IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

JAMES WERTZ,
Appellant,
v.
JEFFERY TITIML, WILMA B. ERNEST, AND BEVERLY TAIMA,
Appellees.

Cite as: 2022 Palau 26
Civil Appeal No. 21-028
Appeal from Civil Action No. 20-061

Decided: November 21, 2022

Counsel for Appellant ..... Johnson Toribiong
Counsel for Appellee ..... Vameline Singeo

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice
JOHN K. RECHUCHER, Associate Justice
KATHERINE A. MARAMAN, Associate Justice

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

OPINION

PER CURIAM:

[¶ 1] This appeal arises from an estate dispute filed by Appellant James Wertz ("Wertz") surrounding the disposition of the land "Rois" left by his mother, Teruko Baiei ("Decedent"). Following a trial, the trial court entered a judgment in favor of Decedent's other children, the appellees in this case, and appointed Jeffrey Titiml as the permanent administrator of the decedent's estate. For the reasons set forth below, we **AFFIRM** the ruling of the trial court with respect to the disposition of Rois and **REMAND** as to the appointment of the permanent administrator.

BACKGROUND

[¶ 2] Decedent passed away on March 5, 2016, at the age of 80, without a will, and survived by five children. Five years later, on May 8, 2021, her son Wertz filed a petition in front of the Trial Division to settle his mother's estate, and more specifically to settle the ownership and control of the land known as "Rois", located in Ngerchemai Hamlet. Rois consists of two Cadastral Lot Nos. 003 B 03 and 003 B 004.

[¶ 3] Decedent was an adopted child of a woman named Umai. When Umai married Baiei, she brought Decedent into the marriage, and Decedent became Baiei's adopted daughter. When Umai passed away, Baiei gave Rois to Decedent. The nature of this transfer is at issue in this case. The Trial Division heard testimony from Appellees that Baiei wanted to give the property to Decedent because she remained a good and respectful daughter, and he wanted her to remain as his child even after the death of her mother Umai. Wertz argued that Decedent received the land as *ulsiungel* in exchange for the care and services she provided to Baiei.

[¶ 4] Before her passing, Decedent fell ill and called her biological relatives from Kayangel as well as her relatives from Rois Clan to discuss her wishes regarding her funeral, burial, and the disposition of her property. During this discussion, Decedent expressed her wish that Rois go to all of her children and that the house she lived in should go to one of her daughters, and continue to be available for relatives coming to Koror to participate in customary obligations of the Rois Clan. After Decedent died and her funeral was held, Decedent's relatives gathered for another *cheldecheduch* to discuss the settlement of Decedent's debts and the taking care of the children. There was no discussion of Rois, as it had already been agreed that it would be given to all of Decedent's children.

[¶ 5] Wertz petitioned the Trial Division to grant him sole ownership of the land. Wertz maintains he is entitled to the land under 25 P.N.C. § 301(a) because he is the oldest legitimate male heir. This statutory framework only applies if Decedent acquired the land as a bona fide purchaser for value. Appellant argues that since Decedent obtained the land from her adoptive father via the custom of *ulsiungel*, she is a bona fide purchaser for value, which triggers the application of the statute. Conversely, Appellees maintain that

Decedent inherited the land from her adoptive father and that in the absence of an applicable statute, the land must be disposed of by customary rules. Under customary rules, the Decedent's wishes prevail, and in this case, the Decedent intended for the land to be inherited by *all* of her children.

[¶ 6] On November 8, 2021, following a bench trial, the Trial Division issued its decision in which it found that Decedent had received Rois as an inheritance from her adoptive father and that as such, customary rules governed its disposition. It then awarded Rois to all of Decedent's children. This timely appeal followed.

STANDARD OF REVIEW

[¶ 7] We review this case under the clear error standard of review. Questions of fact are reviewed under the clear error doctrine. *Urebau Clan v. Bukl Clan*, 21 ROP 47, 48 (2014). Using this standard, we will not set aside the Trial Division's findings unless we are "left with a definite and firm conviction that an error has been made." *Kerradel v. Besebes*, 8 ROP Intrm. 104, 105 (2000), and we will affirm the Trial Division as long as the "findings are supported by evidence such that a reasonable trier of fact could have reached the same conclusion." *Id.* "Where there are several plausible interpretations of the evidence, the [trial court]'s choice between them shall be affirmed even if this Court might have arrived at a different result." *Rengulbai v. Children of Elibosang Eungel*, 2019 Palau 40 ¶ 7. We will not "reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence." *Takeo v. Kingzio*, 2021 Palau 25 ¶ 6.

