

Masang v. Ngerkesouaol Hamlet, 13 ROP 51 (2006)
SAM MASANG,
Appellant,

v.

NGERKESOUAOL HAMLET,
Appellee.

CIVIL APPEAL NO. 05-015
LC/B 04-110

Supreme Court, Appellate Division
Republic of Palau

Decided: February 14, 2006¹

Counsel for Appellant: Mark Doran

Counsel for Appellee: Pro se

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
KATHLEEN M. SALII, Associate Justice

Appeal from the Land Court, ROSE MARY SKEBONG, Associate Judge, presiding.

PER CURIAM:

BACKGROUND

On September 18, 2004, Adelbairekesouaol Jones Ngoriakl filed a land registration claim on behalf of Ngerkesouaol Hamlet for Tochi Daicho Lot Number 433. Believing the claim to be uncontested, the Land Court scheduled a registration hearing for October 18, 2004. At this hearing, Sam Masang informed the court that he had a claim on the same land, though under a different Tochi Daicho lot number. In light of this claim, the court terminated the registration hearing and rescheduled the hearing for February 8, 2005. Notice of this hearing was served upon both claimants; however, only **L52** Ngoriakl appeared at the second registration hearing. Masang did not attend the hearing, notify the court of his absence in advance, or file a motion to postpone the hearing.

At the hearing, Ngoriakl testified that the land in question was the property of Ngerkesouaol Hamlet, and that it had been the site of an abai for well over forty years. During this period, the abai had been rebuilt on a number of occasions; once, after it was destroyed by Typhoon Sally in the late 1960s, and again in 2001 through budgetary appropriations from Koror

¹ The court has concluded that oral argument would not materially assist in the resolution of this appeal. *See* ROP R. App. P. 34(a).

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State. Although Sam Masang at one time lived near the site of the abai, Ngoriakl testified that Masang lived on different land and that Masang was present at the abai during discussions leading to the Hamlet's claim to the land, but registered no objections or claims to the land at that time. On the basis of this testimony, as well as Masang's failure to appear, the Land Court concluded that Masang's claim to the land was "frivolous" and that ownership of the lot lies in Ngerkesouaol Hamlet, under the administration of the Hamlet Chief Adelbairekesouaol Jones Ngoriakl. The Land Court entered a determination of ownership to this effect on February 9, 2005.

Following the Land Court's decision, Masang filed a "Motion to vacate the 'Summary of Proceedings, Findings of Fact, Conclusions of Law, and Determination,' and to cancel the Determination of Ownership." In support of his motion, Masang summarized testimony that he would present supporting his claim to the land. Regarding his absence, Masang claimed that an illness had prevented his attendance at the registration hearing. Specifically, he claimed that he had been taking prescription cough medicine, which left him "drowsy" and unable to "think clearly." On February 25, 2005, the Land Court denied the motion on the grounds that Masang had cited "nothing – no law, no rule, no justifiable reason" in support of his request.

Pursuant to ROP Rule of Appellate Procedure 4(a), Masang had until March 11 (thirty days after the issuance of the determination of ownership) in which to file a notice of appeal from the Land Court. On April 8, 2005, nearly a full month after the passage of this deadline, Masang filed a motion to extend the time for filing a notice of appeal. As good cause for grant of an extension, Masang, through counsel, cited a trip he had made off-island during the time between the denial of his motion to reopen the hearing and the expiration of the thirty-day deadline. His counsel also claimed that he had encountered a several day delay in receiving the February 25th order denying the motion to reopen the hearing because he had been checking the wrong mailbox at the Land Court. The Land Court denied Masang's motion as untimely.

ANALYSIS

Masang now appeals the Land Court's denial of both his motion for extension of time to file a notice of appeal and his motion to vacate the judgment and reopen the determination of ownership hearing. With regards to the denial of his motion for an extension, he argues that the motion was not untimely and that the Land Court abused its discretion in denying it as such. Regarding the motion to vacate, he maintains that the Land Court abused its discretion in refusing to reopen the hearing in light of the illness that caused him to miss the original determination of ownership hearing. Since Masang must prevail on both issues to succeed on this appeal, and since we find that the refusal to reopen the hearing clearly was not an abuse of 153 discretion,² we focus our discussion on that latter issue.

