IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

STERLINA GABRIEL, Appellant, v. CHILDREN OF URREI BELLS and TITIBAU BAUMERT, Appellees.	CIVIL APPEAL NO. 10-036 (Civil Action No. 07-146) **OPINION**

Decided: ~~April~~ May 16, 2012

Counsel for Appellant: Mariano W. Carlos
Counsel for Appellees: J. Uduch Sengebau Senior

BEFORE: ALEXANDRA F. FOSTER, Associate Justice, ROSE MARY SKEBONG, Associate Justice Pro Tem, and RICHARD H. BENSON, Part-Time Associate Justice.

Appeal from the Trial Division, the Honorable LOURDES F. MATERNE, Associate Justice, presiding.

PER CURIAM:

Sterlina Gabriel appeals the Trial Division's August 18, 2010, award to Appellees of Cadastral Lot No. 002 D 10 (also known as *Dims*); Cadastral Lot Nos. 013 D 06 and 013 D 09 (also known as *Dort*); and Cadastral Lot No. 013 D 16 (also known as *Dort/Bairarang*). The land is located in Ngiwal and once belonged to decedent Gabriel Renguul.

The Trial Division, relying on the customary determination made at Renguul's cheldecheduch, awarded Lot No. 002 D 10 and other lands to the children of Urrei Bells and Titibau Baumert. Gabriel, a child of Decedent, appeals. We are not persuaded by Gabriel's arguments and accordingly affirm the Trial Division.

I. BACKGROUND

Decedent Renguul executed a will on December 1, 2005. He co-owned the lots at issue with relatives[1] and did not explicitly dispose of his interest in all of the properties in his will. Instead, he stated in his will that the ownership of *Dims, Dort,* and *Dort/Bairarang* "should be settled at any customary meeting after [his] death by [his] children and relatives." Renguul died on January 13, 2007. Renguul's daughter, Appellant Gabriel, filed a petition to probate the estate of her father. Appellee Hilaria Sullivan, a child of Renguul's first cousin, filed her claim to the lands on behalf of herself and the Children of Baumert and Bells.

The case proceeded to trial. The Trial Division accepted Renguul's will as "true and authentic" and held that the will would control the properties, including Lot Nos. 002 D 10, 013 D 06, 013 D 09, and 013 D 16, which are the subject of this appeal. Moreover, the court recognized testimony from experts and witnesses regarding who has the power to distribute the decedent's properties or interests. Two such witnesses, Walter Tabelual and Antonio Bells, testified that an cheldecheduch took place on February 4, 2007, at

[1] The relatives include Renguul's sister, Kiarii Mellil, his aunts, Titibau Baumert and Urrei Bells, and a relative, Kodep Brel.

Esuroi Clan House in Airai. They testified that, in accordance with custom, Renguul's interests were transferred to the children of Baumert and Bells. The court found these testimonies to be credible and concluded that the children of Baumert and Bells are close relatives of Decedent's father who have the authority to settle the decedent's properties at an cheldecheduch.

Appellant Gabriel now appeals this determination. She argues that the Trial Court erred in finding that Renguul's land was properly disposed of at his cheldecheduch, in interpreting Renguul's will as it did, and in failing to apply the proper statute.

II. STANDARD OF REVIEW

Factual findings of the lower court are reviewed using the clearly erroneous standard. *Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.*, 9 ROP 162, 164 (2002). Under this standard, the findings of the lower court are set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached that conclusion. *Id.* Conclusions of law are reviewed *de novo*. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

III. ANALYSIS

The Palau National Code provides that inheritance of land held in fee simple "may be transferred, devised, sold or otherwise disposed of at such time and in such manner as the owner alone may desire, regardless of established local customs which may control

the disposition or inheritance of land through matrilineal lineages or clans." 25 PNCA § 301.

Appellant advances three arguments on appeal. First, she argues that the Trial Division committed reversible error by allowing Sullivan to "collaterally attack" the Certificates of Title to several lots, including Lot Nos. 002 D 10, 013 D 06, 013 D 09 and 013 D 16, and to introduce "completely new evidence as to the ownership of these lots which the Trial Court relied on in awarding decedent's interests in these lots to her and her siblings." (App. Op. Br. 10).

