Arbedul v. Mokoll, 4 ROP Intrm. 189 (1994)
HAINRICK ARBEDUL AND TENGOLL NGIRAKESAU, representing BALII LINEAGE,

v.

MOSES MOKOLL,
Appellee.

CIVIL APPEAL NO. 7-93
Civil Action Nos. 468-91 & 483-91

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: April 13, 1994

Attorney for Appellants: Johnson Toribiong

Attorney for Appellee: Oldiais Ngiraikelau

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; PETER T. HOFFMAN, Associate Justice.

MILLER, Justice:

This appeal involves three parcels of land in Ngerkesou Hamlet, Ngchesar State. Appellants Hainrick Arbedul and Tengoll Ngirakesau, representing the Balii Lineage, appeal the August 19, 1993 Opinion and Order of the Trial Division, which affirmed in part and reversed in part the two November 13, 1991 Adjudications and Determinations of the Land Claims Hearing Office (LCHO). As a result of the court's order, all three lots were determined to be the individual property of appellee Moses Mokoll. We affirm the judgment of the Trial Division.[1]

⊥190 BACKGROUND

The parcels in question are Tochi Daicho Lot Nos. 299, 312, and 313. All three lots are listed in the Tochi Daicho as the individual property of Ngirakesau, who died in 1962. The LCHO issued two separate Adjudications and Determinations. The first regards Tochi Daicho Lot Nos. 312 and 313. Six parties laid claim to the property: Moses Mokoll (as Ngirakesau's only natural son), Ana Ngirkelau (who withdrew her claim and consented to Mokoll's claim), Ngirngebedangel Albert and Johanes Ngirakesau (Ngirakesau's adopted sons), Hainrick Arbedul (as trustee for the Balii Family), and Tengoll Ngirakesau (who withdrew his claim and consented to Arbedul's claim). The LCHO awarded Lot 312 to the Balii Family, with Arbedul as trustee,

[1] Given our conclusion on the merits, we need not address appellee's contention that Tengoll is not a proper party to this appeal.

and Lot 313 to Mokoll, whom the panel found to be Ngirakesau's natural son.

The second Adjudication and Determination concerns Lot No. 299, which was awarded to Mokoll. The other two parties, Ana Ngirkelau and Hainrick Arbedul, took the same stance as they had with the other two lots.

The Trial Division upheld the determinations of Lots 313 and 299, but reversed as to Lot 312. The court concurred with the LCHO's factual finding that Mokoll was the natural son of Ngirakesau, but disagreed with its conclusion regarding Lot No. 312 that the Balii Family had "more authority to this land because it is a house lot."

⊥191 DISCUSSION

I. Trial De Novo

Appellants claim that the court erred by failing to grant its motion for a trial de novo,[2] thereby denying them the opportunity to call additional witnesses, particularly for rebuttal, regarding the history of the lots in question, the relationship of Arbedul and Mokoll to the decedent Ngirakesau, and the Palauan custom regarding the eligibility of an illegitimate child to inherit property.

A trial court hearing an appeal from the LCHO may in its discretion grant a trial de novo, *Silmai v. Rechucher*, Civil Appeal No. 34-91, slip op. at 3 (Dec. 9, 1993), but a new trial is not a matter of right, *Otiwii v. Iyebukel Hamlet*, Civil Appeal No. 28-91, slip op. at 12 (Sept. 14, 1992). The issue, then, is whether it was an abuse of discretion to deny appellants' motion for a trial de novo where there was no showing that the additional evidence could not have been presented at the LCHO hearing. We hold that the discretion to grant a trial de novo need not be exercised merely because an appellant believes that a better case can be presented if granted a second opportunity. If an appellant has had a full and fair opportunity to present his case to the LCHO, requests for a trial de novo to present new evidence may, in the ⊥192 sound discretion of the trial court, be denied. There is good reason for this rule: if one could obtain a trial de novo as a matter of course, simply by offering to produce additional evidence, the important fact-finding role played by the LCHO would be diminished.

