IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

BENEDICTA KEBEKOL,
Appellant,
v.
TIKEI KEBEKOL,
Appellee.

Cite as: 2025 Palau 7
Civil Appeal No. 24-017
Appeal from Civil Action 21-177

Decided: June 13, 2025

Counsel for Appellant ..... Johnson Toribiong
Counsel for Appellee ..... James W. Kennedy

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice, presiding
FRED M. ISAACS, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

Appeal from the Trial Division, the Honorable Antonio L. Cortes, Associate Justice, presiding.

OPINION[1]

PER CURIAM:

[¶ 1] This case appeals a corrected judgment issued by the Trial Division on June 25, 2024, which distributed the inventoried assets of the Estate of George Kebekol. The parties appeal the trial court's decision, mostly where it pertains to the $8 million in rental funds that George received from leasing his property, Ngerchelngael Island, to Leisure Development Koror, Inc. ("LDK").

[1] Although Appellee/Cross-Appellant Tikei requests oral argument, we resolve this matter on the briefs pursuant to ROP R. App. P. 34(a).

[¶ 2] For the reasons set forth below, we **AFFIRM in part and VACATE and REMAND in part**.

BACKGROUND

[¶ 3] Decedent George Kebekol passed away on May 26, 2021. At the time of his death, he individually owned the island called, *Ngerchelngael,* which he inherited from his father, Kebekol Alfonso. He also individually possessed lease interests in a submerged water lease from Koror State.

[¶ 4] On September 5, 2017, three years or so before he died, George entered into a commercial lease agreement with Leisure Development Koror, Inc. ("LDK") for *Ngerchelngael.* The lease had a term of fifty years, plus a renewal term of 49 years, for the sum of US $8,500,000. This sum was entirely paid as a condition for delivery, and $8 million of the rental funds were deposited on September 15, 2017 in a Bank of Hawaii account owned solely by George, account No. 32495583 ("the '5583 Account").

[¶ 5] George then transferred $7.3 million from the '5583 Account into another account he solely owned, Account No. 6032-617708 ("the '7708 Account"). The trial court determined that 96% of the funds in the '7708 Account originated from the LDK lease. On April 23, 2018, George withdrew $5 million from the '7708 Account and deposited it into an account he owned jointly with his daughter, Tikei, Account No. 8074-081078 ("the '1078 Account"). One year later, George transferred that $5 million from the joint '1078 Account into BOH Account No. 8081-834478 ("the '4478 Account"), which he held in trust for Tikei. Finally, on April 25, 2018, George transferred $2 million from the '7708 Account to BOH Account No. 8083-281205 ("the '1205 Account"), which he solely owned. One year later, funds in the '1205 Account appear to have been transferred to BOH Account No. 6032-603749 ("the '3749 Account"), held jointly by George and Tikei.[2]

[¶ 6] On the day George died, the '7708 Account had a balance of $180,084, and the '5583 Account had a balance of $1,225.

---

[2] George thus roughly transferred $7 million of the LDK rentals to accounts he either owned jointly with or held in trust for Tikei.

[¶ 7] George's family held a *cheldecheduch* on July 10, 2021. Hokkons Baules was charged with announcing the decision. He stated that since the property of George and his wife Elizabeth during the marriage belonged to George and Elizabeth, they would not make a decision on these properties, and the property of George's parents belonged to George and his sister, Benedicta. *See* Decision, *In re: Estate of George Kebekol Alfonso*, Civ. Action No. 21-177 at 15-16 (Feb. 26, 2024 Tr. Div.) [hereinafter "Decision"]. The decision was stated broadly and did not clearly identify specific properties such as *Ngerchelngael* Island or the Submerged Lease. Several witnesses confirmed their understanding of the outcome of the decision. *Id.* at 6-13.

[¶ 8] The opening of George's estate in 2021 was followed by lengthy litigation between Tikei and Benedicta. Among the filings relevant to this case, a trial court Order dated May 23, 2023 ruled that LDK rents distributed by George prior to his death are not part of his Estate, and therefore not at issue in this action brought for the purpose of distributing his Estate. Therefore, the trial court excluded from the inventory Account '3749, which was held jointly with Tikei, and Account '4478, which was held in trust.

