IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

MIRIAM NAKAMURA,
Appellant,
v.
ELIZABETH NAKAMURA, MARGO LLECHOLECH, AND MERNA KYOTA,
Appellees.

Cite as: 2016 Palau 23
Civil Appeal No. 15-017
Appeal from Civil Action No. 07-113

Decided: November 2, 2016

Counsel for Appellant.....Salvador Remoket
Counsel for Appellees.....Oldiais Ngiraikelau

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
KATHLEEN M. SALII, Associate Justice
KATHERINE A. MARAMAN, Associate Justice

Appeal from the Trial Division, the Honorable Lourdes F. Materne, Associate Justice, presiding.

OPINION

PER CURIAM:

[¶ 1] This appeal involves competing claims in the estate of Steven Nakamura. In particular, the parties dispute the effect of the purported transfer of certain assets at an cheldecheduch held in March 2007. The Trial Division concluded that those assets had been disposed of in accordance with Palauan custom and were not subject to a subsequent probate proceeding. For the reasons below, we **AFFIRM**.

BACKGROUND

[¶ 2] Steven Nakamura died intestate on January 5, 2007. He was survived by his wife, Miriam Nakamura, his daughter, Mizora Nakamura, his mother Elizabeth Nakamura, and his siblings Margo Llecholech, Merna

Kyota, Imelda Nakamura, and Siegfried Nakamura. A funeral was held on January 20, 2007.

[¶ 3] On March 3, 2007, an cheldecheduch was held in Koror. The cheldecheduch was attended by the relatives of the decedent as well as his surviving spouse Miriam and her relatives. Miriam's maternal uncle, Tadao Ngotel, represented Miriam and her child.

[¶ 4] At the cheldecheduch, a relative of the decedent, Besure Kanai, read a document titled "Desires of the Immediate Lineage of Steve Nakamura/*Eldecheduch* of Steve Nakamura." The document contained the decision of the members of decedent's paternal and maternal lineages as to the disposition of various assets. Kanai, using a microphone, read the entire document to the crowd. The document was subsequently read aloud again, this time by Harry Fritz. The document included dispositions for the decedent's interests in a variety of personal assets, including stocks, land, and leasehold interests. Fritz also announced various contributions, including the chelbechiil, techel otungel, children's money, and cheleas. Later, Tadao Ngotel, representing Miriam and her child, came to the microphone and thanked the gathering and noted that it had been a very good cheldecheduch. Among other things, Ngotel thanked the decedent's brother, telling him something to the effect of: "if your brother Steve was alive, he would be very happy."

[¶ 5] Despite Ngotel's expressed view that the cheldecheduch had been very good, Miriam was not happy with the announced distribution. However, neither she nor any of her relatives publically objected to the distribution of assets. Miriam privately made her concerns known to her sister, Deborah, but she did not tell anyone else at the cheldecheduch. When the decedent's mother, siblings, and other relatives left the cheldecheduch after it was finished, they were unaware of Miriam's disappointment.

[¶ 6] A little more than a month later, on April 16, 2007, Miriam filed a verified petition to probate the estate of Steven Nakamura. She subsequently filed a claim against the estate and later moved to have the court appoint her as the estate's administrator. Decedent's relatives objected and moved the court to appoint Imelda Nakamura as administrator. The court ultimately appointed Miriam and Imelda as co-administrators.

[¶ 7] On August 14, 2007, Miriam, acting as co-administrator, filed an inventory of the estate's assets and liabilities. The same day, Imelda, also acting as co-administrator, filed an estate inventory. The two inventories did not match. The chief difference was that Miriam's inventory included assets in the estate that had purportedly been transferred at the cheldecheduch. The inventory Imelda filed did not include those assets. On August 28, 2007, decedent's mother, Elizabeth, and two of his siblings, Margo and Merna, filed a claim against the estate. The claim was for the assets on Miriam's inventory that were purportedly transferred at the cheldecheduch.

[¶ 8] On January 28, 2008, Elizabeth, Margo, and Merna filed a "Motion for an Order Requiring the Administrators to Clarify and Remove from Inventory Lists Assets which Have Been Disposed or Are Not Assets of the Estate." The motion highlighted the differences between Miriam's and Imelda's competing estate inventory lists. The motion explained that some of the assets on Miriam's inventory were discussed and disposed of at the cheldecheduch. The motion argued that these assets had been disposed of in accordance with Palauan custom and should not be considered assets of the decedent's estate.

