IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

TOMASA DELTANG RECHESENGEL
Appellant,
v.
PETER MIKEL and KLOULUBAK MARK RUBASECH and WUEL FUANA BENHART
Appellees.

Cite as: 2018 Palau 20
Civil Appeal No. 17-013
Appeal from Civil Action No. 16-045

Decided: October 17, 2018

Counsel for Appellant Rechesengel .... Vameline Singeo
Counsel for Appellees Rubasech and Benhart ……….. Yukiwo Dengokl
Counsel for Appellee Mikel …………………………… Masami Elbelau, Jr.

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
R. BARRIE MICHELSEN, Associate Justice
DENNIS K. YAMASE, Associate Justice

Appeal from the Trial Division, the Honorable Kathleen M. Salii, Associate Justice, presiding.

OPINION

PER CURIAM:

[¶ 1] This appeal concerns ownership of land known as *Ngeluul*, located in Ngkeklau, Ngaraard. *Ngeluul* was originally identified as Cadastral Lot No. 056 E 08 (Tochi Daicho Lot 1849-Part), but has since been divided into four smaller parcels, two of which are at issue in this dispute—Lot Nos. 056 E 29 and 056 E 32. For the following reasons, we **VACATE** the trial court's judgment and **REMAND** for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

[¶ 2] The first Certificate of Title for *Ngeluul* was issued on February 8, 1996, and registered on May 2, 1996, by the Land Claims Hearing Office, naming *Ongalk ra Ngiraked* as owner in fee simple of Lot 056 E 08, with John Olbedabel Ngiraked ("Olbedabel") serving as trustee.

[¶ 3] In 2016, Appellant Tomasa Deltang Rechesengel filed an action to quiet title to Lots 056 E 29 and 056 E 32. Appellees Mark Rubasch and Wuel Fuana Benhart, representing the children of Ileberang Ebelbal, filed an objection and claim. Appellee Peter Mikel also filed an objection and claim.

[¶ 4] Rechesengel based her claim to the lots on two transfer deeds from Olbedabel. On October 29, 1996, Olbedabel and Rechesengel executed a document, *Oterul ma Oidel a Chutem*, by which Rechesengel purchased part of *Ngeluul* (Lot 056 E 32) for $5,000. To prove he had the authority to sell this land, Olbedabel provided Rechesengel with a Power of Attorney (dated March 25, 1992, and signed by all the surviving natural children of Ngiraked—Christian Ngiraked, Moses Sam, Rosania Olkeriil, Maria Paulis, and Irene Obeketang) through which the members of *Ongalk ra Ngiraked* gave permission for Olbedabel to sell *Ngeluul*, as well as any other land the group inherited from their late father. The following day (October 30, 1996), Rechesengel recorded the *Oidel a Chutem* in the Supreme Court and registered the transfer with the Land Court.

[¶ 5] On January 12, 1998, Rechesengel and Olbedabel executed another *Oterul ma Oidel a Chutem*, by which Rechesengel purchased another portion of *Ngeluul* (Lot 056 E 29) for $8,000. Once again, Olbedabel based his authority to sell the land on his status as trustee for *Ongalk ra Ngiraked* and the 1992 Power of Attorney. The next day (January 13, 1998), Rechesengel recorded the *Oidel a Chutem* at the Supreme Court and registered the transfer with the Land Court.

[¶ 6] Appellees Rubasch and Benhart (on behalf of the children of Ileberang Ebelbal), based their claim to *Ngeluul* on a purchase made at a public auction associated with *Bank of Guam v. Moses Sam*, Civil Action No. 01-123 (Tr. Div. 2001). In that case, a default judgment was entered on August 27, 2001, in favor of Bank of Guam and against Sam for $2,627.53.

In 2004, the court declared Sam co-owner of Lot No. 056 E 08, and accordingly ordered that Sam's interest in this lot be partitioned and sold by public auction. At the ensuing public auction, Tiou Ngirasob purchased Sam's interest in the lot for $2,912. A quitclaim deed in favor of Ngirasob was then duly executed. The Land Court subsequently issued a new Certificate Title on August 3, 2005, naming *Ongalk ra Ngiraked* and Ngirasob (owning Sam's interest) as co-owners of Lot 056 E 08.

