

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FILED
[Signature]

TERRY ELEDUI NGIRAINGAS,	:	CIVIL APPEAL NO. 12-013
	:	Civil Action No. 11-056
	:	
Appellant/Appellee,	:	
	:	
v.	:	OPINION
	:	
ELLEN TELLEI,	:	
	:	
	:	
Appellee/Appellant.	:	

Decided: February 11 , 2013

Counsel for Appellant: Raynold B. Oilouch
Counsel for Appellee: Moses Uludong

BEFORE: C. QUAY POLLOI, Associate Justice Pro Tem; ROSE MARY SKEBONG, Associate Justice Pro Tem; and HONORA E. REMENGESAU RUDIMCH; Associate Justice Pro Tem.

Appeal from the Trial Division, the Honorable ALEXANDRA F. FOSTER, Associate Justice, presiding.

PER CURIAM:

This case concerns the estate of Adalbert Eledui (“Decedent”) and the Trial Division’s decisions concerning various pieces of property previously held or owned by Eledui. For the following reasons, the decisions of the Trial Division are affirmed.¹

¹ Although Appellant requests oral argument, we determine pursuant to ROP R. App. P. 34(a) that oral argument is unnecessary to resolve this matter.

I. BACKGROUND

This appeal concerns the property of Decedent, Adalbert Eledui. Upon Decedent's death in 2010, the named parties became involved in an extensive trial at the end of which the trial court determined the ownership of various properties and houses. The following is a summary of the trial court's findings relevant to this appeal.

Ngertimiked House

Ellen Tellei ("Tellei") was married to Decedent. The two built a house on a piece of land in Airai called Ngertimiked and held a customary Ocheraol. The underlying land belonged to the children of Emau Kus, which included Decedent and Terry Eledui Ngiraingas ("Ngiraingas"). Per custom, Decedent's family contributed the money to build the house.

Decedent and Tellei lived in the Ngertimiked house until December 14, 2010, when Decedent passed away. In May 2010, several months before Decedent died, he held a meeting in which he made some of his wishes known concerning his property. At this meeting, Decedent explained that he wanted Tellei to live in the Ngertimiked house until the first anniversary of his death at which point he wanted the house to go to the lineage of Emau Kus, of which Decedent was a member.

A few months later, in November 2010, Decedent called an attorney to prepare his will. However, after having some conversations about Decedent's wishes, the will was not completed before Decedent's death. Nonetheless, his attorney relayed the contents of

the unfinished will to the parties, including confirmation that Decedent wanted Tellei to live in the Ngertimiked house for one year following Decedent's death.

At the trial, Ngiraingas called a customary expert witness to testify that when the husband's family contributes the money to build a house, that family has rights to the house after the husband's death. Another customary expert disagreed and testified that in such a circumstance, the wife of the deceased has the right to remain in the house until her death. Customary expert witnesses were unclear about the effect of the person's final wishes if that person subsequently attempts to have a will drafted.

The court determined that because the case revolved around Palauan custom, resolution should be sought through an *cheldecheduch*. After attempting an *cheldecheduch*, the parties responded that they were unable to resolve the issues. Accordingly, the court issued a Final Decision and determined that Tellei was to move out of the Ngertimiked House to comply with Decedent's final wishes. In so doing, the court evidently accepted the testimony provided by the expert witness who asserted that property paid for by the husband's family does not automatically transfer to the wife of the deceased husband upon his death. The court reasoned that Decedent's final wishes as to the Ngertimiked house were unaltered during his final months and that sufficient testimony was provided to establish that the meeting Decedent called in order to convey these wishes was understood to be official under Palauan custom. The court noted that even Tellei's customary expert witness testified that a surviving spouse must follow the

known final wishes of their deceased spouse. Thus, because Tellei knew of Decedent's final wishes, the court concluded that Palaun custom dictated that Tellei move out of the house on the one year anniversary of Decedent's death. Tellei appeals, arguing that the Decedent had no authority to dispose of the house in his will and that the court erred in considering Decedent's wishes as to the Ngeritimiked house.

Ngerkesoaol Land

In 2008, Decedent entered into a transaction wherein a parcel of land in Ngerkesoaol, which was owned by the children of Eledui Omeliakl, including Decedent, Ngiraingas, Doris Eledui Ito, and Kenny Eledui, was allegedly transferred to Decedent as the sole owner. Tellei asserted that the children of Eledui conveyed their interests in the property through a quitclaim deed. Tellei and Decedent purchased a house on the land from William Eledui around the same time and renovated it for use as a rental property.

