

FILED



IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

2013 JUL 12 10:42 AM
SUPREME COURT
OF THE
REPUBLIC OF PALAU

-----X
FRANCISCO SUNGINO,

Appellant,

v.

FUANA BENHART, MARK RUBASCH
SUZETTE NGIRASOB, and RUTH
GIBBONS,

Appellees.
-----X

CIVIL APPEAL NO. 12-041
Civil Action No. 11-225

OPINION

Decided: 7/3, 2013

Counsel for Appellant: Brien Sers Nicholas
Counsel for Appellees: Salvador Remoket

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII,
Associate Justice; and R. ASHBY PATE, Associate Justice.

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

PER CURIAM:

This appeal arises from the Trial Division's Judgment concluding that Appellees are senior strong members and Appellant is not Kloulubak of the Kermong Clan. For the following reasons, the decision of the Trial Division is **AFFIRMED**.²

BACKGROUND

The underlying dispute in this appeal stems from a disagreement concerning the identities of the strong members of the Kermong Clan of Ngkeklau Hamlet, Ngaraard State. Appellees filed for declaratory relief before the Trial Division, seeking a determination that they are the senior strong members of the Clan with the power to appoint the title-holders and to manage and control Clan affairs. Appellees also disputed Appellant's counterclaim that he holds the title of Kloulubak (male chief) of the Clan.

Before the Trial Division, both parties called multiple witnesses to testify concerning their claimed statuses within the Clan. Appellees—Fuana Behart, Mark Rubasch, Suzette Ngirasob, and Ruth Gibbons—testified that their ochell (strong female line) status extends back seven generations to a woman named Sulkal, whom they claim was a member of the Clan.³

Appellant disputed Appellees' senior strong status, arguing that the line from Sulkal was broken when Ubad, a female ancestor of Appellees, refused to take part in an

² Although Appellant requests oral argument, we determine pursuant to ROP R. App. P. 34(a) that oral argument is unnecessary to resolve this matter.

³ Testimony established that Sulkal had three sons—Oyaol, Ngiraidelbong, and Meresebang. Generationally, Ngiraidelbong was the father of Torch, who was the mother of Ubad, who was the mother of Ilong, who was the mother of Ileberang, who was the mother of Belbult, who was the mother of Appellees Fuana and Gibbons.

omengol⁴ to Melekeok. Accordingly, Appellant asserted that Appellees are now mechut el iars, a label reserved for those who return to a clan after being separated from it. As such, Appellant argued that Appellees' statuses are weaker than his own.

Appellant called witnesses to testify that he was presented before the Ngkekklau Klobak by senior strong members of the Clan and was confirmed as Kloulubak of the Clan. These testimonies also suggested that Appellant was connected to the Clan through Appellant's ancestor who became a part of the Clan when she agreed to lead the omengol that Ubad allegedly refused to perform.

In the Findings of Fact and Decision of the Trial Division issued on September 19, 2012, the court stated that Appellee Fuana is a strong senior member of the Clan. The court rejected Appellant's contention that Appellees are mechut el iars, finding that, regardless of what might have happened with Ubad, other members of the lineage stayed with the Clan and maintained their status. The court accepted expert testimony supporting the notion that, even if one member moves away, if other members of her lineage stay behind and remain active in clan matters, the other members of that lineage maintain their status.

The court also accepted expert customary testimony explaining that, in order for someone to become Kloulubak, all senior strong members must approve the appointment. The court concluded that, because Fuana is a senior strong member and did not approve

⁴ An omengol occurs when females from one clan go to another village to perform services for money on behalf of their clan.

Appellant's appointment, Appellant did not present sufficiently convincing evidence that he is Kloulubak of the Clan.

Appellant appealed these findings.

STANDARD OF REVIEW

Appellant argues that the trial court erred in finding that Appellant does not hold the chiefly title of Kloulubak for the Clan because he was not endorsed by all of the senior strong members. Appellant asserts that Appellees failed to prove that they are senior strong members with "evidence so clear, un-contradictory and distinct as to leave no doubt as to the validity of their argument." First, we note that this is *not* the standard Appellees bore before the trial court. Rather, Appellees, as plaintiffs at the trial level, were required to prove their case by a preponderance of the evidence and to prove the existence of any customs upon which they rely by clear and convincing evidence. See *Remoket v. Omrekongel Clan*, 5 ROP Intrm. 225, 227 (1996); *Ngiramechelbang v. Katosang*, 8 ROP Intrm. 333, 333 (1999).⁵

The trial court's conclusions concerning whether Appellees met this burden are findings of fact, as is the existence of a purported customary law, which we review for clear error. *Imeong v. Yobech*, 17 ROP 210, 215 (2010). Accordingly, on appeal we will not reweigh evidence, nor will we consider a decision clear error where admissible evidence supports competing versions of the facts. *Beches v. Sumor*, 17 ROP 266, 272

⁵ This standard was revised in *Beouch v. Sasao*, Civ. App. 11-034, slip op. at 10-14 (Jan. 3, 2013). However, because the *Beouch* decision has been given purely prospective effect, it does not apply to cases, such as the one at bar, filed before January 3, 2013. *Id.* at 17.

