IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

BILUNG GLORIA SALII, LEE BOO R. GIBBONS, DEREK GIBBONS AND LOUCH J. GIBBONS,
Appellants,
v.
YUTAKA M. GIBBONS JR. AND MARICAR PAULINO GIBBONS,
Appellees.

Cite as: 2025 Palau 1
Civil Appeal No. 24-008
Appeal from Civil Action No. 21-221

Decided: January 8, 2025

Counsel for Appellant Bilung Gloria Salii	Salvador Remoket
Counsel for Appellant Lee Boo R. Gibbons	Pro Se
Counsel for Appellants Derek and Louch Gibbons	Brendlynn Joseph
Counsel for Appellees	Siegfried B. Nakamura

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice, presiding
FRED M. ISAACS, Associate Justice
KEVIN BENNARDO, Associate Justice

Appeal from the Trial Division, the Honorable Lourdes F. Materne, Associate Justice, presiding.

OPINION

PER CURIAM:

[¶ 1] This appeal stems from a familial dispute over the settlement of the estate of Yutaka M. Gibbons, the former *Ibedul* of Koror State. The issues are whether the trial court erred in (1) denying Appellant Bilung's claim and dismissing her from the case; (2) finding the Decedent's 2017 Will valid; (3)

denying a motion to disqualify counsel for the Appellees; and (4) admitting testimony at trial by the Decedent's former legal counsel.

[¶ 2] For the reasons set forth below, we **AFFIRM** the trial court's decisions regarding the validity of the 2017 Will, the denial of the motion to disqualify Appellees' counsel, and the admission of testimony by the Decedent's former legal counsel. We **REVERSE** regarding the denial of Bilung's claim and her dismissal from the case, and **REMAND** for further proceedings.[1]

BACKGROUND

[¶ 3] This appeal stems from several trial court decisions made throughout the course of the litigation below.

[¶ 4] On December 29, 2021, Appellees Yutaka Jr. and Maricar petitioned the trial court to settle the Decedent's estate (the "Estate"). The trial court appointed them as Temporary Administrators of the Estate and ordered that any claims against the Estate be filed by March 7, 2022. Appellants Lee Boo, Derek, and Louch, as well as Maricar and others, timely filed claims. Appellant Bilung timely objected to the appointment of the Temporary Administrators.

[¶ 5] On August 9, 2023, Bilung moved to exclude certain properties, accounts receivable, and liabilities from the Estate. Following a hearing, the trial court denied and struck the motion as an untimely claim against the Estate. The trial court simultaneously disqualified Bilung's counsel due to a conflict of interest and denied Bilung's motion to reconsider. During trial, Bilung appeared *pro se* to request time to secure new counsel or present her claims *pro se*. The trial court informed her that she was no longer party to the case and directed her to appeal.

[¶ 6] At the outset of trial, Lee Boo, Derek and Louch moved to disqualify attorney Siegfried B. Nakamura as counsel for the Appellees based on an

[1] Although requested by some of the parties, we dispense with oral argument inasmuch as we find the written record sufficient to determine the issues presented on appeal. ROP R. App. P. 34(a).

alleged concurrent conflict of interest. The trial court denied the motion, finding insufficient evidence to disqualify Mr. Nakamura.

[¶ 7] During trial, the parties presented evidence of two wills prepared for the Decedent: one from 1998 (the "1998 Will"), and the other from 2017 (the "2017 Will"). Viola Dilbuil Kanai, a notary and employee of the Decedent's company, testified that she drafted the 2017 Will according to the Decedent's verbal instructions, printed it to be proofread aloud, and witnessed the Decedent's signature before notarizing the document. Belen Pipit, also an employee of the Decedent at the time, testified that she read the 2017 Will aloud to Ms. Kanai and the Decedent before also witnessing and signing the document. Rachel Dimitruk, the Decedent's former legal counsel, testified that the Decedent was of sound mind around the time the 2017 Will was created, and that he had discussed with her a desire to leave his estate to his wife and minor children, as the 2017 Will instructed.

