In the Matter of NASIE AIRAM

Civil Appeal No. 141

Appellate Division of the High Court

Truk District

July 7, 1976

Petition for order declaring appellant as lawful spouse and heir of deceased. Truk District Court denied petition, which judgment was affirmed by Trial Division of the High Court. On appeal, the Appellate Division of the High Court, Brown, Associate Justice, affirmed, holding that marriage of petitioner, a citizen of Trust Territory, to non-citizen, which was solemnized by a feast, was consummated, and out of which a child was born to the couple, who lived together, was nevertheless not a valid marriage since it was not solemnized by one authorized by statute relating to marriages of citizens and non-citizens.

1. **Statutes—Construction—Construction with Other Laws**

   Where a statute contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different intention existed. (39 TTC §§ 51–53)

2. **Statutes—Construction—Legislative Intent**

   Judicial construction of a statute should be in keeping with the natural and probable legislative purpose.

3. **Domestic Relations—Marriage—Validity**

   Congress of Micronesia intended to make marriages by custom valid only between Trust Territory citizens, and as to marriages in Trust Territory involving a citizen and a non-citizen, it exercised its power to regulate and require certain procedures and forms in celebration of marriages. (39 TTC §§ 51–53, 55)

4. **Domestic Relations—Marriage—Validity**

Requirement that there be solemnization of marriage between a citizen and non-citizen of Trust Territory by a person mentioned in statute in order to constitute a valid marriage is a mandatory condition. (39 TTC § 53)

5. **Courts—High Court—Function of Appellate Division**

It is not function of court to legislate and where statutes are clear and unambiguous, it is neither the court's right nor its duty to change them; and fact that Congress of Micronesia has imposed stricter procedural requirements in marriages involving non-citizen than in marriages involving citizens of Trust Territory does not permit court to change statutory requirements. (39 TTC §§ 51–53, 55)

6. **Domestic Relations—Marriage—Validity**

Citizen's argument on appeal, that her marriage to non-citizen outside statutorily prescribed procedure was solemnized by a feast and was consummated, that a child was born of the union, that the two lived together, and that therefore the spirit of the law, though not letter of the law, was met, and there was thus a valid marriage, could not be accepted. (39 TTR §§ 51–53; 55)

Counsel for Appellant: GERALD SECK, Micronesian Legal Services Corporation

Before BURNETT, *Chief Justice*, BROWN, *Associate Justice*, and HEFNER, *Associate Justice*

BROWN, *Associate Justice*

Appellant appeals from the judgment of the Trial Division of the High Court which affirmed on appeal the judgment of the Truk District Court in the above-entitled matter.

Dr. Alphonse Van Schoote, a non-citizen of the Trust Territory, and appellant, a citizen of the Trust Territory, married in accordance with Trukese custom. There was one child the issue of that union, and that child is deceased. It is undisputed that the marriage in question did not comply with the provisions of 39 TTC 51, 52, and 53, which deal with marriages between non-citizens and citizens of the Trust Territory.

Upon the demise of Dr. Van Schoote, appellant petitioned the Truk District Court to issue an order declaring her to be the former's lawful spouse and heir. The petition was denied, and appellant appealed to the Trial Division of the High Court which affirmed the judgment of the District Court; and the matter now comes before us.

Appellant bases this appeal on two grounds. First, she claims that a customary marriage between a non-citizen and a citizen of the Trust Territory is a legally recognizable marriage. Second, she contends that the provisions of 39 TTC 51, 52, and 53 are not mandatory. We first will consider that latter ground for appeal.

The pertinent portions of the foregoing sections of the Code provide as follows:

"39 TTC 51 . . . In order to make valid the marriage contract between . . . a non-citizen and a citizen of the Trust Territory, it *shall* be necessary that:

(3) a marriage ceremony be performed by a duly authorized person as provided in this Chapter. (emphasis added)

39 TTC 52 . . .

(1) The District Administrator . . . is authorized to grant a license for marriage between . . . a non-citizen and a citizen of the Trust Territory. Upon the filing of an application for such license, the District Administrator shall collect from the parties . . . the sum of two dollars . . .

(2) In order to obtain a license to marry, the parties *shall* file with the District Administrator an application in writing . . . If the statements in the application are satisfactory and it appears that the parties are free to marry, the District Administrator *shall* issue the parties a license to marry . . . (emphasis added).