(2010). Thus, we will reverse only if no reasonable trier of fact could have reached the same conclusion based on the evidence in the record. *Labarda v. ROP*, 11 ROP 43, 46 (2004).

DISCUSSION

Both of Appellant's arguments on appeal turn on whether Appellees are senior strong members of the Clan. The burden of proof in these matters belongs to the individual or group seeking to establish their status within the clan. *In re Estate of Baulechong Adelbeluu*, 3 ROP Intrm. 58, 59 (1991). The burden of proving senior strong status is the preponderance of the evidence standard and, "[t]o the extent that [a party] relies upon custom to prove [their] case, [they] must prove the existence of the custom by clear and convincing evidence." *Ngiramechelbang*, 8 ROP Intrm. at 333. Faced with this burden, Appellees presented evidence tracing their ancestry through several generations of female members of the Clan. The Trial Division found this evidence sufficient to meet Appellees' burden. Appellant, however, argues that, because one of Appellees' ancestors, Ubad, left the Clan, Appellees' attempts to establish strong membership in the Clan now makes them mechut el iars. As such, Appellant contends, they are not senior strong members of the Clan.

I. The Trial Division did not err in concluding that Appellees are not mechut el iars of the Clan.

The Trial Division took testimony concerning Appellant's claims that Appellees are mechut el iars. Specifically, the Trial Division heard from an expert witness, who

explained that customary law dictates that, when one person leaves a clan, that person's descendants do not lose their clan membership so long as other members of their lineage maintain their strong ties to the clan. The court noted that Appellees have maintained ties to the Clan by staying active in Clan matters. Further, Appellant presented no evidence to rebut Appellees' evidence establishing their Clan status.

Because Appellees' ties to the Clan are questions of fact, in order to disturb that finding we must conclude that no reasonable trier of fact could have come to the same conclusion as the Trial Division. *Labarda*, 11 ROP at 46. Appellant has given us no reason to conclude as much. Appellees have clearly demonstrated their strong ties to the Clan and that their roots in the Clan run deep. Appellees presented substantial testimony to establish their ocell status and as such they have convincingly demonstrated their senior strong status within the Clan.

Appellant attacks the credibility of Appellee Fuana by arguing that some of her testimony was contradictory. It is well-settled that "[t]he Appellate Division will only overturn credibility determinations of a trial court in extraordinary circumstances." *Koraro v. Ngotel*, 16 ROP 120, 123 (2009). Thus, we disagree that Fuana's alleged contradictions—that she has made claims to membership in a different lineage in the past—are sufficiently egregious to warrant reversal. Assuming for the sake of argument that Fuana's statements are contradictory, we do not agree that the Trial Division was unreasonable in concluding that Appellees have not maintained their Clan ties. Appellees

were able to explain their ancestry and how they have remained active in the Clan. Appellant did not contradict this evidence.

II. The Trial Division did not err in concluding that Appellant is not Kloulubak of the Clan.

Next, Appellant asserts that the Trial Division erred in determining that Appellant is not Kloulubak of the Clan. Appellant argues that he presented substantial testimony from strong members of the Clan establishing his connection to the Clan and proving that Appellant was presented to Ngkeklau Klobak, where he was confirmed Kloulubak.

Problematic for Appellant, however, was expert testimony that established that, in order for a man to become Kloulubak of a clan, all senior strong members of the clan must confirm him. As noted, the Trial Division did not err in concluding that Appellees are senior strong members. The Trial Division also accepted that Appellee Fuana did not confirm Appellant as Kloulubak. Because we hold that the court did not err in its Decision concerning Appellees' status, then the only aspect left for review on this point is whether the court erred in its Decision with respect to the expert testimony that all senior strong members must confirm a Kloulubak.

Appellees met their burden of proving with clear and convincing evidence that all senior strong members must confirm a Kloulubak. *See Omrekongel Clan*, 5 ROP Intrm. at 227. They did so by providing uncontradicted and convincing expert testimony that all senior strong members must confirm a Kloulubak, as well as other uncontradicted testimony that Fuana, a senior strong member, did not confirm Appellant. Based on this

evidence, we cannot agree that no reasonable finder of fact could have come to the same conclusion as the Trial Division. *See Labarda*, 11 ROP at 46. Because fewer than all senior strong members confirmed Appellant as Kloulubak, the Trial Division did not err in concluding that he does not hold this title.

CONCLUSION

Because we hold that the Trial Division did not err in its factual findings, we **AFFIRM** its decision on all accounts.

SO ORDERED this 3rd day of July, 2013.



ARTHUR NGIRAKLSONG
Chief Justice



KATHLEEN M. SALI
Associate Justice



R. ASHBY PATE
Associate Justice