

Delbirt v. Ruluked, 10 ROP 41 (2003)
AKEMI DELBIRT,
Appellant,

v.

ULANG RULUKED,
Appellee.

CIVIL APPEAL NO. 01-04
LC/K 00-356

Supreme Court, Appellate Division
Republic of Palau

Decided: January 22, 2003¹

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: Moses Uludong, T.C.

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; KATHLEEN M. SALII, Associate Justice.

Appeal from the Land Court, the Honorable OLDIAIS NGIRAIKELAU, Part-Time Judge, presiding.

MILLER, Justice:

Appellant Akemi Delbirt (Akemi) appeals the Land Court's determination that Appellee Ulang Ruluked (Ulang) is the owner of fee simple lands that were owned by Delbirt Ruluked (Delbirt) at the time of his death. The Land Court applied 39 PNC § 102(d) and determined that Ulang was the party who by custom would have the right to dispose of Delbirt's property. For the reasons set forth below, we vacate and remand to the Land Court for additional proceedings consistent with this opinion.

BACKGROUND

142 The Ngeremlengui Tochi Daicho lists the subject properties as lots 648, 680, 681, and 682, and they are known collectively as Itaoch. Delbirt and Ulang were the adopted children of Ruluked and Akemi was the natural daughter of Delbirt. Ruluked acquired the lands at issue as individual fee simple property for services performed. In 1971, Ruluked gifted the property to Delbirt by way of a general warranty deed. Thus, Delbirt was not a bona fide purchaser for value. Upon Delbirt's death in 1983, an *eldecheduch* was held, but Itaoch was not disposed of

¹The parties waived oral argument, and the court agrees that oral argument would not materially advance the resolution of this appeal.

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nor was it discussed at any other time.

Ulang claimed the lands on two grounds. First, she asserted that Ruluked had promised her the property during his life. Second, she contended that because she was Delbirt's sister and had contributed to his customary obligations, she was the person who by custom would have the authority to dispose of Delbirt's property. Akemi argued that she was entitled to the land because she was Delbirt's proper customary heir and she had provided physical care to Delbirt during his final illness. The Land Court determined ownership in Ulang's favor in accordance with her second theory.

STANDARD OF REVIEW

We review the Land Court's findings of fact for clear error. *Tesei v. Belechal*, 7 ROP Intrm. 89, 89-90 (1998). Conclusions of law are reviewed *de novo*. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001). Because we address only Akemi's challenge to the Land Court's interpretation of 39 PNC § 102(d) (currently codified at 25 PNC § 301(b)), we review *de novo*.

DISCUSSION

We apply the intestacy statute as it existed at the time of Delbirt's death. *Ngirakebou v. Mechucheu*, 8 ROP Intrm. 34, 35 n.3 (1999) (citing *Wally v. Sukrad*, 6 ROP Intrm. 38, 39 (1996)). At the time of Delbirt's death in 1983, the intestacy statute in force was the revised version of Palau District Code § 801, which was codified in the Palau National Code at 39 PNC § 102 in 1985.²

The parties' main disagreement on appeal is whether § 102(d) can be applied in this case. Section 102(d) states:

If the owner of fee simple land dies without issue and no will has been made . . . 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 Clerk of Courts.

The Land Court concluded that neither Akemi nor Ulang presented evidence as to the desires of a responsible lineage, but it applied § 102(d) because Itaoch is fee simple land and **143** Delbirt was not a bona fide purchaser for value. A court may apply § 102(d) only when its requirements have been met. The court was correct in its conclusion that because Delbirt died without a will and he was not a bona fide purchaser for value, some of the requirements of § 102(d) were met. Neither party, however, introduced evidence of a lineage's desires as to the

²The statute was recodified without substantive amendment at 25 PNC § 301 and 39 PNC § 403 in 1998.

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disposition of the property. We hold that § 102(d) is operative only when the desires of a lineage are ascertainable. In the absence of such evidence, a court may not apply § 102(d).

Because the Land Court applied § 102(d) in the absence of evidence of the desires of a statutorily defined lineage, it did not give effect to the legislature's use of the word "lineage" in the statute. The statute includes two definitional elements. First, the lineage must be related to the deceased through birth or adoption; this element is not at issue. Second, the lineage must have been actively and primarily responsible for the deceased prior to his death. The Land Court found that "actively and primarily responsible for the deceased prior to his death" means "the people who, under custom, would be responsible for decedent's affairs upon his death." Land Ct. Op. at 13 (quoting *In re Estate of Isaol*, Civ. Action No. 99-280, slip op. at 5 (October 25, 2000), *rev'd on other grounds and remanded by* 9 ROP 146 (2002)) (internal quotation marks omitted).

Since the Land Court's decision, however, this Court has ruled in *Masang v. KSPLA*, 9 ROP 125, 129 (2002), that a mere customary connection to the decedent is not sufficient to satisfy the statutory requirement that a lineage be "actively and primarily responsible for the deceased *prior to his death* ." § 102(d) (emphasis added). On the other hand, as we now elucidate, the statute is likewise not satisfied by a showing that an individual or individuals cared for the deceased prior to his death. Rather, the court may only determine ownership pursuant to § 102(d) where both requirements are met: a lineage related to the deceased through birth or adoption has assumed active responsibility for the deceased prior to his death. To that extent, insofar as the Land Court found that neither Akemi nor Ulang had "produced any evidence which established the lineage that was actively and primarily responsible for [Delbirt] prior to his death," it erred in awarding the land pursuant to that statute.

Where a court finds no expression of the desires of a statutorily defined lineage, we conclude that it must turn to customary law to determine the proper heir of the deceased.³ Here, although the Land Court found that "Ulang would be one of the persons responsible for Delbirt's affairs upon his death," it is not clear to us that that is equivalent to a determination that Ulang would be considered the heir of Delbirt as a matter of Palauan custom. We therefore remand to the Land Court for further consideration consistent with this opinion. In its discretion, the court may rely on the existing record or it may reopen the hearing and take additional testimony.

³For this reason, we agree with the statement expressed in *Ysaol v. Eriu Family*, 9 ROP 146, 149 (2002) (Ngiraklsong, C.J., concurring), that the intestacy statute does not nullify all customary law as to the inheritance of fee simple land.

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CONCLUSION

For the aforementioned reasons, the determination of ownership is vacated and the matter remanded to the Land Court for further proceedings consistent with this opinion.