

Delbirt v. Ruluked, 13 ROP 10 (2005)
AKEMI DELBIRT,
Appellant,

v.

ULANG RULUKED,
Appellant.

CIVIL APPEAL NO. 04-029
LC/K 00-365

Supreme Court, Appellate Division
Republic of Palau

Decided: October 25, 2005¹

111

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: Moses Uludong, T.C.

BEFORE: LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice;
JANET HEALY WEEKS, Part-Time Associate Justice.

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

PER CURIAM:

The issues presently on appeal arise from our remand of this case to the Land Court. In *Delbirt v. Ruluked*, 10 ROP 41 (2003), we instructed the Land Court to determine under Palauan custom who was the proper heir of Delbirt Ruluked (“the deceased”), the deceased owner of the subject property. The Land Court determined that under Palauan custom, the deceased’s adopted sister, Ulang Ruluked (“Ulang”) was the proper heir, and was thus entitled to the subject property. The deceased’s daughter, Akemi Delbirt (“Akemi”) appeals the Land Court’s determination. She contends that: (1) testimony by Ulang’s expert witness was not relevant to determining who is the proper heir under Palauan custom; and (2) prior case law establishes that a daughter is the proper heir under Palauan custom. We find that the testimony by Ulang’s expert witness was relevant to determining who is the proper heir under Palauan custom, and accordingly, prior case law does not determine this factual question. For these reasons, explained in greater detail below, we affirm the Land Court’s determination.

The underlying facts of this case are explained in detail in this Court’s opinion in *Delbirt*, 10 ROP at 41. After this Court remanded the case for the Land Court to determine the

¹ The Court has determined that oral argument would not materially assist in the resolution of this appeal. See ROP R. App. Pro. 34(a).

Delbirt v. Ruluked, 13 ROP 10 (2005)

deceased's proper heir under Palauan custom, the Land Court heard additional testimony. Although no witnesses testified on behalf of Akemi, the Court heard testimony from Ulang's expert witness, William Tabelual. Tabelual testified that the relatives of the deceased decide how to dispose of the deceased's properties. He added that where the deceased's properties have not been settled at eldecheduch and his relatives have left the matter in the hands of the deceased's sisters, and where the older sister contributed the most to the deceased's customary affairs, the older sister decides on the proper disposition of the deceased's properties. After hearing this testimony, the Land Court noted that Akemi did not introduce any expert witnesses and merely relied on prior case law which stated that the daughter of the deceased is the proper heir under Palauan custom. The Land Court then found that because Ulang was the older sister and she contributed to the deceased's customary affairs, Ulang was the proper person to decide on the disposition of the deceased's property. The Land Court awarded the land to Ulang because Ulang decided the land should be given to herself.

Akemi's first claim on appeal is that she is entitled to inherit under Palauan custom because prior case law establishes that when there is no applicable statute, under custom, property is inherited by a decedent's children. Akemi's claim ignores the fact that this Court has stated that the existence and substance of [§12](#) custom is a question of fact, "which requires that the outcome of a case be decided on the basis of its own record and allows the possibility that the conclusions reached in one case may vary from, or even be inconsistent with, the conclusions in another." *Arbedul v. Emaudiong*, 7 ROP Intrm. 108, 110 (1998). The rule established in prior case law is merely that "the property passes to the proper customary heir or heirs and who the customary heir happens to be is a question of fact to be established by the parties before the land court." *Ikluk v. Udui*, 11 ROP 93, 95 (2004). Accordingly, while the Land Court may determine that, under custom, a decedent's land passes to his or her children, it is not bound to do so, particularly where no expert testimony to that effect was introduced. *See Obak v. Joseph*, 11 ROP 124, 128 (2004).

Here Akemi offered no expert testimony to support her assertion that the land passes to the decedent's children. Ulang, however, offered expert testimony that supported her theory that the decedent's sister determines to whom the land passes. Because there were facts in the record to support Ulang's assertion, and no facts in the record supported Akemi's assertion, the Land Court's determination was not clearly erroneous. *See Rechucher v. Ngirmeriil*, 9 ROP 206 (under the clearly erroneous standard, the court's findings of fact will not be set aside as long as they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion.).

Akemi contends, however, that this Court does not have to affirm the Land Court because she claims that Ulang's expert witness did not offer testimony that proved evidence of a contrary custom on the issue of a decedent's heir. She argues that Ulang's expert testified only about the disposition of property, and as such, the Land Court was entitled to take judicial notice of the custom that individually-owned land of a decedent will be presumed to pass to his children based upon the cases that she presented to the Land Court.

We reject Akemi's claim that Ulang's expert witness did not offer evidence of a contrary

Delbirt v. Ruluked, 13 ROP 10 (2005)

custom on the issue of a decedent's heir. As noted above, the expert testified as to who, under custom, normally makes decisions about the disposition of property after a death. This is relevant to who is the decedent's proper heir, because an heir is the person who inherits or is entitled to succeed to the possession of property after the death of its owner. *Webster's Third New International Dictionary* 1050 (1981); *see also Heirs of Drairoro v. Yangilmau*, 9 ROP 131,133 n.2 (2002) ("Heir' means nothing more than the legal successor to the interest of the prior owners of a piece of property."). Here, the expert's testimony about who determines the disposition of property essentially explains, under Palauan custom, who determines the heir – the person who succeeds to the possession of the property. According to the expert's testimony, Ulang was the proper person to determine the heir, and in this case, Ulang determined that she was the heir. The expert's testimony was, thus, relevant to the issue of the decedent's heir.

Akemi also argues that Ulang could not be both the decision maker and the recipient of the subject property. Fundamentally, she is arguing that it is self-dealing to allow Ulang to choose herself as heir. However, Akemi cites no case law holding that such self-dealing is not allowed. *Cf. Bandarii v. Ngerusebek Lineage*, 11 ROP 83, 85-86 (2004) (under 25 PNC § 301(b) lineage not prevented from conferring land to itself). More importantly, she entered no 113 evidence before the Land Court that such self-dealing is not allowed. As there is no evidence in the record to support her position, and she has cited no case law to establish that self-dealing is forbidden, Akemi has not established that the Land Court erred in finding that Ulang was the proper heir under Palauan custom.

Akemi, who was represented by counsel before the Land Court, elected to offer neither expert witness testimony that a daughter inherits under Palauan custom, nor evidence that self-dealing is not allowed under Palauan custom. She is now bound by these choices. Ulang entered testimony to support her position that the deceased's sister decides who gets the deceased's property. Under such circumstances, we will not say that the Land Court erred in awarding the property to Ulang.

AFFIRMED.