

IN THE  
SUPREME COURT OF THE REPUBLIC OF PALAU  
APPELLATE DIVISION

FILED<sup>caK</sup>

2023 DEC 11 P 2:07

**HOWARD ROISEBONG NGCHEED,**  
*Appellant,*  
v.  
**DESEREI B. IMEONG,**  
*Appellee.*

SUPREME COURT  
OF THE  
REPUBLIC OF PALAU

Cite as: 2023 Palau 25  
Civil Appeal No. 23-020  
Appeal from Civil Case No. 22-054

Decided: December 11, 2023

Counsel for Appellant ..... Vameline Singeo  
Counsel for Appellee ..... Brendlynn Joseph

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice, presiding  
JOHN K. RECHUCHER, Associate Justice  
FRED M. ISAACS, Associate Justice

Appeal from the Supreme Court, Trial Division, the Honorable Honora Remengesau-Rudimch, Associate Justice, presiding.

**OPINION<sup>1</sup>**

PER CURIAM:

[¶ 1] This is an appeal from the Trial Division’s estate judgment awarding Ostavius Imeong’s (“Decedent”) two-bedroom house, located on the land known as *Uchularael*, to Appellee Deserei Imeong (“Deserei”) following Palauan custom.

<sup>1</sup> The parties did not request oral argument in this appeal. Thus, the appeal is submitted on the briefs. *See* ROP R. App. P. 34(a).

[¶ 2] For the reasons set forth below, we **AFFIRM** the Trial Division’s judgment.

### **BACKGROUND**

[¶ 3] Decedent individually owned a two-bedroom house located on a portion of the land known as *Uchularael*. He died intestate on March 3, 2022. No *cheldecheduch* was held, but all his biological children, including Appellant Howard Ngcheed (“Howard”) and Deserei, received U.S. dollars and Palauan money during the funeral. Thereafter, Deserei filed a petition to settle Decedent’s estate and be appointed Administratrix. The estate consisted of Decedent’s interest in *Uchularael*, the two-bedroom house, and a personal Bank of Guam savings account. The trial court, following a bench trial, awarded the house to Deserei.

[¶ 4] During the nine-day trial, Deserei presented evidence that the house was built in the late 1980s when her mother and Decedent were still married, and the couple held an *ocheraol*, a customary party to raise money for the house. Contrary to Deserei’s evidence, Howard stated that no *ocheraol* was performed, and Deserei’s mother and Decedent were no longer married at the time of Decedent’s death. Despite some discrepancies in their testimonies, both parties’ expert witnesses agreed that under Palauan custom children born outside of a couple’s marriage have no rights to a house built by the couple’s joint efforts and where the couple held an *ocheraol*. Finding Deserei and her witnesses more credible, the Trial Division issued its judgment awarding the house to Deserei. This timely appeal followed.

### **STANDARD OF REVIEW**

[¶ 5] Factfinding by the lower court is reviewed under the clearly erroneous standard. *Glover v. Lund*, 2018 Palau 10 ¶ 2 (citing *Kiuluul v. Elilai Clan*, 2017 Palau 14 ¶ 4). The findings of the lower court will be set aside only if they “lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion.” *Etpison v. Rechucher*, 2022 Palau 2 ¶ 14 (quoting *Ngotel v. Iyungel Clan*, 2018 Palau 21 ¶ 8). Credibility determinations are left to the trial court’s discretion, subject to reversal only in extraordinary cases. *Glover*, 2018 Palau at ¶ 2. “Whether a given custom has met the traditional law requirements is a mixed question of law and fact.

However, the definitive statement as to whether a custom is or is not binding law is a pure determination of law.’ We review such issues *de novo*.” *Id.* (citing *Beouch v. Sasao*, 20 ROP 41, 49–50 (2013)).

## DISCUSSION

[¶ 6] On appeal, Howard raises a single issue—the trial court erred when it determined that Decedent’s house belongs to Deserei following established Palauan custom. In its fourteen-page decision, the trial court made detailed findings of fact and concluded that it is traditional customary law for a child of a married couple to inherit the couple’s house when the couple remarries or dies, if the house was built after the child was born and an *ocheraol* was held.

[¶ 7] It is the appellant’s burden to prove error in the lower court’s conclusion. *See Glover*, 2018 Palau at ¶ 21; *Obakerbau v. Nat’l Weather Serv.*, 14 ROP 132, 135 (2007). In other words, the appellant must “point out specifically where the findings are clearly erroneous,” otherwise the appeal borders on being frivolous as “it wastes the time of opposing counsel and the resources of both parties.” *Ngetchab Lineage v. Klewei*, 16 ROP 219, 221 (2009) (quoting *Pachmayr Gun Works, Inc. v. Olin Mathieson Chem. Corp.*, 502 F.2d 802, 807 (9th Cir. 1974)).

[¶ 8] This reasoning underlies our Rules of Appellate Procedure. Namely, under Rule 28(e), “references to evidence must be followed by a pinpoint citation to the page, transcript line, or recording time in the record.” Further, under Rule 10(a), “[a]ny parts of the record a party relies on that are not in English must be accompanied by a translation prepared by that party.” While a party is not required to submit a transcript, its availability “allows meaningful review to take place.” *Edward v. Suzuki*, 19 ROP 187, 191 (2012); *Shmull v. Ngirirs Clan*, 11 ROP 198, 203 (2004); *see Pedro v. Carlos*, 9 ROP 101, 102 (2002); *Fanna v. Sonsorol State Gov’t*, 8 ROP Intrm. 9, 13 (1999). The absence of a transcript “largely precludes any challenge to the findings of fact made in the Trial Division.” *Fanna*, 8 ROP Intrm. at 9.

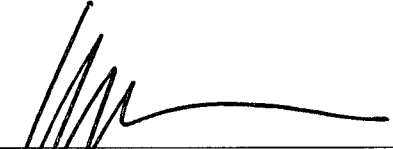
[¶ 9] Howard failed to provide this Court with either a written transcript or accurate timestamps to the trial recording under Rule 28(e). In addition, the trial proceedings below were entirely in Palauan, and Howard did not provide an English translation as required by Rule 10(a). Therefore, Howard is

precluded from challenging the trial court's findings and credibility determinations. Because no clearly erroneous factual findings have been specifically identified with supporting citations to the record, we affirm.

**CONCLUSION**

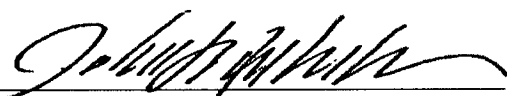
[¶ 10] For the reasons set forth above, we **AFFIRM** the Trial Division's judgment.

**SO ORDERED**, this 11th day of December 2023.




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OLDVAIS NGIRAIKELAU  
Chief Justice, presiding



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JOHN K. RECHUCHER  
Associate Justice



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FRED M. ISAACS  
Associate Justice