As an initial matter, we note that it is not our task to re-evaluate evidence. We evaluate factual determinations under a clearly erroneous standard. In its decision, the Trial Division relied on four critical factual determinations: (1) Renguul's will was valid and stated that the lands at issue before us should be disposed in "any customary meeting"; (2) Renguul's cheldecheduch served as an appropriate "customary meeting" as contemplated by the will; (3) the cheldecheduch, where members of Renguul's family discussed the properties, was held in conformity with custom; and (4) Renguul's family members awarded the lands to the children of Baumert and Bells. There is support in the record for the Trial Division's decision, and the conclusions of fact were not unreasonable.

The Trial Division relied on the direction in Renguul's will to settle ownership of these properties at "any customary meeting" that his children and relatives attended. The

court found that a customary meeting, the cheldecheduch, occurred on February 4, 2007. The court heard expert testimony that the father's relatives decide the distribution of properties. Renguul's father's relatives properly decided the distribution of his properties at the cheldecheduch. Therefore, the Trial Division's finding that the cheldecheduch occurred and that the properties were discussed, in accordance with Renguul's will, was not in error.[2]

The trial judge is "best situated to make credibility determinations of expert witnesses, and this Court will generally defer to those decisions." *Koror State Pub. Lands Auth. v. Ngirmang*, 14 ROP 29, 34 (2006). The Trial Division accepted expert witness testimony from Wataru Elbelau, an expert in Palauan customs, who stated that a decedent's property does not automatically go to his children but must instead be discussed by close relatives. The Trial Division also heard testimony from Sariang Timulch, a member of the Palau Historical Society and another expert in Palauan customs. Timulch testified that the sisters of the decedent's father have the authority to settle decedent's properties at the cheldecheduch. The Trial Division's reliance on this testimony was not clearly erroneous.

[2] Gabriel argues that the Trial Division erred in "allowing [Claimant Sullivan] to alter the ownership of the said lot with new claims and testimonies." (App. Op. Br. 17). The evidence does not support this argument. Instead, we affirm the Trial Division's finding that, based on the evidence, a customary meeting occurred and properties were distributed accordingly.

The Trial Division relied on Tabelual's and Bells' testimony to find that the properties at issue came from Ibai Clan of Ngiwal into Dort Lineage, which is the lineage of Renguul's father. Tabelual, the family spokesperson, explained that he "would not go into *Dims* because it belongs to Tony Bells." Bells corroborated this testimony. The Trial Court's determination that *Dims* was discussed and its ownership decided at the cheldecheduch was supported by credible evidence. The evidence supports the distribution of land that resulted from the cheldecheduch, and we accordingly affirm the Trial Division's decision.

Gabriel's second and third arguments are that the trial court made an incorrect finding of law in interpreting the meaning of "any customary meeting" and in failing to apply 25 PNC § 301(b). Gabriel raises, for the first time on appeal, the argument that the words "any customary meeting" may not refer to an cheldecheduch. An issue not raised in the trial court is waived. *Nebre v. Uludong* 15 ROP 15, 25 (2008). Accordingly, we will not consider this argument.

Appellant next argues that the Trial Division failed to apply 25 PNC § 301(b), the intestacy statute. If the statute were to apply, it would supplant the cheldecheduch as the proper means of disposing of Renguul's land. The statute lists three separate requirements that must be met before the section can apply: If the decedent dies (1) without issue and (2) without a will, and (3) if he or she acquired his lands from someone other than a *bona fide* purchaser for value, then the land may be disposed "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." 25 PNC 301 § 301(b). While the language of the statute is ambiguous, it has been interpreted to require all three conditions. *Marsil v. Telungalk ra Iterkerkill*, 15 ROP 33 (2008) ("All will agree that § 301(b) is not a model of clarity. . . . [T]hree separate requirements must always be met before § 301(b) can apply . . . In effect, the 'or' becomes an 'and'.").

The Trial Division correctly found that Renguul died with issue and with a will. Thus the statute cannot apply, and custom fills the gap. *Marsil*, 15 ROP at 36; *Nakamura v. Sablan*, 12 ROP 81, 82 (2005).

IV. CONCLUSION

We hold that the findings of the Trial Division were not clearly erroneous and its legal conclusions were correct. The Trial Division properly awarded the lands known as *Dims, Dort, and Dort/Bairarang* to the children of Baumert and Bells. Accordingly, we **AFFIRM** the Trial Division's award of land to Appellees.

SO ORDERED, this 16 day of ~~April~~ May, 2012.

ALEXANDRA F. FOSTER
Associate Justice

ROSE MARY SKEBONG
Associate Justice Pro Tem

RICHARD H. BENSON
Part-Time Associate Justice