After Decedent's death, the land and house were considered during the extensive trial concerning his estate. Tellei claimed the Ngerkesoaol property, asserting that it belonged solely to Decedent pursuant to the 2008 quitclaim deed. The trial court heard evidence regarding the transfer of the property from the other children of Eledui to Decedent. There was some confusion as to whether the quitclaim deed had all of the necessary signatures from the children of Eledui. Doris, Kenny, and Ngiraingas each testified that they did not intend to convey the property and did not sign a quitclaim deed. Further, the notary testified that when she notarized the deed, only Decedent had signed.

Because the other children of Eledui were not present to sign, the notary did not fill out the bottom portion of the deed because that portion stated that the above listed people, which included Doris, Kenny, and Ngiraingas, appeared before her and signed the document.

After the parties were unable to obtain a resolution through an *cheldecheduch*, the trial court determined that there were too many unanswered questions regarding the validity of the quitclaim deed that Tellei was unable to answer. As a result, the court awarded the land to the children of Eledui collectively. Tellei appeals this ruling, arguing that the court improperly placed the burden on her to prove the authenticity of the deed and contending that the court erred in finding that the deed was invalid. The court also awarded the house on the Ngerkesoaol land to Tellei, counting it as marital property. Ngiraingas appeals the court's decision concerning the house, arguing that the court misinterpreted the applicable customary law.

II. STANDARD OF REVIEW

“[T]he 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).² The trial court's factual findings concerning the quitclaim deed are reviewed using the clearly erroneous standard. *Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.*, 9 ROP 162, 164 (2002).

² The standard of review for issues of customary law was recently altered in *Beouch v. Sasao*, Civ. App. No. 11-034 (Jan. 3, 2013). However, that ruling was to apply prospectively only and will not apply to any appeal filed prior to the issuance of that opinion.

III. ANALYSIS

A. The trial court's determination that Tellei was to comply with Decedent's final wishes to vacate the Ngertimiked house was not clearly erroneous.

Tellei argues on appeal that Decedent had no authority to include disposition of the house in his customary will. Tellei asserts that the Ngertimiked house was marital property and that upon Decedent's death, she became the sole owner of the house. The customary experts gave conflicting statements about whether custom would dictate that Tellei owned the house with Decedent or whether Decedent's family should have rights to the house. Some of the testimony asserted that while it is customary for the husband's family to front the cost for building a home, the home is still considered marital property. In this vein, the home would belong to the wife, even after her husband's death. Other testimony, however, explained that a home paid for by the husband's family is not viewed as marital property, but rather as a home owned by the husband's family and available for use by the couple.

We will only overturn the trial court's conclusions concerning customary law if they are clearly erroneous. *Ngirmang*, 14 ROP at 34. Ultimately, considering the testimony concerning the custom of the husband's family contributing the funds to build the house, the trial court accepted the theory that Tellei did not have ownership of the home as part of the marital property she shared with Decedent and ordered that Tellei vacate the home.

Reviewing the trial court's determination of the applicable customary law, we can find no evidence of record that this determination was clearly erroneous. *See id.* Accordingly, we decline to overturn the trial court's decision concerning the Ngertimiked house.

B. The trial court's decision to award the house in Ngerkesoaol to Tellei was not clearly erroneous.

Ngiraingas contends that the trial court's decision to award the house in Ngerkesoaol to Tellei was incorrect and that the trial court misinterpreted customary law. Again, we will only overturn the trial court's conclusions concerning customary law if they are clearly erroneous. *Ngirmang*, 14 ROP at 34.

Here, both parties called expert witnesses to testify concerning customary practices in accumulating and assigning marital property. The trial court recognized that each of the experts agreed "that property purchased by the husband and wife went to the surviving spouse." The court also recognized the undisputed claim that Tellei and Decedent together bought the house from William Eledui. Considering the expert testimony the trial court heard, we can see no clear error in its conclusion that the house in Ngerkesoaol belongs to Tellei.

Ngiraingas asserts also for the first time on appeal that because the house is on the Ngerkesoaol land, its ownership cannot be separated from it. We will not consider this argument because it was not preserved at trial. *See Aimeliik State Pub. Lands Auth. v. Rengchol*, 17 ROP 276, 281–82 (2010).