[¶ 8] After crediting the above testimony and weighing the evidence presented, the trial court determined that the 2017 Will was valid. Appellants appeal this determination, as well as the trial court's denial of Bilung's claims and the motion to disqualify Mr. Nakamura.

STANDARD OF REVIEW

[¶ 9] We review matters of law de novo, findings of fact for clear error, and exercises of discretion for abuse of that discretion. *Obechou Lineage v. Ngeruangel Lineage of Mochouang Clan*, 2024 Palau 2 ¶ 5.

DISCUSSION

[¶ 10] Altogether, Appellants present four primary issues on appeal in support of their requests for reversal and remand.[2] The first is whether the trial

[2] We decline to consider at length Appellant Lee Boo's additional arguments regarding service of notice on two of the Decedent's heirs, his ability to call additional witnesses at trial, and the trial court's impartiality. Briefly, Lee Boo lacks standing to raise the issue of service on behalf of the two additional heirs. In addition, he fails to develop his argument regarding calling witnesses beyond listing it among numerous perceived errors. Finally, he fails to satisfy the high burden imposed on litigants raising the issue of disqualification after-the-fact as set forth in *Ulimang Council of Chiefs v. Otong Lineage (Ulimang Council of Chiefs II)*, 2024 Palau 10 ¶ 9.

court erred in denying as untimely Appellant Bilung's motion to exclude certain shared assets from the Estate, and in dismissing Bilung without addressing her objection to the appointment of the Temporary Administrators. The second is whether the trial court erred in finding the Decedent's 2017 Will valid. The third is whether the trial court erred in denying the motion to disqualify counsel for Appellees. The fourth and final issue is whether the trial court erred in admitting testimony by the Decedent's former legal counsel.

I. Bilung's Objection and Claim

[¶ 11] Bilung contends the trial court erred in denying her motion to exclude certain assets and liabilities from the Estate, and in dismissing her from the case without addressing her objection to the appointment of the Temporary Administrators. We will not disturb these rulings unless they were clearly wrong. *See Children of Kadoi v. Eberdong*, 2024 Palau 8 ¶ 7 (The trial court abuses its discretion when "a relevant factor that should have been given significant weight is not considered, when an irrelevant or improper factor is considered and given significant weight, or when all proper and no improper factors are considered, but the court in weighing those factors commits a clear error of judgment.").

[¶ 12] Turning first to Bilung's objection to the appointment of the Temporary Administrators, we have previously held that the trial court abuses its discretion when it refuses to consider a timely objection to the appointment of an estate administrator. *See Kee v. Ngiraingas*, 20 ROP 277, 282 (2013). In its January 21, 2022 Order, the trial court stated the deadline to submit claims and objections was March 7, 2022. It explained that, "[i]n the event that a timely objection to the appointment of the Petitioners as Permanent Administrators, the Court will set a hearing. In the absence of such an objection, the Petitioners shall become the permanent Administrators of the Estate of Yutaka M. Gibbons." Despite Bilung's timely objection to the appointment of Yutaka Jr. and Maricar on March 4, 2022, the trial court failed to set a hearing or otherwise address the merits of the objection. This was clearly wrong. Accordingly, we find that the trial court abused its discretion in dismissing Bilung from the case while her objection remained pending.

[¶ 13] We turn next to Bilung's motion to exclude certain assets from the Estate. Although Bilung maintained below that she was not making a claim

against the Estate and, more specifically, the personal assets of the decedent, the trial court construed her motion as an untimely claim and denied the same. Pursuant to 14 PNC § 404,

> [a]ny action by or against the executor, administrator or other representative of a deceased person for a cause of action in favor of, or against, the deceased shall be brought only within two (2) years after the executor, administrator or other representative is appointed or first takes possession of the assets of the deceased.