In the instant case there is no evidence that the evidence appellants sought to introduce at a trial de novo could not have been presented at the LCHO hearing. The Trial Division therefore acted well within the ambit of its discretion by denying the motion.

II. Palau District Code § 801(c)

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[2] As we have in the past, we use the term "trial de novo" to denote a new hearing to call witnesses and present evidence, and not to refer to the court's discretion to make new findings of fact based on the existing record. See *Ngiratereked v. Joseph*, Civil Appeal No. 3-92, slip op. at 4 (Dec. 17, 1993). The latter sense of the term is sometimes referred to as a "trial de novo on the record" in other jurisdictions.

Palau District Code § 801(c), the statute in effect at the time of Ngirakesau's death in 1962, states that in the absence of a will, "lands held in fee simple by an individual shall, upon the death of the owner, be inherited by the owner's oldest living male child of sound mind, natural or adopted, ..." Appellants argue that Mokoll is ineligible to inherit under this provision because he was an illegitimate child of Ngirakesau and because there was no showing that he was the oldest.

The trial court found that the record contained no evidence that Mokoll was an illegitimate son of Ngirakesau. Even if there were such evidence, appellants' contention that Section 801(c) imposes a legitimacy requirement is not supported by the language of the statute. As the trial court observed, Section 801(c) differs from its successor 39 PNC § 102(c) inasmuch as the former contains no express requirement of legitimacy. The plain meaning ⊥193 of the statutory reference to the "oldest living male child" includes illegitimate as well as legitimate children. We will not construe that which requires no construction, *Remeliik v. The Senate* , 1 ROP Intrm. 1, 5 (High Court 1981), nor is this a case where enforcement of an unambiguous statutory text will produce manifestly unintended and profoundly unwise consequences. See *Conroy v. Aniskoff*, 113 S.Ct. 1562, 1566 n.12 (1993).[3]

Addressing the other prong of appellants' argument, the court conceded that there was no specific finding that Mokoll was the "oldest" son within the meaning of Section 801(c). The court held, however, that the failure of Ngirakesau's adopted sons to appeal the LCHO's determination constituted a waiver of any claim they might have had.

Appellants argue that Section 801(c) should be interpreted in a strict primogenitary sense whereby only the oldest son may inherit land. Such an interpretation is at odds with the provision in Section 801(c) that "if male heirs are lacking, [the lands shall be inherited by] the oldest living female child of sound mind, natural or adopted, or, in the absence of any issue, by the spouse of the deceased,. . . ." While this language establishes a hierarchy of inheritance rights, it clearly allows for another sibling or the spouse of the deceased to inherit.
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III. Judicial Notice

Appellants contend that the court erred in failing to take judicial notice of two previous LCHO determinations. The court refused to consider at least one of these documents because it had not been submitted to the LCHO. Appellants argue that the court's refusal violated ROP R. Evid. 201(f), which states: "Judicial notice may be taken at any stage of the proceeding." The permissive language ("may") of the Rule, however, means that the taking of judicial notice is addressed to the discretion of the trial court, and the court's determination will not be disturbed on appeal unless it is shown that the court abused this discretion. See 29 Am. Jur. 2d Evidence § 18 (1967).

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[3] Appellants argue that they should have been granted a trial de novo to present evidence of the Palauan custom barring inheritance by illegitimate children. Even if such a custom exists, however, it cannot affect our interpretation of Section 801(c), which was plainly intended to displace custom.

The first document, a 1975 Adjudication and Determination of other Ngirakesau property, awarded land to adopted son Johanes Ngirakesau, who claimed to be Ngirakesau's only child. Appellants claim this determination is "res judicata" on the issue of the senior Ngirakesau's heirs, thus excluding Mokoll. The doctrine of res judicata applies, however, only to final judgments based on the same cause of action between the same parties or their privies. *Montana v. United States* , 99 S.Ct. 970, 973 (1979). In the present case, Mokoll was not a party to the previous proceeding, rendering the doctrine inapplicable.

