Otobed v. Etpison, 10 ROP 119 (2003)
DEMEI OTOBED and
ABINA ETPISON,
Appellants,

v.

SHALLUM ETPISON,
Appellee.

CIVIL APPEAL NO. 02-14
LC/B 01-339

Supreme Court, Appellate Division
Republic of Palau

Decided: July 24, 2003[1]

Counsel for Appellants: J. Roman Bedor, T.C.

Counsel for Appellee: John Rechucher

BEFORE: LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice; ALEX R. MUNSON, Part-time Associate Justice.[2]

Appeal from the Land Court, the Honorable DANIEL N. CADRA, Senior Judge, presiding.

PER CURIAM:

This is an appeal from the Land Court's determination of ownership concerning a parcel of land designated as Lot Nos. K-166, K-166A, and K-166B on Bureau ⊥120 of Lands & Surveys Worksheet No. 181; shown as Koror Tochi Daicho Nos. 242 and 243; and located in Ngerchemai Hamlet, Koror (hereinafter, "the property"). After holding a hearing, the Land Court determined that Appellee Shallum Etpison owned the property. Appellants Demei Otobed and Abina Etpison contest the Land Court's determination on several grounds.

[1]The parties waived oral argument and the Court agreed that argument would not materially advance the resolution of this appeal.
[2]The Honorable ALEX R. MUNSON, Chief Judge, United States District Court for the Northern Mariana Islands, sitting by designation.

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BACKGROUND

The property was listed in the Koror Tochi Daicho as belonging to a man named Ngirturong, who died intestate in 1956. The dispute before the Land Court involved two competing theories as to what became of the property after Ngirturong's death.

The theory put forth by Demei and Abina is as follows. Ngirturong's brother, Iked Etpison, took over control and administration of the property after Ngirturong died. In May 1967, Iked executed and recorded a quitclaim deed conveying his interest in part of the property (Lot Nos. K-166 and K-166A) to Delbirt Ruluked; Delbirt, in turn, sold the property to Appellant Demei in May 1982, at which point Demei began farming his portion of the land along with others. Abina claimed ownership of the remainder of the property (K-166B) by virtue of a November 1979 warranty deed from Iked.

Under the theory advanced by Shallum Etpison, Iked never had authority to dispose of Ngirturong's property. Instead, Ngirturong was survived by his daughter, Rose Adelbai, who inherited the property herself under custom. In January 1991, Rose executed a warranty deed conveying the disputed property to John Rechucher. Rechucher sold the property to Shallum in April 1998.

In its February 2002 written decision, the Land Court noted that "the evidence in this case was unusually sparse and of particularly low quality as to who the property went to after Ngirturong." As to the theory put forth by Demei and Abina, the Land Court found that they had not introduced any evidence to show that Ngirturong's brother Iked was authorized to dispose of the property after Ngirturong's death. The Land Court reasoned, citing cases from this Court, that absent proof to the contrary, the individually-owned land of a decedent passes to his children under custom. Because there was no evidence that the disputed property had been given out by Ngirturong inter vivos or at his eldecheduch, the Land Court determined that Rose inherited and kept it until 1991, at which point she conveyed it to John Rechucher, who later conveyed it to Shallum. The Land Court also rejected the argument that Rose's interest would have been extinguished by 14 PNC § 402(a)(2), the 20-year statute of limitations.

On appeal, Demei and Abina argue that Rose's interest in the property (and therefore that of her successors) was waived, or barred by the twenty-year statute of limitations. Appellants also contend that the Land Court erroneously took judicial notice of custom in determining that Rose inherited the property from Ngirturong.

DISCUSSION

This Court has treated the statute of limitations in land disputes as though it creates an ownership interest for an adverse claimant, just as adverse possession does. *Andres v. Desbedang Lineage*, 8 ROP Intrm. 134, 135 (2000) (noting that "[a]lthough the statute of limitations is, strictly speaking, a defense to a claim and not itself a basis for a claim," adverse possession and statute of limitations should be considered together, and concluding that claimant obtains same result ⊥121 under twenty-year adverse possession claim or twenty-year statute of

limitations defense); *Teriong v. Rdechor*, 3 ROP Intrm. 191, 193 (1992) (finding that the factual determination of LCHO that adverse occupation began more than 20 years earlier compelled conclusion that claim was barred by 20-year statute of limitations). Here, however, we agree with the Land Court that the recording of Iked's 1967 quitclaim deed did not cause the statute of limitations to begin running. First, the deed was not inconsistent with Rose's ownership rights because it was a merely a "quitclaim," i.e., a deed "intended to pass any title which the grantor may have in the premises, but not professing that such title is valid, nor containing any warranty or covenants for title." Black's Law Dictionary 1251 (6th ed. 1990). Further, the recording of the deed was not, by itself, sufficient constructive notice to begin the running of the limitations period. 66 Am. Jur. 2d *Records and Recording Laws* §§ 98, 100 (2001) (providing that recording an instrument not in record chain of title is not constructive notice to person claiming under such chain and noting that "a proprietor of land is not required to search the records to determine whether some stranger has, without right, assumed to convey it"); *cf. Andres*, 8 ROP Intrm. at 135 (2000) (finding that the fact that Tochi Daicho lists adverse claimant as owner is insufficient to commence running of twenty-year statute of limitations and instead concluding that an adverse claimant must show same elements as adverse possession claim, i.e., possession that is actual, continuous, open, visible, notorious, hostile or adverse, and under a claim of title or right for 20 years). Likewise, we have found no authority for the argument–one that was not raised below–that Rose "waived" her claim by failing to object to the 1967 quitclaim deed. Black's Law Dictionary 1580 (6th ed. 1990) (defining waiver as the intentional or voluntary relinquishment of a known right); *Ngiraked v. Media Wide, Inc.*, 6 ROP Intrm. 102, 104 (1997) (holding that claims may not be raised for first time on appeal).

Finally, we find no merit to Appellants' argument that the Land Court improperly considered Palauan custom. Instead, the Land Court properly relied upon on *Elewel v. Oiterong*, 6 ROP Intrm. 229, 233 (1997), and *Ruluked v. Skilang*, 6 ROP Intrm. 170, 171 (1997), for the proposition that absent proof of some contrary custom, the individually-owned land of a decedent will be presumed to pass to his children. Since Appellants have not presented any contrary evidence of how Ngirturong disposed of the land, there is no basis for overturning the Land Court's finding that the disputed property passed to Rose. *See Ruluked*, 6 ROP Intrm. at 172 (finding sufficient prior case law that decedent's children were his heirs under custom as reasonable evidence to support LCHO's finding that land passed to such children).

CONCLUSION

For the reasons stated above, we affirm the Land Court's determination of ownership.