

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

LISA GLOVER,
Appellant,
v.
ANNE LUND,
Appellee.

Cite as: 2018 Palau 10
Civil Appeal No. 18-007
CP/Civil Action No. 16-102

Decided: July 6, 2018

Counsel for Appellant Johnson Toribiong
Counsel for Appellee C. Quay Polloi

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
JOHN K. RECHUCHER, Associate Justice
R. BARRIE MICHELSEN, Associate Justice

Appeal from the Court of Common Pleas, the Honorable Honora E. Remengesau Rudimch,
Senior Judge, presiding.

OPINION

PER CURIAM¹:

[¶ 1] This appeal concerns Appellant Lisa Glover’s right to continue collecting social security benefits as a surviving spouse pursuant to 41 PNC § 755. On September 7, 2016, Appellant Glover filed a petition with the Court of Common Pleas to confirm a customary marriage between herself and the late John Baptist Rechesengel (decedent), who had passed away in 2014.²

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

² We assume, without deciding, that the Court of Common Pleas has jurisdiction to “confirm a marriage.” *But see* 21 PNC § 104, authorizing the Trial

Notice of the petition was provided to decedent's sister, Anne Lund. After a four-day trial, the court concluded that at the time of decedent's death, his marriage with Glover had already been terminated pursuant to Palauan custom. Therefore, the court denied Glover's request to confirm that her customary marriage to the decedent continued until his death in 2014. Glover appeals the court's decision.

STANDARD OF REVIEW

[¶ 2] Fact-finding by the lower court is reviewed under a clear error standard. *Kiuluul v. Elilai Clan*, 2017 Palau 14 ¶ 4. Credibility determinations are left to the trial court's discretion, subject to reversal only in the extraordinary case. *See, e.g., ROP v. Tmetuchel*, 1 ROP Intrm. 443 (1988). "Whether a given custom has met the traditional law requirements is a mixed question of law and fact. However, the definitive statement as to whether a custom is or is not binding law is a pure determination of law." *Beouch v. Sasao*, 20 ROP 41, 49 (2013) (internal citation omitted). We review such issues de novo.

BACKGROUND

[¶ 3] Both Glover and Lund testified on their own behalf, and both parties also presented their own custom experts (Peter Elechuus testified for Glover, and Tadao Ngotel testified for Lund). Glover's mother and maternal uncle also testified on her behalf.

[¶ 4] Based on the evidence submitted and testimony given during trial, the court found that Glover and the decedent had been customarily married pursuant to recognized Palauan custom in 1996 through the exchange of *ngader* and *bus* between the families during Glover's first birth hot bath ceremony. The marriage was not recorded with the Clerk of Courts. Glover

Division of the Supreme Court to confirm customary annulments, divorces, and adoptions.

and the decedent lived together as husband and wife until sometime in 2009, when the relationship became strained.

[¶ 5] It was also in 2009 that Glover asked the decedent for assistance so she could attend her maternal uncle's funeral in Saipan, but the decedent and his family did not help her. Glover managed to attend the funeral anyway, and contemplated ending her marriage when she returned to Palau. However, while she was away, the decedent gathered her belongings and brought them to Glover's other maternal uncle's house in Koror. At this point, according to Lund, the decedent indicated that he no longer wished to be married to Glover.

[¶ 6] When Glover returned from Saipan, she did not return to the marital home. From 2009 until the decedent's death on April 26, 2014, Glover did not live with the decedent, although she sometimes spent the night with him at the marital home. Glover lived in various places during these five years, and admitted in her testimony that she had a relationship with another man, but claimed she only did so because the decedent had affairs with other women as well. When the decedent became sick and went to the Philippines on referral, his family held an *omengudel udoud* to raise money for his medical treatment. Glover did not attend the ceremony, nor did she contribute any money. Glover also did not accompany the decedent on his trip to the Philippines for medical treatment.

[¶ 7] Glover claims that when the decedent was hospitalized, she visited him and took care of him (although Lund disputes this, claiming a woman named Gloria cared for the decedent during his final days). Glover testified that the decedent wished to reaffirm their vows in front of a priest before he died, but this never happened, and the families of Glover and the decedent did not exchange any gifts or payments as is customarily done to repair frayed relationships. Glover did not attend the decedent's funeral, and no *cheldecheduch* occurred.