Furthermore, appellants misstate the LCHO's determination when they claim in their appellate brief that the LCHO had found that "Johanes Ngirakesau was the sole surviving heir of Ngirakesau." While Johanes, who was the only claimant in that case, and his ⊥195 witness testified to this effect, the LCHO made no such finding; it merely found that "claimant is the rightful person to inherit the property in question." Since it would not have affected the result herein in any event, we find no abuse of discretion in the court's failure to take judicial notice of this evidence.

The second document is a July 17, 1991 Adjudication and Determination of land in Ngeremlengui State. In that proceeding Mokoll had claimed a parcel of land as an adopted son of Ibutirang, who had married Mokoll's natural mother Irorou. He testified that he had lived with Ibutirang from the age of four until 1958 (when he was twenty-eight). Appellants argue that this adoption severed his right to inherit from Ngirakesau.

The trial court pointed out that "no Palauan legal authority is cited for this contention." Although we agree with appellants that 21 PNC § 409, cited by the trial court, does not appear to be on point,[4] appellants have still failed to cite any evidence or Palauan authority to support their own contention that adoption severs the right of inheritance. Cf. *Elechus v. Kdesau* , 4 T.T.R. 444, 451 (Tr. Div. 1969) (holding that "an ochel[l] adopted from his or her clan to another clan remains an ochel[l] member of the original clan"). It follows, then, that even if the Trial Division had taken judicial notice of the LCHO determination, the court ⊥196 could still have dismissed appellants' severance argument.

IV. Standard of Review

Appellants' final argument is that there was "reasonable evidence" and "substantial evidentiary support" for the LCHO's conclusion that Lot 312 was a house lot and therefore should be awarded to the Balii Lineage, and that the Trial Division should not have reversed this determination unless it was clearly erroneous.

Appellants misapprehend the law in this regard. The trial court is not bound by the "clearly erroneous" standard when reviewing the LCHO's findings of fact. *Ngiratereked v. Joseph*, slip op. at 4. The court may either adopt the LCHO findings or make its own findings, as long as there is evidence in the record to support them. Id. The Appellate Division will then review the trial court's findings using the clearly erroneous standard. *Silmai v. Rechucher* , slip

[4] 21 PNC § 409 applies to "child[ren] adopted under this title," that is, legally rather than customarily adopted as is the case here.

op. at 3 (Dec. 9, 1993). If the trial court's account of the evidence is plausible in light of the record viewed in its entirety, the appellate court may not reverse it. *ROP v. Chisato* , 2 ROP Intrm. 227, 238-39 (1991).[5]

The trial court in the present case made the following finding:

> The evidence was that Ngirakesau ordered the stone platform constructed when a Balii mother, Bekiar, became ill and asked where she would be buried. Prior to that time, there was no stone platform. These events do not, when considered with all of the other evidence in the ⊥197 record, constitute sufficient evidence to overcome the presumptive accuracy of the Tochi Daicho listing. Absent a rebuttal of the presumption, the claim of Balii must fail.

The court therefore rejected the LCHO's finding that Lot 312 was a traditional lineage house lot, finding instead that Nigrakesau had permitted his individual property to be used for burial purposes. The court's statement of the evidence conforms to the record and therefore is not clearly erroneous.

CONCLUSION

The court did not abuse its discretion by refusing to grant a trial de novo or by refusing to take judicial notice of prior determinations of the LCHO. The court correctly concluded that Mokoll was eligible to inherit pursuant to Palau District Code § 801(c). The court's factual finding that the Tochi Daicho presumption with respect to Lot No. 312 had not been rebutted was not clearly erroneous.[6]

The judgment of the Trial Division is AFFIRMED.

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[5] Given our conclusions with respect to these determinations, we need not address appellee's motion to strike them as exhibits to appellants' brief.

[6] We share the trial court's hope that appellee will preserve intact, and allow Balii family members access to, the stone platform.