

Ngirutang v. Ngirutang, 11 ROP 208 (2004)
MARIANO NGIRUTANG,
Appellant,

v.

NGIRAITERONG NGIRUTANG and WILHELMINA NGIRUTANG,
Appellees.

CIVIL APPEAL NO. 03-024
Civil Action No. 229-96

Supreme Court, Appellate Division
Republic of Palau

Argued: June 28, 2004

Decided: August 9, 2004

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Counsel for Appellant: Kevin Kirk

Counsel for Wilhelmina Ngirutang: David Kirschenheiter

Counsel for Ngiraiterong Ngirutang: Johnson Toribiong

BEFORE: R. BARRIE MICHELSEN, Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice; ROSE MARY SKEBONG, Associate Justice Pro Tem.

Appeal from the Supreme Court, Trial Division, the Honorable LARRY W. MILLER, Associate Justice, presiding.

MICHELSEN, Justice:

This is an appeal from the Trial Division's judgment dividing the Estate of the decedent, Ngirutang Oit ("Oit" or "the decedent"), among his two biological children and adopted son in three equal portions. Mariano Ngirutang ("Temol"), Oit's biological son, argues on appeal that Ngiraiterong Ngirutang ("Oite"), Oit's adopted son, failed to present evidence of a custom entitling him to a share of the decedent's property after he had left his adoptive family's household and returned to his natural parents. Further, Temol argues that the trial court erred in failing to discuss all of the material issues before it in its decision. Because it was Temol who did not present sufficient evidence to establish the existence of a custom providing for adoption nullification and disinheritance, and because the trial court adequately addressed all material issues in its findings of fact and conclusions of law, we affirm.

BACKGROUND

Seven months after the death of Oit in October of 1995, Temol filed a petition to open his

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father's Estate and to be appointed the administrator. Three persons filed claims to the Estate: Temol, Oite, and the decedent's daughter, Wilhelmina Ngirutang ("Mina"). Temol's original list of Estate assets included four items: the DNT building located on the road to T-Dock, two buildings in Airai, ten shares of stock in Palau Shipping Corporation, and a debt owed by John K. Rechucher.

The hearing on the claims against the Estate was postponed a number of times over the next six years at the request of the litigants for the purpose of allowing the parties to discuss settlement. After those settlement discussions were not successful, the subsequent hearing concerned the claimants' differing views regarding what was included in the Estate and the distribution of Estate assets. Temol and Mina asserted that Oit had given them certain properties while he was still living. Specifically, Mina and Temol claimed the DNT building and Temol claimed the ten shares of stock, and they argued that those properties were not to be included in the Estate. Further, several witnesses testified that Oite had moved out of his adoptive household and rented a house in Koror sometime around 1980 after an argument with Temol, but that Oite had returned to the household to help take care of Oit in the months leading up to his death. Temol argues on appeal that after Oite left his adoptive household, he was no longer considered to be a child of the decedent for the purposes of inheritance. As for the property that was conceded to be part of the Estate, such as the two buildings in Airai and the debt owed by John Rechucher, the claimants agreed that it should ultimately be divided among them.

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The trial court determined that the DNT property had been transferred by Oit to Mina before his death, but that the two buildings in Airai, the ten shares of stock, and John Rechucher's debt were all assets of the Estate that should be shared by the three claimants equally. The court ordered each of the parties to submit a proposed judgment incorporating all of its rulings and closing the Estate. On May 6, 2003, the court entered the judgment proposed by Mina. This appeal followed.

STANDARD OF REVIEW

A trial court's legal conclusions are reviewed *de novo* on appeal. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001). Trial court findings of fact are reviewed under a clearly erroneous standard. *Ngeribongel v. Gulibert*, 8 ROP Intrm. 68, 70 (1999). Under this standard, if the trial court's findings are supported by evidence such that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless this Court is left with a definite and firm conviction that an error has been made. *Roman Tmetuchl Family Trust*, 8 ROP Intrm. at 318.

ANALYSIS

Temol first argues that Oite failed to present sufficient evidence of a custom entitling him to a share of the Estate assets as an adopted son who had left his adoptive family at one point in time. However, Oite did submit evidence of custom regarding the general rule that an adopted child has a right to inherit. The affidavit of Moses Sam stated that under customary law, an adopted child "is entitled to receive a fair and equitable share from the estate of the decedent."