[¶ 9] On February 21, 2008, the Trial Division held a hearing on the motion. The court heard witness testimony about the conduct of the cheldecheduch. The court also heard testimony from two experts on Palauan custom. The expert witnesses explained various aspects of the cheldecheduch and the manner in which a cheldecheduch is customarily conducted. The experts both described the customary finality to cheldecheduch: decisions that were discussed and not objected to are considered final. In addition to questioning of the experts by counsel, the court itself asked questions to clarify expert views on the custom of cheldecheduch.

[¶ 10] After the hearing, the parties filed written closing arguments. Elizabeth, Margo, and Merna, the movants, reiterated the argument that where the relatives of the decedent announce property dispositions at the cheldecheduch, and the surviving spouse or her representative do not object, the cheldecheduch is finished. Under Palauan custom, they argued, the decisions made at such an cheldecheduch are final and it was not appropriate for the probate court to interfere. Miriam, in turn, advanced a variety of

counter-arguments. She argued that the cheldecheduch itself had violated Palauan custom. In particular, she argued that the cheldecheduch was traditionally limited to disposing of limited types of assets and would not have discussed, for example, stocks. She also noted that even if certain assets were discussed, those assets had not been disposed of in accordance with tradition; for example, decedent's interests in land would customarily pass to his child rather than his sibling or surviving parent. Miriam also argued that she and/or her daughter had interests in some of the assets discussed at the cheldecheduch, and that it was improper for those assets to be disposed of outside of probate. She also advanced a number of equitable arguments about the distribution, generally asserting that the distribution had been unfair to her and her daughter.

[¶ 11] On September 5, 2008, the court issued an order with factual findings and legal conclusions. The court found that the two experts had essentially agreed regarding the custom of cheldecheduch. The court noted that according to some of the expert testimony, certain distributions at this cheldecheduch were not customary. For example, the court noted that according to one expert, it was not Palauan custom to distribute a deceased man's lands, inherited from his father, to any person but that man's surviving children. The court also found, however, that the experts agreed that if at an cheldecheduch the relatives of the deceased man award his properties to someone other than his child, and there is no objection made, then the cheldecheduch is proper and final. The court noted that there was no evidence to the contrary. The court found that the expert testimony had thus established, by clear and convincing evidence, that if the decisions of an cheldecheduch regarding asset distribution are not objected to by the participants before the cheldecheduch was finished, those decisions were final and binding. The court accordingly granted the motion to clarify the estate's inventory to exclude the assets disposed of at the cheldecheduch.

[¶ 12] Ten days later, on September 15, 2008, Miriam and her daughter filed a motion to alter or amend the judgment. The motion generally urged the court to reconsider the expert testimony and return the assets to the estate probate proceedings. On September 24, 2008, Elizabeth, Margo, and Merna, filed their own motion. They asked the court to enter final judgment confirming the disposition of assets discussed at the cheldecheduch.

[¶ 13] On February 13, 2009, the Trial Division denied both motions. The court explained that Miriam's motion was untimely as the court had not entered any final judgment in the matter. Regarding Elizabeth's motion for final judgment, the court noted it was denied because of the pending issues of creditors and debts of the estate.

[¶ 14] On May 19, 2015, the Trial Division entered a judgment and an order closing the estate.[1] The Trial Division stated that for the reasons given in the court's September 5, 2008, order and submissions thereafter, the court was entering judgment in favor of Elizabeth, Margo, and Merna for the properties transferred at the cheldecheduch. The court explained that "[s]uch properties were disposed [of] in accordance with Palauan custom and not subject to this probate proceeding." *See* Judgment, Civ. Action No. 07-113 (May 19, 2015). Miriam Nakamura timely appealed.

STANDARD OF REVIEW

[¶ 15] We review a lower court's conclusions of law de novo. *ROP v. Terekiu Clan*, 21 ROP 21, 23 (2014). We review findings of fact for clear error. *Imeong v. Yobech*, 17 ROP 210, 215 (2010). Under the clear error standard, we will reverse only if no reasonable trier of fact could have reached the same conclusion based on the evidence in the record. *Id.* The existence of a purported customary law is a question of fact. *Id*.[2] The existence and content of a custom must be established by clear and convincing evidence. *Id.* at 215 n.10. Importantly, "an appellate court's role is not to determine issues of fact or custom as though hearing them for the first

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[1] The record is not entirely clear about the nature of the estate probate proceedings after early 2009. The proceedings appear to have largely focused on the debts of the estate, including addressing the timeliness of certain claims from putative creditors.