DISCUSSION

[¶ 8] We note at the outset that there is no dispute as to the ownership of Rois. At the time of her death, Decedent individually owned Rois as reflected in the Certificates of Title issued in her name.

[¶ 9] Wertz contends that the Trial Division erred in concluding: (1) that Decedent did not own the lands in dispute as a bona fide purchaser for value; (2) that since Decedent received the land as an inheritance, it should be disposed of in accordance with custom; (3) that Decedent could not have received the lands in dispute as a bona fide purchaser for value through

ulsiungel since the standards for establishing custom were not met pursuant to *Beouch v. Sasao*; and (4) that the court could appoint a Permanent Administrator to administer the estate of Decedent after the closure of the probate of this estate.

I. Whether Decedent was a Bona Fide Purchaser for Value

[¶ 10] We find no issue in the trial court's determination that Decedent did not own the lands in dispute as a bona fide purchaser for value. When determining who shall inherit a decedent's property, the Trial Division applies the statutes governing descent and distribution in effect at the time of the decedent's death. *Wally v. Sukrad*, 6 ROP Intrm. 38, 39 (1996). Absent an applicable descent and distribution statute, customary law applies. *Marsil v. Telungalk ra Iterkerkill*, 15 ROP 33, 36 (2008). The Trial Division first looked at 25 PNC §301(a)–(b) to guide its decision, which provides:

> (a) In the absence of instruments and statements provided for in [39 PNCA § 403(b)], lands held in fee simple, which were acquired by the owner as a bona fide purchaser for value, shall, upon the death of the owner, be inherited by the owner's oldest legitimate living male child of sound mind, natural or adopted, or if male heirs are lacking the oldest legitimate living female child of sound mind, natural or adopted, of the marriage during which such lands were acquired; in the absence of any issue such lands shall be disposed of in accordance with subsection [(b)] hereof.
> (b) If the owner of fee simple land dies without issue and no will has been made in accordance with this section [or 39 PNCA § 403] or the laws of the Republic or if such lands were acquired by means other than as a bona fide purchaser for value, then the land in question shall be disposed of in accordance with the desires of the immediate maternal or paternal lineage to whom the deceased was related by birth or adoption and which was actively and primarily responsible for the deceased prior to his death.

> Such desires of the immediate maternal or paternal lineage with respect to the disposition of the land in question shall be registered with the Clerk of Courts pursuant to [39 PNCA § 403(a)].

25 PNC §301.

[¶ 11] Subsection (a) applies if the decedent died with children and the decedent purchased the land as a bona fide purchaser for value. If these requirements are met, then the land will be inherited by the owner's oldest child. *See* 25 PNC §301(a). Subsection (b) has been narrowly interpreted to apply only when the decedent dies without children, without a will, and the land owned was not purchased for value. *See Kee v. Ngiraingas*, 20 ROP 277 (2013); *Marsil*, 15 ROP at 36.

[¶ 12] Therefore, because Decedent had children, this case revolves around whether Decedent purchased the land as a bona fide purchaser for value, in which case 25 PNC §301(a) will apply and grant the land to the oldest male child. Wertz maintains that this land was given to the Decedent by her father in the form of *ulsiungel*, while the Appellees contend that Decedent inherited it from her father.

[¶ 13] A bona fide purchaser for value is someone who acquired the property by parting with "valuable consideration . . . by paying money or other thing of value, assuming a liability, or incurring an injury." *Obak v. Frank*, 13 ROP 243, 245 (Tr. Div. 2006) (citing 66 Am. Jur. 2d Records and Recording Law § 142 (2001). Comparatively, "[a]n heir is nothing more than the legal successor to the interest of the prior owner of a piece of property." *Drairoro v. Yangilmau*, 14 ROP 18, 25 (2006) (quoting *Heirs of Drairoro v. Yangilmau*, 9 ROP 131, 133 n.2. (2002)). A person who is declared the heir obtains an interest in the land; even if there is a person who would otherwise have a closer tie with the Decedent in the family lineage. *Id.*