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In addition, Oite presented the testimony of Rengulbai Brikul, the highest ranking chief of Aimeliik State, that under custom, adopted children are entitled to property and to share in Estate assets upon the death of their adoptive parents. He further testified that he had never heard of a custom of returning an adopted child to his natural parents, but as Oite's maternal uncle, he should have been notified of such an event. Instead, he had no knowledge regarding a contention that Oite's adoptive parents had returned him to his natural family.

The existence and content of a claimed customary law must be established by clear and convincing evidence. *Ngeribongel*, 8 ROP Intrm. at 70. Palauan custom is normally established by expert testimony that traces the historical application of the custom to the facts. *Silmai v. Rechucher*, 4 ROP Intrm. 55, 59 (1993). Here, Oite's evidence of the general rule concerning an adopted child's customary right to inherit was undisputed. It then became Temol's burden to establish the existence of a Palauan custom of adoption nullification by clear and convincing evidence and to prove the consequences for inheritance rights. Temol did not introduce any evidence in this regard.

Temol further argues that the trial court failed to address or consider testimony that Oite had been thrown out of his adoptive family and that the decedent wanted his properties to go to Temol. Although ROP R. Civ. P. 52(a) requires a trial court to "find the facts specially," this does not include an obligation on the part of the trial court to summarize and comment upon each witness's testimony in its decision. A trial court's decision must "reveal an understanding analysis of the evidence, a resolution of the material issues of 'fact' that penetrate beneath the generality of ultimate conclusions, and an application of the law to those facts." *Fritz v. Blailles*, 6 ROP Intrm. 152, 153 (1997) **1211** (quoting 5A James Wm. Moore et al., *Moore's Federal Practice* ¶ 52.05[1] (1984)). Although a trial court decision must contain sufficient findings supporting its conclusions to allow for appellate review, there is no rule that the court must make a finding with respect to every piece of evidence submitted, customary or otherwise. *Rechucher v. Ngirmeriil*, 9 ROP 206, 210 (2002). When findings of fact are reviewed in the context of a full record, it may be very clear what evidence was rejected. *Ngirakebou v. Mechucheu*, 8 ROP Intrm. 34, 35-36 (1999).

Here, there was ample evidence supporting the assertion that Oite had been accepted back into the decedent's household before his death and that the decedent never willed or transferred the disputed properties to Temol. Therefore, the trial court's findings of fact were supported by the evidence.

In a more general objection, Temol contends that the trial court also failed to discuss all of the material issues raised by the parties in its decision. Specifically, Temol asserts that the lack of discussion regarding Palauan custom created uncertainty as to what evidence and issues the trial court considered in reaching its decision. However, we believe that the trial court's findings of fact provide sufficient analysis of how its conclusions were reached. The trial court was not obligated to discuss every issue that had ever been raised by the parties in its decision, particularly where it appeared that Temol had largely given up on his argument regarding custom. As the case progressed, Temol's emphasis shifted from a customary argument that Oite was not entitled to inherit because he was no longer considered to be a child of the decedent, to an argument that Oite was not entitled to inherit assets such as the shares of stock because they

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had been distributed to his siblings and were not part of the Estate. This shift is evidenced by Temol's failure to present any evidence of custom at the trial and the absence of any mention of custom in his written closing argument. That being the case, the trial court can hardly be faulted for not addressing his customary argument.

Temol's decision to move beyond his argument regarding custom is understandable because it appears to be unsupported by the weight of the evidence. Although Temol and other witnesses testified that Oite had left the decedent's household at one point, the evidence indicates that by the time of his adoptive mother's death, Oite had returned to the household and was considered to be Oit's son again. In fact, the evidence was that Oite, Temol, and Mina were given equal amounts of children's money at the eldecheduch for their mother. Furthermore, several witnesses agreed that Oite returned to the decedent's house before his death to help Mina take care of him.

Even if Oite had somehow been disowned for a time by his adoptive family, the evidence of record indicates that there was a reconciliation and Oite was allowed to return to Oit's household as his son before his death. This interpretation of the evidence is further supported by Temol's concession in his testimony at the hearing and in his written closing argument that Oite is his brother and was entitled to one-third of the rent collected from the two buildings in Airai and was free to pursue the debt owed by John Rechucher. Because the trial court found that the ten shares of stock were also Estate assets, the court's decision to award one-third of those shares to Oite was not clearly erroneous.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the Trial Division.