[¶ 8] After the decedent passed away, Glover began receiving social security benefits as his surviving spouse until Lund informed the Social Security Administration that the decedent and Glover had been customarily divorced prior to his death. After Lund's intervention, Glover stopped receiving benefits. Consequently, Glover petitioned the court to confirm her

customary marriage up until the decedent's death in 2014 so that she could resume receiving social security benefits.³

[¶ 9] The court reached two main conclusions; 1) prior to the decedent's death, he and Glover were divorced pursuant to Palauan custom; and 2) under Palauan custom, when a marriage is dissolved through the acts of the husband, *olmesumech* should be given to the wife and her family, but if the wife committed adultery or sought the dissolution of the marriage, then *olmesumech* is unnecessary.

A. Divorce

[¶ 10] The court concluded that Glover and the decedent were divorced under customary law prior to his death. The court based this conclusion primarily on three factors, with the third factor being the most important: 1) The decedent packed Glover's belongings and took them to her maternal uncle's house; 2) The decedent and Glover did not live together from 2009 until his death in 2014; 3) Glover admitted to having a relationship with another man, thus committing adultery (the court noted that the decedent may have also committed adultery). The court concluded that under Palauan custom, marriages can be dissolved if either spouse commits adultery. In reaching its finding that Glover and the decedent were no longer married in 2014, the court discounted Glover's proffered evidence that they were still married—that Glover continued to be intimate with the decedent and occasionally spent the night in their marital home, and that she visited and cared for the decedent while he was hospitalized.

³ “Any person aggrieved by a final decision of the [Social Security] Board may obtain a review of the decision in the Supreme Court by filing with the Clerk of Courts within 60 days after receiving notice of the decision, a written petition praying that the decision be modified or set aside in whole or in part.” 41 PNC § 717. Because the Social Security Administration was not a party to this case, nor in privity with any party, the decision of the Court of Common Pleas is not *res judicata* against that agency, and it is not bound by the judgment. The agency is free to accept the Court's result, or not.

B. Necessity of *Olmesumech*

[¶ 11] The court based its conclusion regarding *olmesumech* and customary divorce on the testimony of the experts. They both testified that a marriage can be dissolved under Palauan custom through the acts of either the husband or wife. If the marriage was terminated by the husband, he should pay *olmesumech* to the wife and her family. If the wife committed adultery or no longer wished to remain married to her husband, then *olmesumech* is not necessary, and the woman generally leaves the marriage with nothing.

[¶ 12] The court also referenced The Palau Society of Historians, William Hampton Adams and Florencio Gibbons, *Palau Ethnography Rechuodel: Traditional Culture and Lifeways Long Ago in Palau* 22-23 (DeVerne Reed Smith trans., Micronesian Endowment for Historic Preservation) (1997), which discusses how marriages may be terminated by acts of either spouse (such as adultery), and explains that *olmesumech* is a “farewell” or parting payment when the husband takes another woman for himself, thereby causing his current marriage to end. Finding that this reference text corroborated the testimony of the custom experts, the court concluded that under Palauan traditional custom, an *olmesumech* payment is only required if the divorce is precipitated by the husband’s actions.

[¶ 13] At trial, Glover argued that *olmesumech* is always required to officially terminate a marriage under Palauan custom. However, the court found that the evidence presented did not support such an argument. The court noted that neither of the experts (including Glover’s own expert) specifically corroborated this claimed custom, and there was no other evidence presented to indicate that Glover’s position represents the correct custom. In fact, although Mr. Elechuus (Glover’s expert) testified at one point that a couple remains married if the husband does not pay *olmesumech* to his wife and her family, he later conceded that adultery is another way to terminate a marriage under custom, and that there are instances where a marriage ends even though no *olmesumech* was paid. Therefore, the court concluded that Glover had failed to satisfy the *Beouch* standard⁴ for her

⁴ In *Beouch*, 20 ROP at 48, the Court articulated a four-element test for determining whether a given custom can be considered traditional law: (1)

claimed custom (i.e. that *olmesumech* is always required to dissolve a marriage under Palauan custom).

ANALYSIS

[¶ 14] The main argument Glover raises on appeal is that the Court of Common Pleas erred when it concluded that a customary divorce can be effectuated without an *olmesumech* payment in situations where the wife’s conduct (adultery) precipitated the split. Glover also raises three subsidiary arguments, which we will address before considering the *olmesumech* issue.