39 TTC 53 . . . The marriage rite may be performed and solemnized by an ordained minister, a judge of the District Court, a District Administrator, or by any person author-

ized by law to perform marriages, *upon presentation to him a license to marry as prescribed in Section 52 of this Chapter.*" (Emphasis added.)

These sections must be read together with 39 TTC 55, which recognizes customary marriages between citizens of the Trust Territory.

[1–4] Where a statute with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different intention existed. *Richfield Oil Corp. v. Crawford,* 249 P.2d 600 (Cal.). Judicial construction of a statute should be in keeping with the natural and probable legislative purpose. *City of Glendale v. Criscenta Mut. Water Co.,* 288 P.2d 105 (Cal. App.). There can be no doubt that the Congress of Micronesia intended to make valid customary marriages between Trust Territory citizens only. As to marriages in the Trust Territory involving a non-citizen, it exercised its power to regulate and require certain procedures and forms in the celebration of marriages. A similar exercise of such power was approved in *States v. County Clerk of Los Angeles,* 264 P.2d 959 (Cal. App.). Thus, a requirement that solemnization be performed by a person mentioned in 39 TTC 53 in order to constitute a valid marriage is a mandatory condition. *In re Abate's Estate,* 333 P.2d 200, 206–207 (Cal. App.) (hearing den.)

Appellant's argument that her marriage to Dr. Van Schoote was solemnized by a feast, was consummated, that a child was born of that union, and that she and the deceased lived together all combined to establish that the spirit of the law—though not the letter of the law—was met and therefore made the marriage a valid one cannot be accepted. The case of *Mutong v. Mutong,* 2 T.T.R. 588, cited by appellant, dealt with a customary marriage and is distinguishable upon its facts.

[5] It would appear that this Court once again is asked to engage in judicial legislation. Once again we say that it is not the function of this Court to legislate. *Mad v. Trust Territory*, 6 T.T.R. 550, 555–556. The statutes before us are clear and unambiguous, and it is neither our right nor our duty to change them. The Congress of Micronesia has imposed stricter procedural requirements in marriages involving non-citizens than in marriages involving only citizens of the Trust Territory. Clearly, it has made 39 TTC 51, 52, and 53 mandatory. Any other interpretation by us would serve only to thwart the legislative intent of Congress.

[6] It follows from the foregoing that appellant's first ground for appeal, that the marriage between appellant and Dr. Van Schoote is legally recognizable, cannot stand.

Therefore, and by reason of the foregoing, the judgment from which this appeal is taken is AFFIRMED.

BURNETT, *Chief Justice*, concurring.

I concur, without reservation, with the Court's opinion affirming the decision of the Trial Division and upholding the validity of 39 TTC Sections 51, 52 and 53, which provide specific requirements for valid marriages between non-citizens and citizens of the Trust Territory.

I wish, however, to add certain comments with respect to considerations which may not have been presented on behalf of the appellant at trial level.

The position taken by the appellant in this matter would require either an invalidation of the restrictive provisions of our statute with respect to such "marriages" or an interpretation of them which would, on a selective basis, render them essentially meaningless.

Counsel for appellant briefed the matter extensively. All of the cases which he has cited, however, in support of

appellant's position, involved "customary marriage" between two people of the same custom; that is obviously not the case here. One who is not a citizen does not, by simple residence, become a part of the local custom no matter how much he may profess his desire to do so.

What disturbs me principally is that it is completely unnecessary for the appellant to have this marriage, void under the statute, to be declared valid in order for her to lay claim to whatever may remain from the estate of the deceased, to whom she thought she was married under Trukese custom.

A case cited by appellant, *Fung Dai Kim Ah Leong* v. *Lau Ah Leong*, 27 F.(2d) 582 at 584, uses the words: "Owing to a mutual mistake of both parties respecting the fact of the existence of a valid marital status, the agreement cannot be fully executed, and plaintiff's expectations cannot be fully realized. We are inclined to think that this is such a mistake as warrants the interposition of a court of equity to grant appropriate relief." (Citations omitted)

It thus appears that if this matter had been placed in proper context, the appellant would not be simply told that she was never married and had no rights. The equity jurisdiction of the court is such that she could be granted relief, without the drastic step required to declare the statute invalid.