[¶ 9] On February 26, 2024, the trial court issued an initial Judgment which awarded to Benedicta rents traceable to the current lessee of Ngerchelngael, LDK, that remained in two deposit accounts: Bank of Hawaii Account Nos. 37025704 ("the '5704 Account") and 32495583 ("the '5583 Account"). However, prior to trial, on March 30, 2023, to help narrow the scope of trial to assets requiring that costly process, Benedicta stipulated that thirteen inventoried assets of the Estate would be distributed to Tikei. One of those assets was the funds deposited in BOH Account No. 6032-617708 ("the '7708 Account"). Pursuant to that stipulation, the Judgment awarded the funds in that account to Tikei in a February 26, 2024 Judgment and Decision.

[¶ 10] After the initial judgment, Benedicta sought help from the trial court to trace the LDK lease funds. On April 24, 2024, she filed a report ordered by the court to examine the records of the inventoried bank accounts, and requested relief from the stipulation as the '7708 Account contained LDK rentals.

[¶ 11] On June 25, 2024 the Trial Division issued a corrected judgment and an order explaining the correction to the prior judgment. The Corrected

Judgment acknowledged that the '7708 Account contained funds linked to the LDK rents, withdrew the stipulation and decided to treat the Account on a pro-rata basis: 96% of the $180,084 remaining in the '7708 Account when George passed, or $172,881, were viewed as LDK rents, and the remaining 4%, or $7,203, were viewed as having originated from some other source not in evidence. The trial court further analyzed the circumstances that led to the stipulation over the '7708 Account and found that Benedicta mistakenly believed that the '7708 Account no longer contained LDK rents. The trial court stated that Tikei, as administrator of the estate, had a fiduciary duty to correct that misunderstanding but failed to do so, and concluded that the stipulation could be withdrawn both based on mistake and fraud.

[¶ 12] Therefore, the Corrected Judgment concluded that Benedicta is due $1,225 because that was the amount contained in the '5583 Account when George died and because those funds are traceable to LDK. It further awarded Benedicta 96% of the funds in the '7708 Account on the date of George's death, or $172,881. The trial court also determined that Tikei should pay interest to Benedicta: pre-judgment interest at the rate of 0.02% per annum on $172,881 from May 26, 2021 to February 26, 2024, and post-judgment interest at the statutory rate of 9%, beginning February 27, 2024 and ending as soon as Benedicta is able to withdraw $172,881 from the '7708 Account.

STANDARD OF REVIEW

[¶ 13] "A trial judge decides issues that come in three forms, and a decision on each type of issue requires a separate standard of review on appeal: there are conclusions of law, findings of fact, and matters of discretion. Matters of law we decide de novo. We review findings of fact for clear error. Exercises of discretion are reviewed for abuse of that discretion." *Kiuluul v. Elilai Clan*, 2017 Palau 14 ¶ 4 (internal citations omitted).

DISCUSSION

I. George's Inter Vivos Transfers to Tikei

[¶ 14] During his lifetime, George made several transfers of LDK rental funds to accounts he either owned jointly with or held in trust for Tikei. In the May 23, 2023 Order, the trial court determined that it would not inventory

accounts held jointly or in trust "absent clear and convincing evidence that the Deceased did not intend the deposited funds to become Tikei's by operation of law upon his death". *See* Order on Inventorying Funds in Bank Accounts from Lease Rental for Ngerchelngael Island, *In re: Estate of George Kebekol Alfonso*, Civ. Action No. 21-177 at 4 (Tr. Div. May 23, 2023).

[¶ 15] Benedicta is arguing that George maintained an interest in these accounts, and that this interest should be part of the estate. Benedicta further maintains that under custom, the *cheldecheduch* had the binding power of law, and that she had been appointed as George's heir to administer the rentals from Ngerchelngael Island: therefore, the *cheldecheduch* "repealed" George's transfers. We disagree.