C. The trial court did not improperly place the burden on Tellei to prove the transfer of the Ngerkesoaol property, and its ruling that the quitclaim deed was invalid was not clearly erroneous.

Tellei contends that the trial court improperly placed the burden on her to prove that the quitclaim deed was authentic and properly executed. Tellei asserts that this burden was placed on her by citing the court's language that "Tellei ha[d] not shown a viable agreement between Decedent [and the Children of Eledui], nor . . . shown a mutual assent to an exchange between" the parties. Tellei further argues that duly recorded deeds are presumed to be valid.

It may be true that presumptions of validity exist when a court examines recorded deeds. *See Ketebengang v. Sechedui Clan*, 16 ROP 101, 104–05 (2008) (recognizing strong presumptions of validity in properly recorded quitclaim deeds). However, presumptions may be rebutted. We have recognized burden-shifting as a natural part of the litigation process, which is triggered once a party has met his or her initial burden to rebut a presumption or establish the elements of his or her case. *See Palau Marine Indus. Corp. v. Seid*, 11 ROP 79, 82 (2004) (noting in a contract dispute that the plaintiff must establish the elements of his or her claim before the burden may shift to the other party to rebut the evidence); *Ngeptuch Lineage v. Airai State*, Civ. App. No. 11-045 (2013) ("[O]nce a plaintiff meets his or her burden of proving the elements of the claim, the opposing party then has an opportunity to rebut that evidence."). The key in determining whether a burden was improperly placed is identifying who had the *initial* burden.

The court's indication that Tellei did not show a viable agreement is *not* necessarily an indication that the court placed the initial burden on Tellei. Rather, the court gave the other children of Eledui the opportunity to attack the presumption of authenticity of the deed. In so doing, the court heard testimony and reviewed evidence provided by the children of Eledui. The court determined that this evidence was sufficient to overcome any burden the children of Eledui may have had to undermine the authenticity of the quitclaim deed. The court *then* indicated that Tellei failed to provide evidence of a valid deed that could sufficiently counter the evidence presented by the children of Eledui. The burden was not improperly placed on Tellei.

Tellei's other arguments regarding the quitclaim deed amount to attacks on the trial court's findings of fact concerning the quitclaim deed and its authenticity. We will only overturn the trial court's findings of fact regarding this deed if they are clearly erroneous. *Dilubech Clan*, 9 ROP at 164. The trial court is in the best position to weigh evidence, determine the credibility of witnesses, and make findings of fact concerning whether the quitclaim deed went through the proper process to effectively transfer the land. *Imeong v. Yobech*, 17 ROP 210, 215 (2010) ("The trial court is in the best position to hear the evidence and make credibility determinations . . . and as an appellate tribunal, our review is limited.").

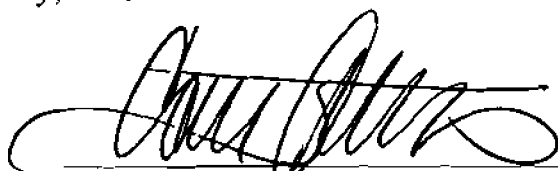
At the trial, besides Decedent, the children of Eledui testified that they did not sign any document to pass title of the land to Decedent. Further, the notary alleged to have

notarized the deed testified that she notarized Decedent's signature but that his was the only signature she notarized on the quitclaim deed. She further explained that she saw the typed names of the other children of Eledui on the deed and that because they were not present to sign she did not fill out the bottom portion of the deed because it stated that each of the named persons had appeared before her. This bottom portion of the deed remains blank. The court noted that this witness was not impeached with bias or motive and that she seemed to have no interest in the outcome of the matter. Considering these findings, we cannot conclude that the court's decision was clearly erroneous. We affirm the decision of the trial court to grant the land to the children of Eledui.

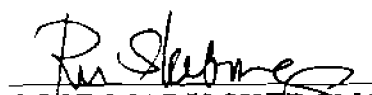
IV. CONCLUSION

For the foregoing reasons, the decision of the Trial Division is **AFFIRMED**.

SO ORDERED this 11th day of February, 2013.



C. QUAY POLLOI
Associate Justice Pro Tem


ROSE MARY SKEBONG
Associate Justice Pro Tem
HONORA K. REMENGESAU RUDIMCH
Associate Justice Pro Tem