

Ngetchab Lineage v. Klewei, 16 ROP 219 (2009)
NGETCHAB LINEAGE, represented by Francisco R. Luis,
Appellant,

v.

IKELAU KLEWEI AND OLSINGCH IYEKAR,
Appellees.

CIVIL APPEAL NO. 08-032
LC/R 01-848 on remand from Civil Action No. 407-94

Supreme Court, Appellate Division
Republic of Palau

Decided: August 13, 2009¹

Counsel for Appellant: Kevin N. Kirk

Counsel for Appellees: David W. Pugh

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice.

Appeal from the Land Court, the Honorable SALVADOR INGEREKLII, Associate Judge, presiding.

PER CURIAM:

Appellant challenges the Land Court's conclusion that Appellees own the land known as *Ngeluul*. Because Appellant has not demonstrated that the Land Court erred, we **p.220 AFFIRM** the Land Court's Determination of Ownership.

BACKGROUND

This appeal involves the land known as *Ngeluul* in Ngerchol Hamlet of Peleliu State. *Ngeluul* is also known as Tochi Daicho Lot Nos.1089 and 1091 and Worksheet Lot No.284-254. The Peleliu Tochi Daicho lists Obak Rechetuker as the owner of *Ngeluul*. In 1994, the Land Claims Hearing Office ("LCHO") found that upon Rechetuker's death, a man named Iyekar became owner of the property. The LCHO awarded *Ngeluul* to Ikelau Klewei and Olsingch Iyekar on the grounds that they were the customary heirs of the late Iyekar. The Trial Division of the Supreme Court remanded the LCHO's determination, however, because it was unclear whether the LCHO properly applied PDC § 801, a land-inheritance statute now codified at 25 PNC § 301.

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).

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After the remand, the Land Court held hearings over the course of twenty days. Ultimately, the Land Court concluded that 25 PNC § 301 did not apply and found that Appellees were the proper heirs of Iyekar under custom. The Land Court also rejected Appellant's arguments that (1) Obak Rechetuker administered *Ngelhuul* on behalf of the lineage and (2) the lineage had the authority to distribute the land because it was primarily responsible for Iyekar prior to his death. Accordingly, the Land Court awarded *Ngelhuul* to Appellees as tenants in common. Appellant timely appealed.

STANDARD OF REVIEW

We review Land Court factual findings for clear error. *Rechirikl v. Descendants of Telbadel*, 13 ROP 167, 168 (2006). "Under this standard, if the 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." *Id.* Importantly, "[i]t is not the appellate panel's duty to reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence." *Kawang Lineage v. Meketii Clan*, 14 ROP 145, 146 (2007). We review Land Court legal conclusions *de novo*. *Singeo v. Secharmidal*, 14 ROP 99, 100 (2007).

DISCUSSION

Appellant's only argument is that the Land Court's findings are not supported by the evidence. In a five-page opening brief (two pages of which consist of block quotations regarding the standard of review), Appellant requests that the Court review the voluminous record of evidence below to determine whether the Land Court's findings were clearly erroneous. Op. Brief at 3. In support of its argument, Appellant "direct[s] the court's attention to the testimony of those witnesses whose testimony was relied upon by the Land Court in making the Determination." *Id.* at 2.

Appellant's opening brief is wholly insufficient. First, it does not comply with the Rules of Appellate Procedure. Under Rule 28(e) of the ROP Rules of Appellate Procedure, "references to evidence must be followed by a p.221 pinpoint citation to the page, transcript line, or recording time in the record." ROP R. App. P. 28(e). "Factual arguments or references to the record not supported by such an adequately precise pinpoint citation may not be considered by the Appellate Division." Here, Appellant failed to provide the Court with citations to the record by page, transcript line, recording time, or even name of witnesses.

Second, it is the job of Appellant, not the Court, to search the record for errors. *See Obakerbau v. Nat'l Weather Serv.*, 14 ROP 132, 135 (2007) ("It is appellant's burden to demonstrate, based on the record on appeal, that an error occurred in the trial court."); *see also* 5 Am. Jur.2d *Appellate Review* § 507 (2007) ("[C]ourts are not obligated to search the record for error and will consider only a legal argument that is supported by references to the factual record."). The burden is on the party asserting clear error to demonstrate it. *Aetna Cas. & Sur. Co. v. General Elec. Co.*, 758 F.2d 319, 323 (8th Cir. 1985); *Valley Nat. Bank of Ariz. v. Trustee*,

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609 F.2d 1274, 1279 (9th Cir. 1979). Moreover, an appellant must “point out specifically *where*
the findings are clearly erroneous.” *Pachmayr Gun Works, Inc. v. Olin Mathieson Chem. Corp.* ,
502 F.2d 802, 807 (9th Cir. 1974) (emphasis added).

Appellant has not met its burden of demonstrating clear error. The only error alleged is that the Land Court’s determination was not supported by the evidence. Appellant does not point to any particular errors made by the Land Court. Nor has Appellant argued that Appellees’ witnesses are not credible or that the Land Court’s findings conflict with custom. Instead, Appellant invites the Court to go on a fishing expedition. We decline Appellant’s invitation to trawl the entire record for unspecified error. This sort of perfunctory appeal not only wastes the Court’s time, it wastes the time of opposing counsel and the resources of both parties. The appeal borders on the frivolous, and we remind counsel that frivolous appeals are sanctionable. ROP R. App. P. 38; *Albert v. Asanuma Gumi Co.*, 1 ROP Intrm. 427, 427 (1987).

CONCLUSION

Appellant has given the Court no reason to believe that the Land Court erred. We therefore **AFFIRM**.