[2] Subsequent to our decision in *Imeong*, we decided *Beouch v. Sasao*, 20 ROP 41 (2013). *Beouch* overruled past precedent and changed the approach to determining customary law. *See id.* at 48-51. However, we explicitly held that *Beouch* was not retroactive and that "courts should apply the previous traditional law standard to all cases filed before" *Beouch* was decided. *Id.* at 51 & n.10. This case was filed before *Beouch* was decided and the legacy traditional law standards apply.

time." *Id*. at 215 (citing *Sambal v. Ngiramolau*, 14 ROP 125, 127 (2007)). As an appellate tribunal, our review of factual findings is limited to reversing those findings that are clearly erroneous. *Id.*

DISCUSSION

[¶ 16] The Trial Division found that the expert testimony in this case was clear and convincing evidence proving the existence and content of a custom. As articulated by the trial court, that custom holds that a decision made at an cheldecheduch regarding the distribution of a deceased man's individual assets, if not objected to by the participants before the end of the cheldecheduch, is final and cannot be altered. On the surface, this appeal presents a straightforward question: Was the Trial Division's factual finding as to the existence and content of that custom clearly erroneous?

[¶ 17] However, embedded in this appeal are less-straightforward issues. The procedural posture of the appeal, for example, is unusual. The substantive order under appeal here—the trial court's September 5, 2008, order—was an order that granted a motion by Elizabeth Nakamura, Margo Llecholech, and Merna Kyota (the "Appellees") in probate proceedings. That motion sought to have the cheldecheduch assets removed from the inventory of the estate being probated. The effect of granting that motion would, it appears, have been to remove the cheldecheduch assets from the probate proceedings.

[¶ 18] But shortly after the trial court granted their motion, Appellees sought a final judgment on their claim to those assets in the probate proceedings. Appellees, referring to themselves as "claimants," asked the trial court to affirmatively declare those assets to be their property. The claimants asked for "judgment upholding the decisions made at the decedent's [ch]eldecheduch and confirming the awards of the following assets in accordance with said [ch]eldecheduch." *See* Motion to Enter Final Judgment, Civ. Action No. 07-113, at 2 (September 24, 2008). This filing suggests that Appellees still considered the cheldecheduch assets to be part of the estate, but that the decision of the cheldecheduch provided a rule of decision for the Trial Division to award those assets in probate proceedings. The filing might also be construed as a request that the Trial Division enforce a decision made in a separate, customary proceeding.

[¶ 19] The Trial Division denied the Appellees'/claimants' motion. The denial order stated that the motion was denied "because of the pending issues of creditors and debts of the estate." *See* Order, Civ. Action No. 07-113, at 1 & n.2 (February 13, 2009). This reasoning suggests that the trial court also considered the assets still to be part of the estate probate proceeding—*i.e.*, creditors to the estate might have a claim on those assets. However, that reasoning is in tension with the Trial Division's May 19, 2015, final judgment closing the estate. That judgment states that the cheldecheduch assets "were disposed in accordance with Palauan custom and not subject to this probate proceeding." *See* Judgment, Civ. Action No. 07-113 (May 19, 2015). It is thus not entirely clear to us whether the estate was probated with the disputed assets included or excluded.

[¶ 20] Our digression on this point is not academic. Either status for the assets—in or out of the estate—implies a legal conclusion as to the effect of the cheldecheduch. Excluding the assets from the estate implies a legal rule that the decision of a cheldecheduch is binding and divests the probate court of any authority over those assets. On the other hand, including the assets in the estate, but disposing of them in accordance with the decision of the cheldecheduch, implies a legal rule that the cheldecheduch provides the rule of decision for the probate court to apply and enforce. Further, the cheldecheduch happened a few months after the death of Steven Nakamura. The trial court's decision to reach the issue of cheldecheduch custom implies a legal finding that none of that property was transferred automatically upon death by operation of law. In certain instances, for example, an intestacy statute might automatically transfer property upon death.

