular parcel of land). Once the specific property and a class of heirs have been identified, the administrator, acting in a fiduciary capacity, is charged with distributing the estate in accordance with the Trial Division's determinations.

To aid the Trial Division in determining the heirs in an intestate proceeding concerning land held in fee simple, the Trial Division should be guided by 25 PNC §301(a)-(b) and *Marsil v. Telungalk ra Iterkerkill*, 15 ROP 33 (2008). The relevant provisions of 25 PNC §301(a)-(b) read:

(a) In the absence of instruments and statements provided for in [39 PNCA § 403(b)], lands held in fee simple, which were acquired by the owner as a bona fide purchaser for value, shall, upon the death of the owner, be inherited by the owner's oldest legitimate living male child of sound mind, natural or adopted, or if male heirs are lacking the oldest legitimate living female child of sound mind, natural or adopted, of the marriage during which such lands were acquired; in the absence of any issue such lands shall be disposed of in accordance with subsection [(b)] hereof.

(b) If the owner of fee simple land dies without issue and no will has been made in accordance with this section [or 39 PNCA § 403] or the laws of the Republic or if such lands were acquired by means other than as a bona fide purchaser for value, then the land in question shall be disposed of in accordance with the desires of the immediate maternal or paternal lineage to whom the deceased was related by birth or adoption and which was actively and primarily responsible for the deceased prior to his death. Such desires of the immediate maternal or paternal lineage with respect to the disposition of the land in question shall be registered with the Clerk of Courts pursuant to [39 PNCA § 403(a)].

See 25 PNC §301.

To summarize, subsections (a) and (b) govern different scenarios for the disposition of the property in an estate depending, in part, on whether the decedent died with issue and was a bona fide purchaser of the land. Subsection (a) applies if the decedent died with children *and* the decedent purchased the land as a bona fide purchaser for value. If these requirements are met, then the land will be inherited by the owner's oldest child. See 25 PNC §301(a).

Subsection (b), which this Court has previously noted "is not the model of clarity," has been interpreted to apply only when the decedent dies without children, without a will, *and* the land owned was not purchased for value.⁷ *Marsil*, 15 ROP at 36. In the event subsection (b) is implicated, the land passes in accordance with the wishes of the decedent's immediate maternal or paternal lineage. See *Koror State Pub. Lands Auth. v. Ngirmang*, 14 ROP 29, 33 (2006) (holding that a lineage meeting the statutory requirements must exist and come forward). If neither §301(a) nor (b) applies—for example, if a decedent died with issue and was not a bona fide purchaser for value—then a court should award property based on custom. See *id.* at 33; see also *Omelau v. Saito*, Civ. App. 11-040, slip op. at 3–4 (Sep. 18, 2012).

⁷ The main confusion with the interpretation of §301(b) is that the introductory clause, which is clearly in the disjunctive, has been interpreted by this Court actually to be read in the conjunctive. That is, "in order for 25 PNC § 301(b) to apply, the decedent must die without issue, without a will, and must have acquired his lands other than as a bona fide purchaser for value. In effect, the 'or' becomes an 'and.'" *Marsil*, 15 ROP at 36.

Put simply, in order for the Trial Division to execute its charge under 35 PNC §1317 to “make a determination of the . . . heir(s),” it must be able to identify whether the decedent was a bona fide purchaser, or, in the alternative, it must consider evidence of Palauan custom. *See Marsil*, 15 ROP at 26 (holding that, absent an applicable descent and distribution statute, customary law applies).

Here, the Trial Division correctly determined that §301(b) should not apply because the decedent died with issue. However, admitting there was no evidence on the record, either way, as to whether decedent was a bona fide purchaser, the Court failed to determine whether §301(a) controls. To be sure, the Court’s reluctance to reach a decision on the applicability of subsection (a) was caused by a failure of the parties to present probative evidence on the issue. Nonetheless, this determination was crucial to determining whether to award the property either to Wong’s eldest living child under §301(a) or whether to award the property based on custom.⁸ *Marsil*, 15 ROP at 26.

In sum, Kee and Tellei argued unconvincingly that various beneficiaries of Wong’s estate lost their interest in the property and failed to cite controlling decisional law supporting this position. Ngiraingas, on the other hand, argued that Wong was not a bona fide purchaser and thus the property should go to Wong’s children. Ngiraingas came closest to hitting the mark by citing 25 PNC §301, but failed to present evidence suggesting that Wong was in fact not a bona fide purchaser, failed to present evidence of

⁸ The record is essentially devoid of any expert customary testimony.

Palauan custom, and ultimately misunderstood 25 PNC §301's entire rubric—that is, if §301(b) applied, the property would not necessarily pass to Wong's children; instead it would be determined by reference to the "desires of the immediate maternal or paternal lineage to whom the deceased was related." 25 PNC §301(b). The Court also failed to inquire more deeply into the bona fide purchaser issue, stating only that there was no evidence supporting either conclusion, and failed to insist on the development of a customary record in the alternative.


In the end, the concomitant failure resulted in leaving an estate matter unresolved and in derogation of 35 PNC §1317. Because of the failure to execute the charge in 35 PNC §1317, which was not entirely the fault of the Trial Division, it was nonetheless an error for it to close the estate without seeking to determine more conclusively and develop the record more robustly to identify, at the very least, a class of proper heirs and their respective interests.


CONCLUSION

The Trial Division did not err in dismissing Kee and Tellei's arguments that none of the other children of Wong have an interest in the *Cheuang* property. The Trial Division, however, did abuse its discretion in naming Ngiraingas as Permanent Administratrix without considering Kee's objections to her appointment. The Trial Division also erred in prematurely closing the estate without determining the heirs and providing more specific direction to the Administratrix.

Accordingly, the Decision of the Trial Division is **AFFIRMED** in part and **REVERSED** regarding Ngiraingas's appointment and the premature closing of the estate. We **REMAND** this case to the Trial Division and direct it to proceed in accordance with this Opinion.

IT IS SO ORDERED, THIS 5th DAY OF Sept., 2013.


R. ASHBY FITE,
Associate Justice


KATHERINE A. MARAMAN,
Part-Time Associate Justice

RICHARD H. BENSON,
Part-Time Associate Justice