We accept the trial court's treatment of Bilung's motion to exclude as a claim against the estate and, as such, we agree with Bilung's argument that the claim was timely.[3] The trial court appointed Yutaka Jr. and Maricar as Temporary Administrators on January 21, 2022. Bilung filed her motion to exclude on August 9, 2023, well within the two-year period. *See In re Estate of Orrukem*, 14 ROP 194 (Tr. Div.) (2006) (denying motion to strike a claim filed outside the court-approved public notice period inasmuch as the claim was filed within the period prescribed by 14 PNC § 404). We remand for further consideration of Bilung's claim below.

II. Validity of the 2017 Will

[¶ 14] Appellants Lee Boo, Derek, and Louch contend the trial court erred when it found the 2017 Will valid for three reasons. First, they maintain that the Decedent did not possess the testamentary intent to create a will. Second, they assert that the 2017 Will did not have two competent witnesses. Third, they argue that there was conflicting evidence presented at trial regarding the 2017 Will's execution.

[3] Although Bilung appears to raise this argument for the first time on appeal, we acknowledge that she briefly appeared before the trial court *pro se* to attempt to clarify her legal position. Inasmuch as the courts of the Republic have been instructed to employ a heightened duty to liberally construe *pro se* litigants' pleadings, *see Whipps v. Nabeyama*, 17 ROP 9, 12 (2009), we find it appropriate in this instance to consider Bilung's argument regarding the limitations period.

[¶ 15] Attacks on the sufficiency of the evidence are attacks on the trial court's factual findings, which are reviewed for clear error. Under the clear error standard of review, "[t]he factual determinations of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion." *Rengiil v. Debkar Clan*, 16 ROP 185, 188 (2009). "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." *Eklbai Clan v. KSPLA*, 22 ROP 139, 141 (2015).

A. Testamentary Intent

[¶ 16] Appellants first contend the Decedent did not intend for the 2017 Will to supersede his 1998 Will because he referred to it as an "insurance policy," and an experienced businessman like the Decedent would have enlisted an attorney to draft his will.

[¶ 17] In order to make a will an individual must be of "sound mind." 25 PNC § 102. We look to Black's Law Dictionary's definition of "testamentary capacity" to determine whether an individual is of sound mind. *See Rengulbai v. Children of Elibosang Eungel*, 2019 Palau 40 ¶ 8.[4] "Testamentary capacity" is defined as:

> The mental ability that a person must have to prepare a valid will. This capacity is often described as the ability to recognize the natural objects of one's bounty, the nature and extent of one's estate, and the fact that one is making a plan to dispose of the estate after death.

Capacity, Black's Law Dictionary (11th Ed. 2019).

[4] In *Rengulbai*, we noted that some jurisdictions distinguish between the mental capacity of a "sound mind" and "testamentary capacity." *Id.* ¶ 8 n.2. Appellants appear to urge us to adopt such distinction for the first time here. We declined to recognize such a distinction in *Rengulbai* on the basis that "resolution of the issue [was] unnecessary given the trial court's credibility determinations." *Id.* In light of the trial court's credibility determinations here, we again find it unnecessary to distinguish between the mental capacity of a "sound mind" and "testamentary capacity."

[¶ 18] The trial court heard and found credible testimony by several witnesses that the Decedent intended to draft a will devising his property to his wife and minor children, and that he would have reviewed the document carefully before signing it. Although the Decedent referred to the 2017 Will as an "insurance policy," the trial court found that credible testimony and the gist of the Decedent's recorded remarks demonstrated his intent to create a will that ensured his wife and minor children were taken care of in case of his death. The trial court likewise considered the Decedent's business experience and determined that he would know the difference between a will and an insurance policy. Moreover, the language of the 2017 Will, as dictated by the Decedent, was clear. Accordingly, we find the trial court's determination as to the Decedent's testamentary intent is not clearly erroneous.

B. Witnesses

[¶ 19] Appellants next argue that the 2017 Will was not properly witnessed because Ms. Kanai signed the document as a notary public. In light of the circumstances, we find this argument unpersuasive.

