

Ngoriakl v. Gulibert, 16 ROP 105 (2008)
DOMINICA NGORIAKL,
Appellant,

v.

MARIO GULIBERT,
Appellee.

CIVIL APPEAL NO. 07-051
(Civil Action 04-165)

Supreme Court, Appellate Division
Republic of Palau

Decided: December 12, 2008¹

p.106

Counsel for Appellant: Clara Kalscheur

Counsel for Appellee: Pro Se

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHERINE A. MARAMAN, Part-Time Associate Justice; ROSE MARY SKEBONG, Associate Justice Pro Tem.

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

PER CURIAM:

Appellant Dominica Ngoriakl appeals the trial court's judgment (1) awarding Appellee Mario Gulibert physical custody of Isims Gulibert, and (2) awarding Appellee possession and ownership of a house located in Tiull. Because we find that the trial court did not abuse its discretion, we affirm the judgment below.

BACKGROUND

Appellant met and began dating Appellee in 1984. At this time, Appellee was living with a Marshallese woman with whom he had two children. Appellee continued to live with this woman for the next eight years, while at the same time dating Appellant. By July 1993, Appellant had two sons with Appellee, Seth and Isims Gulibert.

For the greater part of their relationship, Appellant and Appellee maintained separate residences and lived together only sporadically. In 1996, Appellee leased some land in Tiull from the Koror State Public Land Authority, and he had a house built on the land in 1998. At

¹Upon reviewing the briefs and the record, the panel finds this case appropriate for submission without oral argument pursuant to ROP R. App. P. 34(a).

Ngoriakl v. Gulibert, 16 ROP 105 (2008)

some point after the house was built, Appellee invited Appellant to move in. After some hesitation, Appellant accepted the invitation. The parties, Seth, and Isims lived together in the Tiull house through 2004.

On June 3, 2004, Appellant filed a petition for divorce based on Appellee's adultery. After a lengthy trial, the trial court issued a Decision and Order, a sealed Supplemental Decision, and, later, a Judgment. In the Decision and Order, the trial court found that Appellant and Appellee were married under custom as of October 2000 and that Appellant was entitled to a divorce. The trial court awarded the parties joint legal custody of their children but awarded Appellant physical custody of Seth and Appellee physical custody of Isims. In addition, the trial court concluded that Appellee should have possession and ownership of the house in Tiull. The trial court also found, however, that Appellee was financially responsible for ensuring that Appellant and Seth had suitable living arrangements.

STANDARD OF REVIEW

As Appellant points out, we review trial court findings of fact for clear error. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001). Likewise, "[t]he trial court's findings as to a custom's terms, existence, or nonexistence are reviewed for clear error." *Seventh Day Adventist Mission of Palau, Inc. P.107 v. Elsau Clan*, 11 ROP 191, 195 (2004). We review trial court legal conclusions *de novo*. *Esebi v. Sadang*, 13 ROP 79, 81 (2006).

The above standards of review do not apply, however, when the trial court's decisions are discretionary. We review discretionary decisions under the abuse-of-discretion standard. *See W. Caroline Trading Co. v. Kloulechad*, Civ. Appeal No. 07-034, slip. op. at 2 (Sept. 5, 2008); *Eller v. ROP*, 10 ROP 122, 128 (2003). Under this standard, a trial court's decision will not be overturned on appeal unless the decision was "arbitrary, capricious, or manifestly unreasonable," or because "it stemmed from an improper motive." *W. Caroline Trading Co. v. Philip*, 13 ROP 28, 30 (2005); *see also* 5 Am. Jur. 2d *Appellate Review* § 623 (2007) (stating that discretion is abused only when "the decision in question was not based on fact, logic, and reason, but rather was arbitrary, unreasonable, or unconscionable"). "A discretionary act or ruling under review is presumptively correct," and the burden is on the party seeking reversal to demonstrate an abuse of discretion. *Appellate Review* § 623.

Here, the trial court made its child custody and property distribution decisions pursuant to 21 PNC § 302. This statute does not contain the term "discretion." The statute does, however, provide that "[i]n granting or denying an annulment or a divorce, the court *may* make such orders for custody of minor children for their support, for support of either party, and for the disposition of either or both parties' interest in any property in which both have interests, *as it deems just and the best interests of all concerned may require* ." 21 PNC § 302 (emphasis added). This language indicates that decisions made under 21 PNC § 302 are discretionary. "In the usual context, the word 'may' connotes discretion." *Eller*, 10 ROP at 128. Moreover, the statute expressly provides that the trial court is to use its judgment in determining how justice may best be served.

Ngoriakl v. Gulibert, 16 ROP 105 (2008)

Further support for reviewing decisions involving child custody and property distribution for abuse of discretion can be found in *Kumangai v. Decherong*, 13 ROP 275, 279 (Tr. Div. 2006). There, the trial court noted that the “general rule in the United States is that matters of child custody rest within the sound discretion of courts.” *Id.* Indeed, the common law rule is that court actions with respect to child custody “will not be disturbed on appeal unless it clearly appears that such discretion has been abused.” 24A Am. Jur. 2d *Divorce and Separation* § 929 (1998).