[¶ 21] The question of whether a lower-court judgment is grounded in a correct interpretation of the law represents the bread and butter of an appellate court. Of all the issues reviewable by an appellate court, conclusions of law are the most susceptible to reversal. This is because unlike findings of fact or matters of discretion, we accord no special deference to a lower court's legal determinations: we review conclusions of law de novo. *See, e.g.*, *Salvador v. Renguul*, 2016 Palau 14 ¶ 7.

[¶ 22] The difficulty in reviewing the legal conclusions embedded in this case is that Appellant has not cleanly presented claims of legal error in the

judgment of the Trial Division. Appellant asserts only a single question for appellate review, a question that focuses on the trial court's factual finding regarding cheldecheduch custom. Although Appellant hints at the background legal questions, her brief does not develop these arguments to any significant extent.

[¶ 23] "As a general matter, the burden of demonstrating error on the part of a lower court is on the appellant." *Suzuky v. Gulibert*, 20 ROP 19, 22 (2012) (citing *Ngetchab Lineage v. Klewei*, 16 ROP 219, 221 (2009)). In the absence of clarity and precision in an appellant's argument, "this Court will not 'trawl the entire record for unspecified error.'" *Id.*; *see also, e.g.*, *Idid Clan v. Demei*, 17 ROP 221, 229 n.4 (2010). "This general burden applies both to an appellant's specifications of factual and legal error, each of which requires clarity and proper citation." *Suzuky*, 20 ROP at 22. "With respect to specifications of legal error, the burden is on the party asserting error to cite relevant legal authority in support of his or her argument." *Id.* at 23. "Unsupported legal arguments need not be considered by the Court on appeal." *Id.*; *see also, e.g.*, *Idid Clan v. Demei*, 17 ROP 221, 229 n.4 (2010) ("[A]ppellate courts generally should not address legal issues that the parties have not developed through proper briefing.").

[¶ 24] For example, in her appellate brief Appellant asserts that according customary finality to the decision of the cheldecheduch is a violation of her and her daughter's right to due process. That is the extent of the "due process" argument. Appellant cites no legal authority in support. Perhaps there is a due process concern here. But Appellant has not provided us anything approaching a developed argument and we decline to consider it here. *Cf. Idid Clan*, 17 ROP at 229 n.4.

[¶ 25] However, appellate courts are not categorically barred from considering legal issues the parties fail to identify. A number of prudential considerations, including the need to avoid the misleading application of the law, may warrant appellate review of a legal issue not raised. *See, e.g.*, *ROP v. Airai State Pub. Lands Auth.*, 9 ROP 201, 204 (2002) (collecting cases). Additionally, we "may consider an issue antecedent to and ultimately dispositive of the dispute before [us], even an issue the parties fail to identify." *Ongalibang v. ROP*, 8 Intrm. 219, 220 n.2 (2000).

[¶ 26] There appears to be a potentially dispositive antecedent issue here. Appellant suggests that some of the property distributed at the cheldecheduch was not the decedent's property at all. Appellant asserts that she held property rights in some of the distributed property and indirectly suggests that some of the property may have passed to her or her daughter by operation of law upon the death of her husband. These arguments are not well-developed in Appellant's brief and we could easily decline to consider them.[3] However, these arguments point to a non-trivial legal issue. The Trial Division found that custom dictated that cheldecheduch decisions were final, and that this customary finality trumps any non-customary distributions made at the cheldecheduch. But custom is not the only check on custom. Other authoritative legal sources may foreclose customary results in certain circumstance. For example, intestate succession statutes may preclude customary succession. *See, e.g.*, *Gabriel v. Children of Urrei Bells*, 19 ROP 117, 120 (2012).

[¶ 27] This lengthy digression at an end, we turn to the appeal. We first address Appellant's claim that the trial court's factual finding of custom was clearly erroneous. We then address certain latent legal issues relating to limits on asset transfers via cheldecheduch.

I. The Trial Division's Factual Finding of Custom.

[¶ 28] The Trial Division found that under Palauan custom, a decision made at an cheldecheduch regarding the distribution of a deceased man's individual assets, if not objected to by the participants before the end of the cheldecheduch, is final and cannot be altered. Appellant argues that this finding is clearly erroneous.[4] Appellant also argues that the trial court "did not consider other pronouncements of customary law and overlooked other important testimonies which, if taken into consideration, would change the outcome of the decision." Appellant's Br. at 5.