[¶ 20] Palau does not require wills to be notarized. Rather, wills must only be signed by two competent witnesses. 25 PNC § 104. Regarding the requirements for witnesses, section 104 provides that

> (a) Any person competent to be a witness generally in the Republic may act as attesting witness to a will.
>
> (b) No will is invalidated because attested by an interested witness, but any interested witness shall, unless the will is also attested by two disinterested witnesses, forfeit so much of the provisions made for him therein as in the aggregate exceeds in value, as of the date of the testator's death, what he would have received had the testator died intestate.
>
> (c) No attesting witness is interested unless the will gives to him some personal and beneficial interest.

Id.

[¶ 21] We have yet to consider whether a notary public's official signature may serve as that of an attesting witness. In the United States, a notary's signature on a will may be deemed the signature of an attesting witness where all other requirements of a valid attestation are met. *See* 79 Am. Jur. 2d Wills § 244 ("The fact alone that a witness appends an official description to a signature does not affect its efficacy to satisfy the requirement of due attestation."); *In re Est. of Price*, 73 Wash. App. 745, 752–53, 871 P.2d 1079, 1083 (1994) ("Stated differently, a notary's signature can be deemed the signature of an attesting witness if all of the legal requirements of a valid attestation were nonetheless complied with by the notary's signature."); *In re Est. of Black*, 153 Wash. 2d 152, 167–68, 102 P.3d 796, 804 (2004) (same).

[¶ 22] In the absence of controlling precedent to the contrary, we hold that a notary's signature may serve as that of an attesting witness where all other relevant statutory requirements are satisfied. Applying this holding, we find no error in the trial court's findings regarding Ms. Kanai's competency to serve as a witness. The court found credible Ms. Kanai's testimony that she typed the 2017 Will according to the Decedent's instructions, listened as Ms. Pipit read it aloud, and witnessed the Decedent's signature before signing the will. It likewise credited Ms. Pipit's corroborating testimony and noted that Ms. Kanai gained no personal or beneficial interest from the 2017 Will. Appellants fail to demonstrate clear error in these findings.

C. Valid Execution

[¶ 23] Finally, Appellants argue that conflicting evidence was presented at trial as to whether the Decedent declared the document to be his will. The trial court is in the best position to weigh the evidence and make credibility determinations. "We will not 'reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence.'" *Wertz v. Titiml, Ernest, & Taima*, 2022 Palau 26 at ¶ 7 (quoting *Takeo v. Kingzio*, 2021 Palau 25 ¶ 6). Nevertheless, for a will to be properly executed, the testator must, in relevant part, "signify to the attesting witness that the instrument is his will." 25 PNC § 105(a).

[¶ 24] We find no error in the trial court's findings as to the execution of the 2017 Will. The trial court credited Ms. Kanai and Ms. Pipit's testimony that the Decedent acknowledged the 2017 Will as his will in their presence. Ms. Kanai testified that she typed the document at the Decedent's instruction, the terms of which reflected his desire to provide for his wife and minor daughters in case of "anything result [sic] in death, that will unable [sic] me to do my obligations and responsibilities in my life." Ms. Pipit testified that, upon reading the document back to the Decedent, he "agreed that all he ever wanted is written in that paper" before stating, "*Ng mla mo ungil*"[5] and signing it. Appellants fail to demonstrate clear error in the trial court's evidentiary findings.

III. Motion to Disqualify Counsel for the Appellees

[¶ 25] Lee Boo, Derek and Louch maintain that Mr. Nakamura should be disqualified as counsel for the Appellees due to a concurrent conflict of interest arising from his prior representation of Gibbons Enterprise Corporation in an employment matter and his business relationship with the Decedent.

[¶ 26] ABA Model Rule 1.7 provides that "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest." ABA Model R. Prof. Cond. 1.7(a). Such a conflict exists if "(1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client." *Id.* Even if a conflict exists between two clients, a lawyer may represent both if

> (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
> (2) the representation is not prohibited by law;
> (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

[5] "It's already good," or "It's all good."

> (4) each affected client gives informed consent, confirmed in writing.

Id. 1.7(b).