A. Sufficiency of the Evidence Argument

[¶ 15] Glover argues that the court went against the weight of the evidence when it concluded that she and the decedent were no longer married in 2014, claiming that the court “disregard[ed] the multitude of witnesses in favor of the unsupported testimony of a single biased witness.” The Court fails to see how Glover’s witnesses (her mother and maternal uncle) would be any less biased than Lund (the decedent’s sister). There is more than enough evidence to support the court’s finding that Glover and the decedent were divorced, through the testimony of Lund, Glover, and both custom experts.

B. Judicial Bias

[¶ 16] Glover briefly raises this argument for the first time in her reply brief. According to Glover, the court demonstrated its bias during the second day of trial when it made the following announcement:

I know this is a sensitive case, a lot of people—you know stuff is being said, but uh, I ask that everybody in this courtroom including those that are observing, uh please refrain from making facial expressions or uh eye contact or anything or trying—because it’s

the custom is engaged voluntarily; (2) the custom is practiced uniformly; (3) the custom is followed as law; and (4) the custom has been practiced for a sufficient period of time to be deemed binding.

actually very distracting to me, and that's actually sorta influencing the Court as well, but the Court needs to remain impartial through these proceedings.

According to Glover, this statement demonstrates the trial court's bias, and therefore the Appellate Division should order a new trial.

[¶ 17] This issue was raised for the first time in Glover's reply brief, and is therefore not preserved. *See In the Matter of Land Identified as Lot No. 2006 B 12-002*, 19 ROP 128, 133 (2012) ("An appellant may also file a reply brief *to answer arguments raised in the appellee's response brief*, ROP R. App. P. 28(b), . . .") (emphasis added). We will note the most reasonable interpretation of the court's statement was that the facial expressions of some in the courtroom audience was influencing the court in the sense of being distracting, not in the sense of removing the court's impartiality. Rather than indicating bias, the statement illustrates the court taking affirmative action to maintain control over the courtroom.

C. Burden of Proof

[¶ 18] On appeal, Glover argues that Lund "failed to establish that continual cohabitation, and [Glover's] inclusion in an *omengudel udoud* by Decedent's family was a prerequisite to [maintaining] a customary marriage." Glover claims that "the evidence provided by Appellee does not satisfy the standard for proving custom as set forth in *Beouch v. Sasao*, 20 ROP 41 (2013)[.]" Although her argument is not entirely clear, the "custom" to which Glover is referring appears to be the alleged custom that a couple must continually cohabit and participate in family functions like *omengudel udoud* in order to remain married.

[¶ 19] However, Glover mistakes which party has the burden of proof. As the moving party, Glover had the burden of establishing that she had been customarily married to the decedent at the time of his death in 2014. On appeal, Glover has the burden of establishing legal error by the trial court. *See, e.g., Rudimch v. Rebluud*, 21 ROP 44, 46 (2014) ("the burden of demonstrating error on the part of a lower court is on the Appellant."). Therefore, at no stage in these proceedings (trial level and now on appeal) does Lund have the burden of establishing any purported custom.

D. Necessity of *Olmesumech* for Customary Divorce

[¶ 20] The central question at issue in this appeal is whether, according to Palauan traditional law, an *olmesumech* payment is always required to finalize a divorce. The evidence at trial provided inadequate support for Glover’s claim that such a payment is always required. Even her custom expert admitted during his testimony that, although *olmesumech* is generally required when a divorce is caused by the husband’s actions, *olmesumech* is not necessary if the wife committed adultery or no longer wished to be married. Therefore, the expert admitted that not all marriages that are dissolved under Palauan custom result in *olmesumech*.

[¶ 21] On this evidence, Glover failed to meet her burden of proving error in the lower court’s customary law conclusion. Therefore, we deny her appeal. See *Otei v. Smanderang*, 2018 Palau 4, *Obak v. Ngirturong*, 2017 Palau 11, and *Riumd v. Mobel*, 2017 Palau 4 (denying appeals where appellant failed to show legal error in the trial court’s customary law conclusions).

CONCLUSION

[¶ 22] For the foregoing reasons, the Decision and Judgment of the Court of Common Pleas is **AFFIRMED**.

SO ORDERED, this 6th day of July, 2018.