In conclusion, we hold that child custody and property distribution decisions made pursuant to 21 PNC § 302 are discretionary. Consequently, we will review such decisions, like the ones in the instant case, for abuse of discretion.

DISCUSSION

A. Child Custody

Appellant argues that the trial court erred in awarding physical custody of Isims to Appellee. Appellant asserts that she was the primary parent of Seth and Isims and that the testimony of the children’s teachers supports this assertion. Further, Appellant argues that Appellee is not a good role model for his sons because he **p.108** has no respect for women, culture, and customs. In response, Appellee notes that to reverse the trial court under the “clearly erroneous” standard of review, we would have to find that no reasonable trier of fact would have awarded him custody of Isims. Appellee also argues that he was his sons’ primary caregiver and that Appellant has a temper that makes her a less than perfect parent.

As noted above, to reverse the trial court’s custody decision we would have to find that the trial court’s decision was arbitrary, capricious, manifestly unreasonable, or stemmed from an improper motive. We cannot so find. The trial court set forth its reasoning in two separate documents. In its Decision and Order, the trial court found that although “both parents presented some evidence denigrating the other’s parenting abilities,” “neither parent would question each other’s love for their children or say flatly that he or she believed that the other was unfit to raise them.” Decision & Order 11-12. Moreover, the trial court found that joint legal custody combined with separate physical custody was feasible because both Appellant and Appellee would be living in Koror. *Id.* at 12. The trial court also relied on the preferences of Seth and Isims, which the court obtained via in chambers interviews with the boys. ² Supplemental Decision 2.

Both the Decision and Order and Supplemental Decision demonstrate that the trial court’s custody decision was based on fact, logic, and reason. Thus, it was not arbitrary or capricious. We also cannot find that the trial court’s decision to separate Seth and Isims was manifestly unreasonable. Finally, there is no suggestion that the trial court had an improper motive. Accordingly, we find that the trial court did not abuse its discretion when it awarded Appellant

²A summary of the trial court’s interviews with Seth and Isims can be found in the trial court’s December 16, 2005 Supplemental Decision. Because the Supplemental Decision is sealed, however, we will not reproduce its contents in this opinion.

custody of Seth and Appellee custody of Isims.

B. Tiull House

In addition to arguing that the trial court's custody decision was erroneous, Appellant asserts that the trial court ignored the testimony of her witness on custom when it awarded possession and ownership of the house in Tiull to Appellee. According to Appellant, her custom expert testified that in the case of a divorce caused by a man's adultery, the man should walk away from the marriage empty handed. Appellant points out that although this testimony was not contradicted or refuted by any other expert at trial, the trial court failed to address this testimony in its Decision and Order or Judgment.

We find that trial court did not abuse its discretion in awarding possession and ownership of the Tiull house to Appellee. The trial court explained that Appellee should have possession of the Tiull house because Appellee was the moving force behind its construction and because Appellant has her own house. Decision & Order 15. As for ownership of the Tiull house, the trial court reasoned that notwithstanding Appellant's assistance, Appellee obtained a lease in his own name and built the house with money obtained largely from his family. *Id.* at 16. The trial court p.109 also found significant that Appellant had to be talked into moving into the Tiull house. *Id.* This suggested to the trial court that Appellant did not initially consider the house to be hers. *Id.*

The reasoning provided by the trial court meets the requirements of the abuse of discretion standard. The trial court's decision was not arbitrary or capricious – it was based on a reasoned weighing of the facts. Again, Appellant does not argue that the trial court had an improper motive. It is true that the trial court did not address the testimony of the custom expert in its Decision and Order. But this does not mean that the trial court abused its discretion. “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.” *Ngirutang v. Ngirutang*, 11 ROP 208, 211 (2004) (citing *Rechucher v. Ngirmeriil*, 9 ROP 206, 210 (2002)).

Moreover, this is not a case where the trial court failed to acknowledge custom. The trial court examined custom in great detail when determining whether the parties were married. That the trial court did not also address custom with regards to the Tiull house suggests that the trial court did not find the testimony of Appellant's expert witness to be useful or on point. In fact, the trial court noted during trial that the question posed to the expert did not mention divorce and was confusing. Appellee's Resp. Brief 6. In addition, the expert himself testified that he was not taking into account “leases and things like that.” *Id.*

Ngoriakl v. Gulibert, 16 ROP 105 (2008)

For these reasons, we find that although it would have been helpful for the trial court to address the testimony of Appellant's custom expert, under the circumstances of this case the trial court did not abuse its discretion in awarding possession and ownership of the house in Tiull to Appellee.

CONCLUSION

The judgment of the trial court is **AFFIRMED**.