IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

UCHERIANG ADERKEROI, rep. of Emadaob Lineage and members of that Lineage,
Appellant,
v.
FELIX FRANCISCO, IRENE FRANCISCO, and FLORENCIA NGIRAIWET FRANZ, rep. the Children of Mechutedil Ngiraiwet,[1]
Appellees.

Cite as: 2019 Palau 29
Civil Appeal No. 18-045
Appeal from Civil Action No. 12-198

Decided: September 5, 2019

Counsel for Appellant ..... Pro Se
Counsel for Appellees..... Rachel A. Dimitruk

BEFORE: KATHERINE A. MARAMAN, Associate Justice
DANIEL R. FOLEY, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

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

OPINION

PER CURIAM:

[¶1] This appeal arises out of the Trial Division's decision and judgment in favor of Defendants/Appellees, holding that Plaintiffs/Appellant failed to prove that they are the only strong senior members of Emadaob Lineage of Ngedengoll Clan with the sole authority over the titles and properties of the Lineage. Appellant seeks reversal of the finding that she does not have sole

[1] Plaintiff Olkeriil Aderkeroi and Defendant Victoria Smanderang Yobech, both parties to the original action, have since passed away and as such we dismiss them as parties to the appeal. Additionally, though Appellant named "John Does 1–10" as Appellees, we adhere to the general rule that fictitious parties will not be named in an appeal and we thus dismiss and remove them. See *Rengulbai v. Azuma*, 2019 Palau 12, n.1.

authority to determine who is buried on its odesongel. Specifically, Appellant contends that her attorney failed to present certain evidence that would have resulted in a different conclusion by the Trial Division, and that this failure amounts to ineffective assistance of counsel. In the alternative, Appellant seeks remand for further factfinding and requests that the Trial Division consider the evidence not presented at trial.

[¶2] For the following reasons, we now **AFFIRM** the Trial Division's conclusion.

FACTS AND PROCEDURAL BACKGROUND

[¶3] On November 20, 2012, Plaintiffs below filed a verified complaint for trespass and sought a temporary restraining order, preliminary injunction, and permanent injunction against Defendants. Plaintiffs sought to enjoin Defendants from entering onto land known as Emadaob, located in Urdmau in Ngardmau state, and from burying their relative on the land.

[¶4] After many delays, the case finally went to trial in 2017 and 2018 on the issue of the identity of senior strong members of Emadaob Lineage and their authority over lineage decisions and, more specifically, who may be buried at the lineage's odesongel on the land at issue.

[¶5] After hearing the testimony of many witnesses and considering the evidence presented, the Trial Division found that Plaintiffs had failed to prove by a preponderance of the evidence that they are the only remaining strong senior members of the Lineage with the sole authority over its titles and properties, including the authority to determine who will be buried on its odesongel. Defendants, the Trial Division found, are also strong senior members and as such they, together with Plaintiffs, have authority over Lineage matters.

[¶6] Appellant, her co-Plaintiff now deceased, then filed this appeal.

STANDARD OF REVIEW

[¶7] This Court has delineated the appellate standards of review:

> A trial judge decides issues that come in three forms, and a decision on each type of issue requires a separate standard of review on

> appeal: there are conclusions of law, findings of fact, and matters of discretion. *Salvador v. Renguul*, 2016 Palau 14 ¶ 7. Matters of law we decide *de novo*. *Id*. at 4. We review findings of fact for clear error. *Id*. Exercises of discretion are reviewed for abuse of that discretion. *Id*.

Kiuluul v. Elilai Clan, 2017 Palau 14 ¶ 4 (internal citations omitted).

ANALYSIS

[¶8] Appellant requests this Court to consider whether her attorney's representation at the trial level "effectively constitute[d] ineffective assistance when she omitted certain evidence which would have resulted in a reasonable trier of fact to conclude [sic] that Appellants are stronger members of Emadaob Lineage than Defendants (now Appellees)."[2] Amended Opening Br. 3. Appellant specifies several pieces of evidence that were not introduced at trial that she feels would have changed the outcome had they been offered. Among these are the Land Court file for Cadastral Lot No. 33 H 20 (of which Appellant asks this Court to take judicial notice), excerpts from Dr. Kramer's chronicles of Palauan history, a Japanese-era document pertaining to the ownership of the land, and the failure of Appellant's attorney to give her or her co-Plaintiff the opportunity to testify "that they have never seen Appellees contribute to custom under the name Emadaob Lineage." *Id*. at 10.

a. Judicial notice of Land Court file

[¶9] Rule 201 of the ROP Rules of Evidence states that judicial notice may be taken at any stage of the proceeding of facts that are "either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." ROP R. Evid. 201 (b), (f).