[¶ 16] There are no statutes in Palau governing accounts held jointly or in trust; neither are there any customs or traditions governing these matters. In the absence of controlling Palauan law, "[t]he rules of the common law, as expressed in the restatements of law approved by the American Law Institute, and . . . as generally understood and applied in the United States, shall be the rules of decision in the courts of the Republic." 1 PNC § 303.

[¶ 17] In the United States, when there are no statutes on joint accounts, it is generally recognized in common law that the opening of a joint bank account creates a joint tenancy. 149 A.L.R. 879 (Originally published in 1944). The most common rule is that funds remaining in a "joint account" belong to the survivor, absent clear and convincing evidence of the deceased depositor's contrary intent. 10 Am. Jur. 2d *Banks and Financial Institutions* § 672. According to the Comment to Uniform Probate Code Section 6-104, the rule is based on "[t]he underlying assumption [ ] that most persons who use joint accounts want the survivor or survivors to have all balances remaining at death."

[¶ 18] The common law provides similar rules for accounts held in trust:

> An inter vivos trust is a trust that is created and becomes effective during the lifetime of the settlor. The inter vivos trust is a unique legal entity through which the settlor may transfer property to a trustee reserving for the life of the settlor the beneficial use of the property with the

> remainder to designated beneficiaries . . . Inter vivos trusts are designed in large measure to bypass probate of a decedent's estate, allowing the decedent's property to be managed and distributed immediately following his or her death.

76 Am. Jur. 2d *Trusts* § 4

[¶ 19] Therefore, the trial court did not err in excluding the '4478 Account and the '3749 Account from the estate. Although Benedicta argues that under custom, the *cheldecheduch* repealed or superseded George's inter vivos distribution, "custom is not the only check on custom. Other authoritative legal sources may foreclose customary results in certain circumstance. For example, intestate succession statutes may preclude customary succession." *Nakamura v. Nakamura*, 2016 Palau 23 ¶ 26. The general rule, under common law, is that natural persons have the right to give away their property to whomever they wish. 38 Am. Jur. 2d *Gifts* § 4.

[¶ 20] In addition, under customary law, the final wishes of a decedent on the disposition of their property are binding. *Ngiraingas v. Tellei*, 20 ROP 90, 91 (2013). Expert witness Rachel Bechesserak testified along these lines at trial when she was asked whether someone with personal property "can give it to whoever they want to while their [sic] alive or at their death." Transcript at 482-83. She testified that "it's his property so he can give it to anybody he wants." *Id.* There is no support in custom that the *cheldecheduch*'s distribution superseded George's inter vivos transfers to Tikei.

II. Custom Surrounding George's *Cheldecheduch*

[¶ 21] Tikei presents several arguments to this Court, but we mainly focus on the ones pertaining to the custom of *cheldecheduch* and the related trial court's findings. Tikei maintains that the trial court erred in finding that the *cheldecheduch* had distributed George's individually-owned lands, leaseholds and bank accounts because custom requires the *cheldecheduch* to clearly state which assets are distributed and no custom allows the decedent's relatives to distribute items not traditionally covered by custom.

[¶ 22] The customary tradition of *cheldecheduch* is deeply engrained in Palauan history and culture and precedes the introduction of the concept of

individual ownership in Palau. *See e.g.*, *Ngiruhelbad v. Merii*, 1 TTR 367 (1958) (noting that the concept of individual ownership did not exist in Palauan custom); *Asanuma v. Flores*, 1 TTR 458 (1958) (same). As a result, it was not necessarily self-evident that the *cheldecheduch* had the authority to distribute such assets, unless explicitly included.

[¶ 23] When faced with this friction between custom and modern concepts of property, we have unequivocally concluded that senior family members can transfer individually-owned land at a *cheldecheduch*. *Kubarii v. Olkeriil*, 3 ROP Intrm. 39, 41 (1991); *Bandarii v. Ngerusebek Lineage*, 11 ROP 83, 88D (2004) (Ngiraklsong, C.J., concurring) ("Under Palauan custom, senior family members can transfer individually owned land at the *[che]ldecheduch*.").