[¶ 7] Ngirasob was the maternal aunt of Appellees Rubasch and Benhart. When the public notice was issued for the sale of *Ngeluul*, Ngirasob's siblings asked her to purchase the land for all of them (collectively known as the "Children of Ilberang Ebelbal") because she had the necessary funds at the time, with the understanding that Ngirasob would be reimbursed later. Benhart testified that Ngirasob was, in fact, reimbursed by her siblings. Although the Certificate of Title was issued in Ngirasob's name, the understanding was that the property belonged to the Children of Ilberang Ebelbal.

[¶ 8] Mikel is the son of Maria Paulis, one of Ngiraked's biological children. Mikel claimed Lot 056 E 08 based on a quitclaim deed signed by Kelau Gabriel on February 4, 2017. Mikel claims that although she was not Ngiraked's biological child, Gabriel was customarily adopted by Ngiraked and is thus a member of *Ongalk ra Ngiraked*. Gabriel did not sign the 1992 Power of Attorney in which the other members of *Ongalk ra Ngiraked* granted Olbedabel the authority to sell *Ngeluul*. Therefore, according to Mikel, the 1996 and 1998 transfers to Rechesengel are void, and Gabriel retained her ownership interest in *Ngeluul* until deeding it to Mikel.

[¶ 9] The trial court concluded that Gabriel had indeed been customarily adopted by Ngiraked. The court found several indicia of a parent-child relationship: Gabriel and her mother had lived with Ngiraked since Gabriel was a young child; Gabriel had been raised as Ngiraked's child; Gabriel considered Ngiraked to be her father; Ngiraked considered Gabriel to be his daughter; Ngiraked received money at Gabriel's marriage to her first husband, as is customarily done to acknowledge that he raised her as his daughter; and Gabriel had received money at Ngiraked's funeral along with his other children.

[¶ 10] In concluding that Gabriel was customarily adopted, the trial court disregarded parts of the testimony of Rechesengel's expert on customary law, Floriano Felix. Felix testified that, according to customary practice, Gabriel was "*cheltekiil el ngalek*" (the child of a man's wife who was already alive when the man married the woman, roughly equivalent to the concept of a "step-child") rather than a customarily adopted child. According to Felix, a child who is "*cheltekiil el ngalek*" cannot be customarily adopted because the two concepts are separate, and adoption is reserved for situations where a husband and wife are married before adopting a child together.

[¶ 11] The trial court concluded that, as a customarily-adopted child of Ngiraked, Gabriel was a member of *Ongalk ra Ngiraked* whose consent was required to transfer *Ngeluul*. Therefore, the transactions between Olbedabel and Rechesengel were ineffective. Gabriel, as the last surviving member of *Ongalk ra Ngiraked*, retained her interest in *Ngeluul* until properly conveying her interest to Mikel.

[¶ 12] The trial court concluded that between the three claimants, Rechesengel had not met her burden of proving superior title to the two portions of *Ngeluul*, so it entered judgment quieting title to Lot 056 E 08 in favor of Mikel (owning the interest of *Ongalk ra Ngiraked*) and Appellees Rubasch and Benhart, representing the Children of Ileberang Ebelbal (owning the interest of Ngirasob).

STANDARD OF REVIEW

[¶ 13] A lower court's conclusions of law are reviewed *de novo*. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001). Factual findings of a trial court are reviewed for clear error, and will be reversed only if they so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion. *Pamintuan v. ROP*, 16 ROP 32, 36 (2008). Determination of whether a customary adoption has taken place is a question of fact. *Tkoel v. Ereong Lineage*, 18 ROP 150, 152 (2011) (citing *Nakamura v. Markub*, 8 ROP Intrm. 39, 39 (1999)).