[2] Appellant also asks us to consider whether the Trial Division committed error "when it decided that Appellees were no less strong members of Emadaob Lineage despite probative evidence to the contrary regarding longevity of the parties' participation in siukang under the umbrella of 'Emadaob Lineage.'" Amended Opening Br. 3. Appellant does not, however, develop or indeed even acknowledge this issue in her argument, and appears to have dropped the question in her Reply Brief. We therefore do not undertake examination of it.

[¶10] Appellate courts have wide discretion to take judicial notice of facts or evidence not presented at trial. *Napoleon v. Children of Masang Marsil*, 17 ROP 28, 32 (2009). "In doing so, however, the appellate court should ensure that it is not unfair to a party to the case and 'does not undermine the trial court's factfinding authority.'" *Id*. at 32–33 (quoting 29 Am. Jur. 2d Evidence § 46).

[¶11] In requesting the Court take judicial notice of the Land Court file for Lot No. 33 H 20, Appellant does not provide any explanation as to why the file would have any bearing on the outcome of the case, except to assert that it "contains historical procedure for this land and supports a finding that is [sic] has always been Appellants who have exercised actual possession and control of the land in question until the time Appellees committed their acts of trespass." Amended Opening Br. 8. Appellant reiterates in her Reply that the file "supports Appellant's claims as to the strong senior members of Emadaob Lineage . . . ."[3] Reply Br. 8.

[¶12] The Appellate Court has repeatedly refused to consider claims brought before it that are not well developed and supported by facts on the record or law. "It is not the Court's duty to interpret this sort of broad, sweeping argument, to conduct legal research for the parties, or to scour the record for any facts to which the argument might apply." *Idid Clan v. Demei*, 17 ROP 221, 229 n.4 (2010). Because Appellant presented no compelling reason for us to take judicial notice of the Land Court file, we decline to do so.

b. Evidence not presented

[¶13] Appellant next seeks reversal of the Trial Division's decision and judgment, or, in the alternative, remand for further factual findings based on Appellant's attorney's failure to introduce several pieces of evidence at trial. Appellant claims that, had these pieces of evidence been introduced, "the decision of the trial division would have been decisively in their favor, and

[3] Appellant does not elaborate on how the Land Court file supports these assertions, and her argument in her Reply Brief appears incomplete as the sentence trails off without finishing the thought. Reply Br. 8.

had their counsel been practicing due diligence, these necessary pieces of evidence would have been introduced . . . ." Amended Opening Br. 11–12.

[¶14] "[U]nless he chooses to bring an action for legal malpractice, [a client] will bear the burden of his attorney's alleged shortcomings." *Doe v. Doe*, 6 ROP Intrm. 221, 224 (1997) (quoting the lower court in that case that "[Appellant] selected his own counsel to represent him in this matter. If the [Appellant] chose unwisely, the penalty for that decision should fall on the [Appellant] and not on the [Appellee] who had no part in the selection."). "[T]he negligence of a plaintiff's attorney does not amount to an extraordinary circumstance for which relief from judgment may be granted." *Ngeremlengui State Pub. Lands Auth. v. Telungalk Ra Melilt*, 18 ROP 80, 88 (2011).

[¶15] The constitutional right to a competent attorney is only a right afforded to criminal defendants. Civil parties, on the other hand, undertake the hiring of their own lawyers at their own expense and risk.

[¶16] The lower court "does not clearly err by failing to take evidence into account that was never introduced at trial." *Napoleon v. Children of Masang Marsil*, 17 ROP 28, 32 (2009). It is not, therefore, appropriate for this Court to reverse or remand a case so that the Trial Division can re-examine it with evidence that is not newly discovered, but rather was evidently not presented at the discretion of the attorneys.

CONCLUSION

[¶17] For the foregoing reasons, the Trial Division is **AFFIRMED**.