[¶ 24] Nevertheless, we have also made clear that a public announcement is crucial to the custom of *cheldecheduch*, as it gives the surviving spouse the opportunity to object to the decision. *Rechesengel v. Lund*, 2019 Palau 32 ¶ 25. In *Nakamura v. Nakamura*, 2016 Palau 23, during the *cheldecheduch*, a document written by the decedent's relatives was read disposing of several personal assets, including stocks, land, and leaseholds. The decedent's spouse and her representatives did not object to the document during the *cheldecheduch*, but later contested the distribution of some of the assets to the decedent's siblings. The *Nakamura* court found that even if non-traditional assets or distributions were included in the *cheldecheduch*, if there was no objection, the decision of the *cheldecheduch* goes into effect:

> A distribution to a non-traditional heir does not prevent *cheldecheduch* decision becoming final. A decision becomes final if the disposition of a personal asset of the deceased is discussed publically [sic] and the other participants do not object before the cheldecheduch concludes.

Nakamura, 2016 Palau ¶ 30.

[¶ 25] In this case, the trial court determined that "[a]lthough Mr. Baules's concluding statements did not specifically mention *Ngerchelngael*, the consensus of the *cheldecheduch* was that it would be given to Benedicta to keep or distribute as a property George inherited from his and Benedicta's father, Kebekol Alfonso" and that "[a]lthough Mr. Baules's concluding

statements did not specifically mention the Submerged Lands Lease adjacent to *Ngerchelngael*, the consensus of the *cheldecheduch* was that it was among the properties acquired by George as his separate, non-marital property to be administered or retained by Benedicta as she saw fit." Decision at 30-32.

[¶ 26] During trial, several witnesses testified to the general understanding that the *cheldecheduch* distributed what belonged to Kebekol Alfonso and his wife Rose would go to Benedicta, and what was owned by George Kebekol and his wife Elizabeth would go to Tikei and Elizabeth.[3] However, none of these witnesses testified that they understood that the *cheldecheduch* was distributing specific assets such as *Ngerchelngael*, the associated lease and rental funds, or the Submerged Water Lease. The audio recording from the *cheldecheduch* shows that George's relatives did not specifically state that they were distributing these assets. Expert Witness Mr. Alan Seid further testified that the *cheldecheduch* did not distribute any lands to Benedicta, stating that "it was very clear from what Mr. Baules said that they washed their hands of any issue relating to the properties of George Kebekol privately or properties that may have been owned by him and his siblings. They washed their hands of that." Transcript at 871.

[¶ 27] For the distribution to be made according to custom under *Nakamura* and *Rechensegel*, it must be done publicly and in a way through which objections would have been possible. The evidence in the record does not support that these assets were plainly and expressly distributed during the *cheldecheduch*, in such a way that appropriate objections could have been raised. This is amplified by the fact that the assets in issue are not traditionally included in a *cheldecheduch*—to include non-traditional assets within its authority, the *cheldecheduch* must specifically identify and mention the assets to be disposed and publicly announce their disposition so as to give the surviving spouse and her relatives the opportunity to either object or accept the disposition. This is not what happened here. Therefore, the trial court erred in finding that the *cheldecheduch* had distributed *Ngerchelngael*, its rentals, and the leaseholds to Benedicta.

---

[3] The witnesses were Hokkons Baules, Yuki Ngotel, Kathy Masang, Adelina Sizuko Salii, Sylvia Tmodrang, Ellender Ngirameketii. *See* Decision at 5-13.