DISCUSSION

[¶ 14] Rechesengel raises several arguments on appeal. However, all parties agree that the central issue is whether the trial court was correct in concluding that Gabriel is a member of *Ongalk ra Ngiraked* with an ownership interest in *Ngeluul*.

[¶ 15] To answer this question, the Court must first review the Trial Division's finding that Gabriel was customarily adopted by Ngiraked. Rechesengel argues that the trial court erred in reaching this conclusion. The only authority Rechesengel cites in her brief is the expert witness's testimony from the trial. However, a trial court is not required to accept as true unrebutted expert testimony. *See, e.g., Idid Clan v. Olngebang Lineage*, 12 ROP 111, 124 (2005). Based on the record before us, we find enough evidence of a customary adoption. *See, e.g.*, *Nakamura*, 8 ROP Intrm. at 39–40; *Tkoel*, 18 ROP at 152–53; *and In re Estate of Delemel*, 4 ROP Intrm. 148, 150–51 (1994) (explaining the factors indicating when a customary adoption has taken place, such as acting like parent/child, subjectively considering the relationship as parent/child, living with and being raised by the purported adoptive parent, and receiving money at traditional ceremonies from the family of the putative adoptive parent or child). Therefore, the trial court's finding on this issue is not clearly erroneous, so we uphold the trial court's conclusion that Gabriel was customarily adopted by Ngiraked.

[¶ 16] Once the trial court found that Gabriel had been customarily adopted by Ngiraked, it concluded that she must be a member of *Ongalk ra Ngiraked* because, citing to the expert witness's testimony, "*ongalk*" refers to "children." However, this reasoning is insufficient in light of our decision in *Mikel v. Saito*, 20 ROP 95 (2013)[1]. In *Mikel*, the Appellate Division held that when the Palauan phrase "*ongalk ra*" is used in a Certificate of Title, along with the nomination of an individual to serve as trustee for the land, a court cannot simply rely on the plain meaning of "*ongalk*," and must instead refer

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[1] Coincidentally, *Mikel* involves several of the same figures from the current dispute, as the case involved ownership of land originally owned by a woman named Techeboet, who was Ngiraked's wife and the mother of all his children (including Gabriel).

to customary law regarding inheritance of real property to determine the individual members of the ownership group. *See id*. at 100–01.

[¶ 17] *Mikel* involved facts strikingly similar to those found in the current dispute. The case concerned land known as *Metuker*. *Id.* at 97. In 2004, a Certificate of Title for *Metuker* was issued to "*Ongalk ra Techeboet*." *Id.* In 2010, Isebong Saito purchased the interests of Gabriel, Olbedabel, Sam, and Christian Ngiraked in *Metuker* through a judicial sale of the estate of Ngiraked. *Id.* Subsequently, the Land Court issued a new Certificate of Title for *Metuker* to "*Ongalk ra Techeboet* and Isebong Saito—who owns the interests of John O. Ngiraked, Moses Sam, [Ch]ristian Ngiraked and Kelau Gabriel Renguul." *Id.* (internal quotation marks omitted).

[¶ 18] In 2011, Saito filed an action to quiet title to *Metuker*. *Id.* Mikel filed an objection on behalf of himself, through his mother, Maria Paulis, a daughter of Techeboet, and on behalf of two other female children of Techeboet, Rosania and Irene. *Id.* at 97–98. In his objection, Mikel argued that Paulis, Rosania, and Irene, as children of Techeboet, held title to *Metuker* as "*ongalk*" of Techeboet. *Id.* at 98.

[¶ 19] Because Mikel did not dispute the sale of *Metuker*, and Saito did not dispute that Paulis, Rosania, and Irene were Techeboet's children, the Trial Division held trial solely on the issue of whether the female children maintained valid claims to *Metuker*. *Id.* After the trial, the court found Saito to be the sole owner of *Metuker*. *Id.* In its decision, the trial court explained that although the phrase "*Ongalk ra Techeboet*," as it was used by the Land Claims Hearing Office, meant "children of Techeboet," Palauan custom was applicable because the Office had used the Palauan version instead of the English version. *Id.* The Trial Division credited the expert testimony that under Palauan custom, male children inherit dry land and female children inherit taro patches. *Id.* Because *Metuker* was dry land, the court concluded that title had passed only to Techeboet's male children, rendering Mikel's objection meritless. *Id*.