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[3] Appellees argue that Appellant has, in essence, procedurally defaulted on these arguments. Having reviewed the authorities cited in Appellees brief, we find this argument unpersuasive.

[4] Appellant uses the term "manifested error," but we take this to mean the same thing.

[¶ 29] The gist of Appellant's argument is that finality of decision only applies to a properly-conducted cheldecheduch. Here, Appellant argues, the cheldecheduch was not conducted in accordance with custom and the decisions made at it should be set aside. For example, Appellant contends that a decedent's personal interest in land must go to his surviving child and spouse. At this cheldecheduch, decedent's relatives distributed certain personal land interests to the wrong people—*i.e.*, decedent's siblings. Therefore, Appellant argues, the cheldecheduch was not proper according to custom and it was accordingly clearly erroneous to find that decisions at the cheldecheduch were final and binding.

[¶ 30] This argument is not without merit. The trial court did hear expert testimony that at least some of the distributions at this cheldecheduch were not customary. The flaw in Appellant's argument is that it misconstrues the trial court's finding. The trial court did not find that cheldecheduch distributions were final if the distributions went to traditional heirs. If that had been the court's finding, then the fact that an asset was distributed to a non-traditional heir would be centrally relevant. But the court found something else. The court found that cheldecheduch distributions were final if the distribution decision was public and the participants did not object before the cheldecheduch was finished. Thus, under the trial court's finding, a distribution to a non-traditional heir does not prevent a cheldecheduch decision becoming final. A decision becomes final if the disposition of a personal asset of the deceased is discussed publically and the other participants do not object before the cheldecheduch concludes.

[¶ 31] We review the trial court's factual finding of custom only for clear error. Under the clear error standard, we will reverse only if no reasonable trier of fact could have reached the same conclusion based on the evidence in the record. *Imeong*, 17 ROP at 215. The trial court here heard testimony from two experts in Palauan custom, Demei Otobed and Wataru Elbelau. The first expert, Otobed, testified as follows:

> Q. Now let's take a land that was purchased by the man so it's his individual property. And we also agree that according to custom we're not supposed to include it in the [ch]eldecheduch because it obviously belongs to the child or someone else. But if on the day of the

> [ch]eldecheduch it was mentioned and ended up not going to his child but to someone else instead and the widow and child's relative agrees, according to our custom regarding [ch]eldecheduch is that proper?
>
> A. It's over. It's proper and finished.
>
> Q. Okay. So in other words, when it comes to our [ch]eldecheduch, maybe there are things that are not supposed to be discussed but if the two sides discuss, dispose and agree with the disposition then it's proper?
>
> A. It becomes part of the [ch]eldecheduch, and then goes into effect.

See Transcript of Selected Testimonies of Hearing, Civil Action No. 07-113, at 33-34 (filed April 15, 2008) ("Tr."). The second expert, Elbelau, testified thusly:

> Q. What I'm saying is maybe it was supposed to go to the child but it didn't go to the child and went to someone else. And the widow's representative agreed that it's fine that way. According to our custom, isn't it finished? What I'm saying is those that are at the [ch]eldecheduch and are in charge, if they agree to something then it goes into effect, is that correct or no?
>
> A. It becomes effective.
>
> Q. Is that correct?
>
> A. It becomes effective.

See Tr. at 92.

[¶ 32] Both experts testified that even if non-traditional assets or distributions were included in the cheldecheduch, if there was no objection, the decision of the cheldecheduch goes into effect. Expert testimony can provide clear and convincing evidence of the custom. *Cf., e.g.*, *Tellames v. Isechal*, 15 ROP 66, 68 (2008) ("Proof of custom must be by clear and convincing evidence. This usually occurs in the form of expert testimony.") (citations omitted). Given the consistent expert testimony here, we cannot conclude that no reasonable trier of fact could make the customary finding that the Trial Division made. The Trial Division's finding is therefore not clearly erroneous.