[¶ 28] What is not discussed at the *cheldecheduch* is not settled. *Ngirngemeusch,* 2023 Palau 5 at ¶ 14; *Rechesengel*, 2019 Palau ¶ 25. "The prevailing customary law is that when no statute is applicable to determine the distribution of a decedent's property and no *[ch]eldecheduch* was held regarding such distribution, property should be given to the decedent's children, as they are the customary heirs." *Rechesengel*, 2019 Palau 32 ¶ 14. Although the language in *Rechensegel* may seem to imply otherwise, this does not necessarily mean that the customary heirs are necessarily the children. "To be sure, there are instances where, under Palauan custom, a deceased father's individual land would not necessarily go to his children." *Oiwerrang Lineage v. J. Techur*, 2022 Palau 4 ¶ 5; *see also Omelau v. Saito*, 19 ROP 198, 199 (2012) (paternal aunt was allowed to claim decedent's individual lands that he inherited from his father); *Delbirt v. Ruluked*, 13 ROP 10 (2005) (upholding Land Court decision which awarded decedent's individual land to his older sister, and not to his daughter.). In the past, we have explicitly rejected the argument that a decedent's land automatically passes to his children, and instead stated that "the property passes to the proper customary heir or heirs and who the customary heir happens to be is a question of fact to be established by the parties before the Land Court." *Sked v. Ramarui*, 14 ROP 149, 150 (2007) (citing *Ikluk v. Udui*, 11 ROP 93, 95 (2004)); *see also Matchiau v. Telungalk ra Klai*, 7 ROP Intrm. 177, 179 (1999) (stating that although we have upheld determinations that, under custom, a decedent's land passes to his children, some cases have left open the possibility that contrary evidence regarding custom might support a different result).

[¶ 29] Of course, these cases preceded *Beouch v. Sasao*, 20 ROP 41 (2013), and as such applied the now-defunct standard that "the existence of a claimed customary law is a question of fact that must be established by clear and convincing evidence and is reviewed for clear error." *Koror State Pub. Lands Auth. v. Ngirmang*, 14 ROP 29, 34 (2006). Because the determination of the customary heirs is inherently a question of custom, the *Beouch v. Sasao* framework must be applied.

[¶ 30] We decline to consider Tikei's remaining arguments, as they are now moot.[4] However, to the extent that Benedicta can still be determined to be the customary heir, we note that the trial court did not err in withdrawing the March 30, 2023 pretrial stipulation that the '7708 Account would be distributed to Tikei. *See* Order Granting Relief from Stipulation; Explaining Correction to Judgment; and Granting Motion for Order in Aid of Judgment for '5583 Account, *In re: Estate of George Kebekol Alfonso*, Civ. Action No. 21-177 at 4 (Tr. Div. June 25, 2024).

[¶ 31] "As a general matter, a party may not appeal a judgment to which he consented. However, this rule does not apply where . . . the judgment was allegedly obtained by fraud, collusion, or mistake." *Mesubed v. Urebau Clan*, 20 ROP 166, 167-68 (2013) (internal citations omitted). When, as here, a party appeals a stipulation on the grounds of mistake, the validity of the stipulation is determined by reference to contract law. *Id.* at 168. In a December 12, 2022 filing in front of the trial court, Benedicta put on record her belief that the '7708 Account no longer contained LDK rentals. Further inquiry into the contents of the Account proved it did contain LDK rentals. Therefore, the trial court did not err in withdrawing the stipulation because of a mistake.

CONCLUSION

[¶ 32] We **AFFIRM in part and VACATE and REMAND in part** the Trial Division's judgment for redetermination of George's customary heirs pursuant to the *Beouch v. Sasao* framework. The trial court may choose to receive additional evidence to do so.

---

[4] We also decline wholesale to address Tikei's argument pertaining to the trial court's "impounding" of funds in Civil Action 21-144. The trial court simply reminded the parties that any funds pertaining to the lease concerned by the Civil Action 21-144 default summary judgment should be paid to the Clerk of Courts. The trial court did not make conclusions of laws or findings of facts concerning the separate Civil Action, nor did it "impound" funds from the other case.

SO ORDERED, this 13th day of June 2025.

OLDIAIS NGIRAIKELAU
Chief Justice, presiding

FRED M. ISAACS
Associate Justice

ALEXANDRO C. CASTRO
Associate Justice