[¶ 20] Mikel appealed the Trial Division's decision, arguing that the court erred in construing the meaning of "*ongalk*" to exclude female children. *Id.* at 99. Mikel challenged both the trial court's resort to custom to interpret the phrase "*Ongalk ra Techeboet*" in the Certificate of Title (rather than simply

using the plain meaning of *ongalk* as "children") and the court's conclusion regarding the effect of customary law in this specific situation. *Id.* The Appellate Division held that, given the identification of a trustee and the lack of any discussion of inheritance law, the Land Claims Hearing Office intended to create "a form of communal ownership in the children of Techeboet similar to that of clan or lineage ownership. . . . Accordingly, the rights of the children of Techeboet must be determined by reference to customary law." *Id.* at 101. However, the Appellate Division concluded that Saito had failed to establish the purported customary law regarding male inheritance by clear and convincing evidence, and consequently remanded the case for further proceedings.[2] *Id.* at 102.

[¶ 21] Following the holding of *Mikel*, the trial court here erred in concluding that Gabriel was a member of *Ongalk ra Ngiraked* simply because the plain meaning of *ongalk* is "children." Instead, the court should have determined whether the phrase "*Ongalk ra Ngiraked*," when used in a Certificate of Title, includes a daughter who had been customarily adopted by Ngiraked. To answer this question, the trial court needed to consider customary law regarding the inheritance rights of adopted children.

[¶ 22] The only testimony directly addressing this issue at trial was from Felix, who testified that, as "*cheltekiil el ngalek*," Gabriel had no right to inherit Ngiraked's land and, instead, was only entitled to receive money at the *eldecheduch*. However, the trial court disregarded Felix's testimony regarding the adoption question, so it is unclear what weight should be accorded to his testimony on inheritance. Furthermore, prior Appellate Division case law (all decided before *Beouch* when customary law was treated as a factual matter proven in each case by clear and convincing evidence) provides inconsistent guidance. For example, in *Ngirutang v. Ngirutng*, 11 ROP 208, 210 (2004), the Appellate Division affirmed the trial court's decision to divide a decedent's estate equally among his two biological children and one adopted son, explaining that "[Appellant's]

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[2] At the time *Mikel* was filed, custom was treated as a question of fact to be established by clear and convincing evidence. In *Beouch v. Sasao*, the Court held that custom is a question of law, but explicitly stated that this change would only apply prospectively. *See* 20 ROP 41, 51 (2013).

evidence of the general rule concerning an adopted child's customary right to inherit was undisputed." However, in *Fritz v. Materne*, 23 ROP 12, 19–20 (2015), the Appellate Division affirmed the trial court's finding that an adopted child's inheritance rights ended when the adoptive father died. There, the Appellate Division emphasized that its decision was due to the standard of review in place at the time, stating "[t]he Trial Division's determination of custom itself presents a less clear cut question, but also reveals no reversible error." *Id*. at 19.

[¶ 23] Given the current state of the record, the appropriate action for the Court to take at this stage is to vacate the trial court's conclusion that Gabriel is a member of "*Ongalk ra Ngiraked*" and remand for further proceedings to determine whether, in the context of Palauan customary law regarding inheritance of land, the phrase "*Ongalk ra Ngiraked*" includes a child who was customarily adopted by Ngiraked. *See Beouch* at 49 n.8 ("Where an issue of traditional law is unresolvable on the record, a trial judge must develop the record to allow for resolution.").

CONCLUSION

[¶ 24] For the foregoing reasons, the Trial Division's decision is **VACATED**, and the matter is **REMANDED** to the Trial Division for further proceedings consistent with this opinion.