[¶ 33] Finally, Appellant's argument that the trial court overlooked important portions of the customary testimony is not supported by the record. The Trial Division's September 5, 2008, order explicitly recounted much of the testimony Appellant complains was overlooked. The order contains a summary of expert testimony concerning traditional heirs and the customary distributions of a deceased man's personal properties. The trial court noted that one expert witness, Elbelau, emphasized that a man's properties such as stocks, lease interests, or lands bought or inherited from his father "must go to his surviving child or children" under Palauan custom. *See* Order, Civ. Action No. 07-113, at 5 (September 5, 2008) ("Trial Order"). But the trial court observed that this was not the end of Elbelau's testimony. The court noted that despite the tradition of distributing property to a surviving child, "Elbelau explained that if at an [ch]eldecheduch the relatives of the deceased man award his properties to someone other than his child, and there is no objection made, then the [ch]eldecheduch is proper and final." *Id*.

[¶ 34] The record makes clear that the trial court fully grasped the issue, and honed in on the crucial point: what is the customary result if an cheldecheduch distributes property in a non-customary way? The trial court even questioned Elbelau directly to clarify this point. The court asked: "Is it also your statement that what's decided at the [ch]eldecheduch is it, there's nothing else, is that how it's supposed to be, is that custom?" Elbelau responded: "Yes, regarding the things that are discussed." Tr. at 98. The court, again: "So if there's an [ch]eldecheduch, then everything that was decided on that day of the [ch]eldecheduch is it?" Again, Elbelau responded: "Yes." Tr. at 99.

[¶ 35] The Trial Division did not overlook or ignore testimony. The record below reflects that the Trial Division heard and considered extensive testimony to identify the determinative point of custom. Having identified the key point, the Trial Division heard consistent expert testimony on the finality of cheldecheduch decisions and thereafter made a consistent factual finding. We see no reversible error.[5]

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[5] This case in some ways illustrates the problems in determining customary law that we identified when we changed the customary law standard in *Beouch*. *See* 20 ROP at 47-50 (2013). As noted earlier, *Beouch*'s new

II. The Legal Effect of Other Laws on Customary Distributions of Assets.

[¶ 36] Appellant's principal argument on appeal is that the cheldecheduch disposed of decedent's assets in non-traditional ways. However, Appellant also suggests that the cheldecheduch disposed of certain assets that did not belong to the decedent. This suggestion merits discussion.

[¶ 37] Appellant suggests that certain of the disposed assets were in fact her assets, or at least assets in which she had a part interest. Appellant cites to *Anderson v. Masami*, 6 ROP Intrm. 321 (Tr. Div. 1996), for the proposition that property acquired during a marriage is considered marital property. Appellant asserts that certain of the assets disposed of at the cheldecheduch were acquired during her marriage to the decedent and that she therefore held a joint interest in them. Appellant also hints that certain of the land interests disposed at the cheldecheduch were subject to the intestate succession statute, 25 PNC § 301, and that those land assets could not be disposed of via cheldecheduch in a manner contrary to statute.

[¶ 38] It is axiomatic that a traditional means of disposing of a decedent's assets cannot dispose of assets that did not belong to the decedent. Here, Appellant does not appear to contest that the challenged assets belonged, at least in part, to the decedent at the time of his death. The first question then, is whether any of those assets transferred via operation of law upon the death of the decedent—that is, whether those assets were no longer the decedent's at the time they were discussed at the cheldecheduch.

[¶ 39] We have previously noted that the intestate succession statute at 25 PNC § 301 can apply to the exclusion of customary distributions via cheldecheduch. *See, e.g., Gabriel*, 19 ROP at 120. The first logical step would accordingly be to determine the legal authority for intestate distribution. *See, e.g.*, *Drairoro v. Yangilmau*, 14 ROP 18, 20 (2006). If the statute applied, it would control the distribution of the land interests that fall

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customary law standard was not retroactive and so does not control the result here. *See id.* at 51 & n.10. However, given that *Beouch* provides the customary law standard for future cases, any oddity in the customary law findings here are likely cabined to this particular case.

within its ambit. Appellant has not pointed to any record facts showing that the intestacy statute at 25 PNC § 301 has any application here. Appellant's only suggestion is that it might apply so as to give the deceased's lineage the right to dispose of certain land assets. That same lineage disposed of the land assets at the cheldecheduch, so Appellant's argument does nothing to help her.

