IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FILED
2012 FEB 23 AM 10:26
SUPREME COURT
OF THE
REPUBLIC OF PALAU

CORDINO SOALABLAI, Appellant, v. PASQUALA SWEI and HOKKONS BAULES, Appellees.	CIVIL APPEAL NO. 11-006 (Civil Action Nos. 07-163 & 08-253) (consolidated) **OPINION**

Decided: February 3, 2012

Counsel for Appellant Soalablai: Raynold B. Oilouch
Counsel for Appellee Swei: Oldiais Ngiraikelau
Counsel for Appellee Baules: Salvador Remoket

BEFORE: KATHLEEN M. SALII, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice; and ROSE MARY SKEBONG, Associate Justice Pro Tem.

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

PER CURIAM:

Cordino Soalablai appeals the Trial Division's award in probate of certain properties to Pasquala Swei and Hokkons Baules.[1] The only issue on appeal is whether

[1] Specifically, Soalablai seeks ownership of (1) a portion of the land known as *M'ngai* in Meyuns Hamlet, which was awarded to Swei, (2) a house located on land known as *Ngatbelau* in Ngerbeched Hamlet, awarded to Baules, and (3) land known as *Ngerimel* in Ngeruluobel Hamlet, also awarded to Baules.

the trial court properly determined that the intestacy statute, 25 PNC § 301(b), did not apply to the estate of Father Felix Yaoch. We affirm the Trial Division's order.

I. BACKGROUND

Father Yaoch, a Roman Catholic priest, died without a will and without issue. Throughout his life, as a member of the Jesuit Order, Father Yaoch's worldly comforts were provided by the Catholic Church, the Society of Jesuits, and the Catholic Mission here in Palau. Upon entering the priesthood, Father Yaoch "severed" normal ties with his family in order to fulfill his calling. Around 2001, his health began to deteriorate, and he was hospitalized in the Philippines. Among those who visited and stayed with him during his sickness was Appellant, Cordino Soalablai, a relative of Father Yaoch. Father Yaoch died in the Philippines on December 17, 2002. Members of the Catholic Mission went to the Philippines to make arrangements to have Father Yaoch's body brought back to Palau. Upon returning to Palau, the Catholic Mission was also responsible for planning and putting on Father Yaoch's funeral. However, Soalablai and other members of his lineage, the Lineage of Kesiil, contributed $2,000.00 to the funeral.

On September 3, 2008, Soalablai petitioned the trial court to probate Father Yaoch's estate and to transfer the estate to the Lineage of Kesiil. Appellees Pasquala Swei and Hokkons Baules also filed claims. Soalablai argued that his claim should prevail under the intestacy statute, among other reasons. Swei and Baules contended that the statute was inapplicable because the Lineage of Kesiil was not "actively and primarily responsible" for Father Yaoch before his death. 25 PNC § 301(b). The Trial Division agreed that the intestacy statute did not apply and, therefore, applied Palauan custom.

Concluding that custom dictated that Swei and Baules prevail, the court awarded the currently disputed properties to them.[2]

II. STANDARD OF REVIEW

We review the legal conclusions of the Trial Division de novo and its findings of fact for clear error. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

III. ANALYSIS

25 PNC § 301(b) provides, in relevant part, that:

> If the owner of fee simple land dies without issue and no will has been made . . . 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.

The trial court determined that neither the Lineage of Kesiil, nor any other lineage, was "actively and primarily responsible" for Father Yaoch before his death. It pointed to the financial support and care provided by the Catholic Church as evidence that no lineage met the statutory requirements. Soalablai argues that this was legal error because it amounts to the conclusion that because the Catholic Church provided support, no lineage may qualify as "actively and primarily responsible" for Father Yaoch.

This argument reads too much into the Trial Division's decision. The trial court did not hold that the Catholic Church's support of Father Yaoch precluded a determination that some lineage was qualified under the intestacy statute. Instead, the

[2] Appellant does not contend here that he should have prevailed based on custom.

court simply pointed out that the Catholic Church, as a factual matter, was responsible for Father Yaoch, and no lineage shared that responsibility.

Section 301(b) does not require that a court choose a lineage to receive an intestate decedent's estate. In *Delbirt v. Ruluked*, 10 ROP 41, 43 (2003), we held that it was inappropriate for the Land Court to choose a claimant to receive the distribution if that claimant did not meet the statutory qualifications, even if no better claimant was before the Land Court. We concluded that the statute applies only if a qualified lineage exists and has filed a claim. *Id.* We stated, "the statute is . . . not satisfied by a showing that an individual or individuals cared for the deceased prior to his death." *Id.* Although that case involved individual claimants rather than an individual purporting to act on behalf of a lineage, like Soalablai, the same principle applies here. A lineage claimant in a probate proceeding must make a showing that it was both (1) a "maternal or paternal lineage to whom the deceased was related by birth or adoption" and (2) "actively and primarily responsible for the deceased prior to his death." 25 PNC § 301(b). Soalablai failed to satisfy the second prong.

Finally, Soalablai suggests that, because he and others from the Lineage of Kesiil visited Father Yaoch before his death and helped finance the funeral, the trial court erred in its factual conclusion that the Lineage was not "actively and primarily responsible" for Father Yaoch. However, our inquiry into the trial court's factual findings is merely to ascertain whether its determination was clear error. *Roman Tmetuchl Family Trust*, 8 ROP Intrm. at 318. Given the limited scope of Soalablai's care for Father Yaoch and the fact that an overwhelming majority of his support came from the Church, the Trial

Division's finding that the Lineage of Kesiil was not "actively and primarily responsible" for Father Yaoch was not clear error.

IV. CONCLUSION

For the foregoing reasons, we **AFFIRM** the judgment of the Trial Division.

KATHLEEN M. SALII
Associate Justice

ALEXANDRA F. FOSTER
Associate Justice

ROSE MARY SKEBONG
Associate Justice Pro Tem