[¶ 14] *Ulsiungel* has been defined in case law as land given in gratitude for services rendered. *In re Dengokl*, 6 ROP Intrm. 142, 144 (1997) (noting that *ulsiungel* "has been described as a gift of land for services rendered while the donor was ill or infirm"); *Umedib v. Smaum*, 4 ROP Intrm. 257, 257 (1994) (defining *ulsiungel* as "payment for services rendered"). Therefore, Wertz

argues that if Decedent acquired the land through *ulsiungel*, she offered consideration for the land through the services rendered. Decedent would then constitute a bona fide purchaser for value. This Court has previously declined to determine whether *ulsiungel* could constitute a bona fide purchase for value. *See In re Dengokl*, 6 ROP Intrm. 142, 145, n. 4 (1997). However, it has also noted that where a person obtained land "through his toil", he "obtained the land in good faith, for valuable consideration . . . and he therefore was a bona fide purchaser." *Ngiradilubch v. Nabeyama*, 3 ROP Intrm. 101, 102, 105 (1992). The Trial Division, guided by this precedent, determined that "[r]eceiving land as *ulsiungel* is receiving land for consideration, and thus can be considered a bona fide purchaser for value." However, the Trial Division expressed doubt as to whether *ulsiungel* can exist between parents and children.[1]

[¶ 15] The Trial Division heard the credible testimony of Jeffrey Titiml and Geggie Asanuma that the Decedent was given the land at a young age by her adoptive father because after her mother died, she remained a "good and respectful daughter" and he wanted her to "remain as his child" even after the death of her mother. He informed his close relatives that he would give property to Decedent with the blessings of the members of the clan. The property was then given to the Decedent as personal property when she was still young. The Trial Division noted that Decedent remained an active member of the Rois Clan during her entire life and participated in its customs, as do two of her children, while Wertz has lived outside Palau for two decades and is not active in clan customs.

[¶ 16] Wertz argues that Decedent was given the land in return for the care and services she rendered to her father. Wertz supports this argument by pointing to Appellees' response to a request for admission in which they admitted that Rois was given to Decedent "in consideration for Decedent's services, care, and support provided to her adoptive father." The trial court, however, rejected this evidence and credited instead, Appellees' evidence that Decedent inherited the land from her father. Wertz advances this argument

[1] Because we construe the Trial Division's comments on the applicability of *ulsiungel* between parents and children as *obiter dictum*, we need not address or dwell on the issue. Accordingly, we do not address Wertz's third assignment of error to this Court.

again, asserting that the trial court erred in rejecting it. We do not agree. Where, as here, there are several plausible interpretations of the evidence, the trial court's choice between them shall be affirmed even if this Court might have arrived at a different result. Moreover, it is not our job to reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence. Because there is ample evidence supporting the Trial Division's finding that Decedent inherited the Rois land, the Trial Division's decision is not clearly erroneous.

II. Customary Law for Distributing Inherited Land

[¶ 17] Wertz argues that the Trial Division erred in resorting to custom where a statute applied. As previously established, if 25 PNC §301(a) does not apply, the land must be disposed of through customary law rules. *Marsil*, 15 ROP at 36. Under customary law, the final wishes of a decedent on the disposition of their property are binding. *Ngiraingas v. Tellei*, 20 ROP 90, 91 (2013); *see also Kee v. Ngiraingas*, 20 ROP 277, 284 (2013).

[¶ 18] Here, the Trial Division heard credible evidence that towards the end of her life, Decedent called her relatives to her house to discuss her wishes regarding her funeral and the disposition of her property. She specifically relayed her wishes that Rois go to all her children. There is ample evidence supporting the Trial Division's decision to consider that discussion a *cheldecheduch* and that it reflected the decedent's final wishes. Thus, we do not find error in the Trial Division's decision to apply custom after establishing that the statute was not applicable.

III. Permanent Administrator

[¶ 19] Finally, we turn to the issue of the estate's permanent administrator. Jeffery Titiml, Decedent's nephew, was declared the permanent administrator of the estate. The Trial Division affirmed his role on November 8, 2021, in order to "facilitat[e] any decisions regarding the peaceful occupation of the property by the Decedent's children." Wertz opposes this decision and argues that the appointment of Titiml will not bring cooperation among Decedent's children, but rather encourage rivalry, as Titiml is not one of Decedent's children.

[¶ 20] Because Rois and the estate have been fully distributed and disposed of, we do not believe there remains a need for the permanent administrator to

continue to operate in his full capacity. Although we do not question Titiml's ability in his role, the purpose of the permanent administrator is complete and must now be closed out within a reasonable timeline. We remand the issue back to the trial court with instruction to set a specific duty and timetable for Titiml to close out his role as a permanent administrator.

CONCLUSION

[¶ 21] For the reasons set forth above, we **AFFIRM** the Trial Court's November 8, 2021, decision and judgment in all respects, except the appointment of the permanent administrator which we **REMAND** to the Trial Court to determine the scope and duration of the appointment.