[¶ 27] Appellants argue that Mr. Nakamura's prior representation of Gibbons Enterprise in an employment matter and his status as a shareholder in another entity with the Decedent present a concurrent conflict of interest with his representation of the Estate. Mr. Nakamura maintains that neither constitutes a disqualifying conflict. He argues that his representation of the Estate aligns with his prior representation of Gibbons Enterprise to the extent that such entity was wholly owned by the Decedent and is thus an asset of his Estate. Moreover, he notes that the other entity in which he maintains a shareholder interest is not involved in any transaction or matter directly adverse to the Estate. Inasmuch as the Appellants present no further evidence of a concurrent conflict of interest, we find the evidence insufficient to disqualify Mr. Nakamura from representing the Estate.

[¶ 28] Derek and Louch further contend Mr. Nakamura breached the attorney-client privilege which attached to his prior relationship with Gibbons Enterprise by representing the Estate here. They failed to raise this argument below. Accordingly, we find that they have forfeited it on appeal. *See Kotaro v. Ngirchechol*, 11 ROP 235, 237 (2004) ("No axiom of law is better settled than that a party who raises an issue for the first time on appeal will be deemed to have forfeited that issue.").

IV. Admission of Testimony by Decedent's Former Legal Counsel

[¶ 29] Finally, Derek and Louch argue that the trial court erred when it admitted testimony by the Decedent's former legal counsel, Rachel Dimitruk, about privileged conversations she had with the Decedent regarding his intention to create a will like the 2017 Will. The Appellees maintain that they had broad discretion to waive the privilege on the Decedent's behalf to protect the interests of the Estate.

[¶ 30] "A trial court's decisions concerning the admission of evidence are reviewed for abuse of discretion." *Kumangai v. ROP*, 9 ROP 79, 82 (2002) (internal citation omitted). Rule 503 of the Rules of Evidence for the Courts of the Republic of Palau provides an exception to the attorney-client privilege for

"a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction." ROP R. Evid. 503(d)(2).[6]

[¶ 31] Ms. Dimitruk served as the Decedent's legal counsel from approximately 2015 until 2020. Her communications with the Decedent during this time are relevant to the issue of the 2017 Will's validity. At trial, she testified that the Decedent was "always of sound mind when [she] was his attorney." In addition, she stated that the Decedent had met with her "many times about his desire to create a Will. Uh, and he made it clear that he wanted to leave all of his assets and property to his wife, Maricar and their three children." Thus, under Rule 503, no privilege applies.[7] Although the trial court admitted Ms. Dimitruk's testimony on other grounds,[8] we find no clear error.

CONCLUSION

[¶ 32] For the foregoing reasons, we **AFFIRM** the Trial Division's decisions regarding the validity of the 2017 Will, the motion to disqualify Appellees' counsel, and the admission of Rachel Dimitruk's testimony, and **REVERSE** regarding Yutaka Jr. and Maricar's appointment as Administrators of the Estate and Bilung's claim regarding exclusion of certain shared assets. We **REMAND** this case to the Trial Division for further proceedings consistent with this opinion.

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[6] We note that Rule 503 enshrines what is often referred to as the "testamentary exception" to the attorney-client privilege. *See Swidler & Berlin v. United States*, 524 U.S. 399, 404–05 (1998) (collecting cases). The exception allows courts to consider confidential communications between a testator and his attorney to ensure the "proper fulfillment of the testator's intent." *United States v. Osborn*, 561 F.2d 1334, 1340 (9th Cir. 1977) ("[T]he general rule with respect to confidential communications . . . is that such communications are privileged during the testator's lifetime and, also, after the testator's death unless sought to be disclosed in litigation between the testator's heirs."); *see also Glover v. Patten*, 165 U.S. 394, 406 (1897) (in a suit between devisees under a will, "statements made by the deceased to counsel respecting the execution of the will, or other similar documents, are not privileged").

[7] *See Christensen v. Galliway*, 2024 WL 4769784, at *1 (D. Ariz. Nov. 13, 2024) (finding no privilege upon review of identical Oregon law).

[8] The trial court determined that the Temporary Administrators could waive the privilege on the Decedent's behalf to protect the interests of the Estate.