IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

KATEY O. GIRAKED,
Appellant,
v.
KOROR STATE PUBLIC LANDS AUTHORITY,
Appellee.

Cite as: 2017 Palau 8
Civil Appeal No. 16-007
Appeal from LC/B 08-296

Decided: February 22, 2017

Counsel for Appellant .....Y. Dengokl
Counsel for Appellee .....R. Dimitruk

BEFORE: JOHN K. RECHUCHER, Associate Justice
R. BARRIE MICHELSEN, Associate Justice
DANIEL R. FOLEY, Associate Justice

Appeal from the Land Court, the Honorable Rose Mary Skebong, Associate Judge, presiding.

OPINION

PER CURIAM:

[¶ 1] This matter is on appeal for a second time. The factual background is laid out in detail in our opinion resolving the first appeal. *Kebekol v. KSPLA*, 22 ROP 38 (2015) ("*Giraked I*"). Only a brief overview is necessary here.

[¶ 2] The case began in 2013 when the Land Court heard claims for a parcel of public land in Ngerchemai Hamlet, Koror State (the "Lot").[1] Appellant Katey O. Giraked claimed the Lot was part of the land *Isngull* that was wrongfully taken from her father. The trial court acknowledged that prior cases have awarded several different parcels that were part of her

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[1] The Lot is specifically identified as Lot 181-12057 on "BLS Worksheet #181 part."

father's land *Isngull* to her, but observed that other parts of *Isngull* had been obtained properly by the Japanese government. Giraked did not dispute this fact. The question was whether this Lot had been owned by her father and, if so, whether it had been wrongfully taken from him.[2]

[¶ 3] Giraked's evidence that the Lot was wrongfully taken from her father was her own testimony that the Lot was part of *Isngull* and that there had once been a store on it leased from her father. The Lot was listed in the Tochi Daicho as registered to a Japanese government agency. The same was true of the nearby lots that had been properly obtained from her father. The Land Court concluded that "[a] proper acquisition [of the Lot] would explain the Tochi Daicho listing under the Japanese government," consistent with other nearby lots. The Land Court held that Giraked was required to rebut the Tochi Daicho listing by clear and convincing evidence and that her testimony fell "way short" of meeting that burden.

[¶ 4] Giraked appealed. She challenged the Land Court's application of the clear and convincing standard along with many of the Land Court's evidentiary findings. She also advanced the legal theory that prior cases awarding other lots within *Isngull* to her required the award of this Lot to her as well. In that first appeal, we agreed that the Land Court should not have reviewed the evidence under a clear and convincing standard; the court should have reviewed the evidence under a preponderance standard. *See Giraked I*, 22 ROP at 41-45. Aside from that holding, however, we rejected all the other factual and legal challenges. We "[did] not see any indication that the Land Court improperly disregarded admissible evidence, relied on inadmissible evidence, came to an unsupportable conclusion, or otherwise did anything" to indicate a clear error "as to any . . . intermediate factual findings

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[2] An individual seeking the return of a piece of public land from the government must establish certain facts. Among other things, the individual claimant must prove that the specific piece of claimed land became public when it was wrongfully taken from the original owner. *See, e.g., Giraked I*, 22 ROP at 42. The claimant must also prove that she or he was the original owner or that owner's proper heir. *Id*. Crucially, it is the claimant, and not the governmental land authority, who "at all times bears the burden of proving, by a preponderance of the evidence, that each element is satisfied." *KSPLA v. Idid Clan*, 22 ROP 21, 24 (2015); *see also* 35 PNC § 1304(b).

prior to its ultimate decision." *Id*. at 46. We also explicitly rejected Giraked's arguments about the preclusive effect of prior adjudications of other lots in *Isngull*. *Id.*

[¶ 5] Our remand instruction to the Land Court, *see id.*, was narrow and clear:

> Appellants are entitled to a review of their claims under the preponderance of the evidence standard, for which limited purpose we now remand this case[.] [I]n the event that the Land Court determines Appellants also have failed to meet their burden under the preponderance standard this Court will not be inclined to hear further argument attempting to re-litigate factual issues already decided by the trial court. Even to the extent that some of these factual arguments may be supported by some evidence in the record, none constitute anything even resembling a potentially meritorious ground for appeal.[3]

[¶ 6] On remand, the Land Court determined that Giraked had failed to meet her burden under the preponderance standard. The lower court again noted that the only record evidence that Giraked's father owned the Lot was Giraked's own testimony. The court weighed this testimony and found it insufficient to prove ownership in light of the whole record. The court also noted that Giraked "provided no evidence at all about the circumstances of the Japanese administration's acquisition of the Lot."

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[3] Despite our admonition that Giraked's preclusion arguments were waived or "so clearly unsupported by the record that they do not warrant serious consideration" and that the factual challenges did not "constitute anything even resembling a potentially meritorious ground for appeal," *id.*, Giraked petitioned for rehearing. *Kebekol v. KSPLA*, 22 ROP 74 (2015). In even more explicit terms, we again rejected these arguments. We stated that "bringing a motion to reconsider lacking any substantive distinction from the initial argument after being told that such 'dubious factual challenges and legal arguments . . . border on frivolous' all but invites sanction from this Court." *Id.* at 76 (quoting *Giraked I*, 22 ROP at 45); *see also id.* at 78 (refusing to reconsider legal preclusion arguments).

[¶ 7] Before us now is Giraked's appeal of the decision on remand. Our remand was for the "limited purpose" of having the Land Court review the evidence "under the preponderance of the evidence standard." *Giraked I*, 22 ROP at 46. The Land Court did this. About the only conceivable argument for appeal is that the Land Court incorrectly weighed the evidence in determining what the preponderance of it was.[4] But Giraked instead chooses to again make the same arguments we have expressly rejected twice: in *Giraked I*, and in denying rehearing.

[¶ 8] For example, Giraked argues that the Land Court "fail[ed] to consider all of the evidence." We have already addressed and rejected this argument. *See, e.g.*, *Giraked I*, 22 ROP at 46 ("[W]e do not see any indication that the Land Court improperly disregarded admissible evidence" or "or otherwise did anything" to indicate a clear error.). Giraked also argues that the lower court erred "when it found that the Japanese had taken [the Lot] properly," because "there is absolutely no evidence" it was properly acquired. We have already addressed and rejected this argument. *See Kebekol*, 22 ROP at 75 ("[T]he Land Court did *not* find that the land was properly acquired, so a lack of evidence to support such a finding is irrelevant."). Giraked further broadly challenges the Land Court's "erroneous view of the evidence" and argues that her testimony "should be enough." We have already addressed and rejected these general factual arguments, stating that "none constitute anything even resembling a potentially meritorious ground for appeal." *See Giraked I*, 22 ROP at 46.

[¶ 9] In remanding this case after the first appeal, we made clear that in the event the Land Court determined that Giraked failed to meet her burden under the preponderance standard, we would "not be inclined to hear further argument attempting to re-litigate factual issues already decided." *Id*. Giraked's arguments are attempts to re-litigate factual issues already decided and we decline to hear them. To the extent her brief presents non-factual issues, it is only as part of an effort to revive preclusion arguments we have already addressed. As no arguments are presented on appeal that we have not

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[4] Such an argument would almost certainly fail. As we have repeatedly stated, our role on appellate review "is not to re-weigh the evidence produced below." *See, e.g.*, *Oseked v. Ngiraked*, 20 ROP 181, 183 (2013).

already resolved, the Land Court's findings and determination of ownership are accordingly **AFFIRMED**. By separate order to be issued today, the Court will direct Appellant's counsel to show cause why this appeal was not frivolous in light of our opinion in *Giraked I* and our order denying rehearing. *Cf.* ROP. R. App. P. 38 ("If the Appellate Division determines that an appeal is frivolous, it may award just damages, including attorney's fees, to the appellee.")

SO ORDERED, this 22nd day of February, 2017.