² Whether the Land Court erred in denying Masang's motion for an extension of time to file an appeal is less clear. Rule of Appellate Procedure 4(c) provides:

Upon a showing of excusable neglect or good cause, the trial court may extend the time for filing the notice of appeal by any party for a period not to exceed thirty (30) days from the expiration of the time otherwise prescribed by this subdivision. Such an extension may be requested by motion *before or after* the time otherwise prescribed by

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As the Land Court noted, Appellant did not cite any legal authority in support of his “Motion to vacate the ‘Summary of Proceedings, Findings of Fact, Conclusions of Law, and Determination,’ and to cancel the Determination of Ownership.” Nevertheless, his motion most closely resembles a Rule 60(b) motion for relief from judgment due to excusable neglect, *see* ROP R. Civ. P. 60(b)(1), and we will treat it as such. Although the Land Court’s own rules and regulations do not contain any provision allowing it to reconsider its determinations of ownership,³ we have held that, in certain circumstances, the Land Court has the inherent authority to correct its own decision. *Shmull v. Ngirirs Clan*, 11 ROP 198, 202 (2004) (“Where, as here, a court misapprehends the evidence or commits an inadvertent mistake, that court historically has the inherent authority to correct its own erroneous decision.”); *see also Basilius v. Basilius*, 12 ROP 106, 109 n.5 (2005). We need not elaborate today on the Land Court’s inherent authority to reconsider and correct its own erroneous decisions because even if we were to assume, for the purposes of the present appeal, that Rule 60(b) applied to the Land Court, Appellant has not demonstrated that the Land Court abused its discretion in denying his motion.⁴ **154** Rule 60(b) allows a court to relieve a party from a final judgment upon a showing of mistake, inadvertence, surprise, or excusable neglect. ROP R. Civ. P. 60(b)(1). A trial court’s denial of a Rule 60(b) motion to vacate is reviewed under the abuse of discretion standard. *Melekeok State Gov’t v. Basilius*, 9 ROP 136, 138 (2002). In doing so, the reviewing court need not consider the merits of the underlying judgment, only whether the trial court abused its discretion in finding that the appellants failed to demonstrate excusable neglect or good cause. *Id.*

this subdivision has expired

ROP R. App. P. 4(c) (emphasis added). Pursuant to this “before or after” language, although the deadline for filing a notice of appeal has passed, Rule 4(c) allows an additional thirty-day period in which a party may move for an extension of the time in which to file a notice of appeal upon a showing of “excusable neglect or good cause.” *Id.* Here, although we are doubtful that Masang’s proffered excuses – relating to his trip off-island and his attorney’s confusion regarding the attorney mail boxes at the Land Court – demonstrated good cause or excusable neglect for failing to file his appeal in a timely manner, the Land Court did not deny his motion for extension on that basis, but on the grounds that the motion was untimely. This was incorrect. Masang’s motion was filed within this additional thirty-day period, and was thus timely. Were this the only issue before us, we would remand the case to allow the Land Court to exercise its discretion and consider his proffered excuses for failing to file a notice of appeal within the thirty-day period under Rule 4(a). Here, however, since Appellant has already briefed the substantive issue raised by his appeal – and we find his arguments without merit – we see no need for further delaying this matter.

³ Under 35 PNC § 1312, as well as Rule 16 of the Land Court Rules of Procedure, the only remedy provided to parties aggrieved by a Land Court’s determination of ownership is a direct appeal to the Appellate Division of the Supreme Court. *See Shmull v. Ngirirs Clan*, 11 ROP 198, 201 (2004).

⁴ We have never held that Rule 60(b) applies to the Land Court. In *Shmull*, we held only that “a court has the inherent authority to reconsider its previous decision when there is an intervening change in the law, a discovery of new evidence that was previously unavailable, or a need to correct clear error or prevent manifest injustice due to the court’s misapprehension of the facts, a party’s position, or the controlling law.” *Shmull*, 11 ROP at 202. Thus, *Shmull* suggests that the Land Court’s inherent authority to reconsider its own erroneous decisions is less expansive than a general trial court’s ability to reconsider a decision under Rule 60(b).

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Appellant maintains that his failure to appear at the determination of ownership hearing was excused by his own illness. We disagree. Appellant's illness, while unfortunate, does not establish good cause for not only failing to appear at a court proceeding but also failing to ask for an extension or continuance *in advance*. Moreover, although Appellant maintains that he was too ill to attend the hearing, he offers no explanation for his failure to telephone the court prior to the proceeding, to send a representative in his place, or to secure an attorney to represent his interests. See *Gibbons v. Cushnie*, 8 ROP Intrm. 3, 4 (1999) ("absent some compelling reason, mere failure to obtain counsel does not constitute excusable neglect"); *United States v. A Single Story Double Wide Trailer*, 727 F. Supp. 149, 153-54 (D. Del. 1989) (defendant's failure to attempt a *pro se* appearance or to explain the situation to the opposing party or the court constitutes inexcusable neglect). Any of these measures would have spared the court and the parties the time and effort of holding a superfluous determination of ownership hearing. We conclude, therefore, that the Land Court did not abuse its discretion in denying Appellant's motion.

CONCLUSION

For the above stated reasons, we affirm the Land Court's denial of Appellant's motion to vacate the determination of ownership.