[¶ 40] "Absent an applicable descent and distribution statute, customary law applies." *Marsil v. Telungalk ra Iterkerkill*, 15 ROP 33, 36 (2008); *see also, e.g.*, *Delbirt v. Ruluked*, 10 ROP 41, 43 n.3 (2003) (explaining that "the intestacy statute does not nullify all customary law as to the inheritance of fee simple land"). We have previously upheld the authority of senior family members to transfer individually owned land at an cheldecheduch. *See*, *e.g.*, *Kubarii v. Olkeriil*, 3 ROP Intrm. 39, 41 (1991); *Bandarii v. Ngerusebek Lineage*, 11 ROP 83, 88D (2004) (Ngiraklsong, C.J., concurring) ("Under Palauan custom, senior family members can transfer individually owned land at the [Che]ldecheduch."). Appellant has not cited any contrary authority that would categorically bar the transfers of decedent's individually owned assets at an cheldecheduch.

[¶ 41] Appellant's only argument on this point is that certain of the transferred assets were not individually-owned by the decedent. Appellant argues that "[u]nder Palauan customs, property acquired during the marriage of a husband and wife is considered marital property" and assets such as stocks and lease interests in land "may fall under marital property." *See* Appellant's Br. at 6. In support, Appellant cites to the Trial Division's decision in *Anderson v. Masami*. Liberally construed, we understand Appellant to be making the argument that the cheldecheduch could not transfer certain assets because Appellant had a legal interest in those assets.

[¶ 42] We are not persuaded. Appellant has not made any showing that she had a legal interest in any specific asset transferred at the cheldecheduch. Although certain assets acquired during marriage might be legally owned by both spouses, not all assets acquired by one spouse during a marriage automatically become the joint assets of both spouses by operation of law. Appellant cites no legal authority for such a sweeping, categorical proposition.

[¶ 43] The holding in *Anderson* is not to the contrary. In *Anderson*, the Trial Division used a United States common law presumption to determine that vehicles used by both spouses in a marriage were jointly held by both spouses. *See* 6 ROP Intrm. at 322. The main vehicle disputed in that case had also been purchased with funds from a joint bank account in the name of both spouses. *Id. Anderson* does not help Appellant here.

[¶ 44] As the trial court noted in *Anderson*, resorting to United States common law is only appropriate in the absence of applicable customary law. *See id*. (citing 1 PNC § 303). Here, there is apparent customary law in the form of cheldecheduch transfers that dispose of the subject property interests. The court in *Anderson* specifically noted that the common law presumption of joint ownership "may be limited to property not discussed at the husband's [ch]eldecheduch." *Id*. at 324 n.6. The court there noted that certain property might not be discussable at an cheldecheduch, but that it was moot in that case as it was undisputed that the marital vehicles had not been discussed at the husband's cheldecheduch. *Id.* Appellant here does not address the general priority of customary law over common law or the specific priority accorded to cheldecheduch transfers.

[¶ 45] The common law principle used in *Anderson* is also not a binding rule assigning joint title to all property acquired during marriage to both spouses. Common law merely creates a *presumption* of joint title where certain conditions are met. It is far from apparent on the record that those conditions are present; regardless, Appellant has not carried any burden to establish them. Even where those conditions are present, the presumption of joint title can be overcome. The record suggests that the properties Appellant points to were individually inherited by the deceased. There is no *per se* rule barring spouses from acquiring and maintaining individual property during a marriage, particularly assets received individually by a spouse by devise or bequest. *Cf., e.g.*, 41 Am. Jur. 2d, *Husband and Wife*, §14 (2015) ("A spouse's separate property also includes property received individually by gift, bequest, or devise.").

[¶ 46] We need not decide the full scope of laws applicable to the transferred assets here. It is sufficient to resolve the present dispute to note that Appellant has not met her burden of establishing the applicability of any

law that might support her title in the assets transferred at the cheldecheduch. We will not ourselves go looking for other bases to set aside the decisions made at decedent's cheldecheduch. *See, e.g.*, *Naruo v. Naruo*, 18 ROP 220, 224-25 (2011) (declining to revisit trial court findings regarding cheldecheduch custom where appellant did not cite to legal authority in support of appeal); *cf., e.g.*, *Ngarmesikd Council of Chiefs v. Rechucher*, 15 ROP 46, 49 (2008) ("[A]lthough we have the authority to step in to resolve disputes concerning customary matters, this court opts for the exercise of the least supervision necessary.").

CONCLUSION

[¶ 47] For the foregoing reasons, the judgment of the Trial Division is **AFFIRMED**.

SO ORDERED, this 2nd day of November, 2016.