

Ngiraremiang v. Ngiramolau, 4 ROP Intrm. 112 (1993)
SILES NGIRAREMIANG,
Appellant,

v.

MARCELINA NGIRAMOLAU,
Appellee.

CIVIL APPEAL NO. 7-92
Civil Action No. 541-90

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: December 30, 1993

Counsel for Appellant: John K. Rechucher

Counsel for Appellee: Johnson Toribiong

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice;
and JANET H. WEEKS, Part-Time Associate Justice.

MILLER, Justice:

In this divorce case, Siles Ngiraremiang appeals the trial court's finding that he and Marcelina Ngiramolau were married pursuant to Palauan custom.

BACKGROUND

Siles and Marcelina started dating in November 1982. At the time, Marcelina was living in an apartment in Koror while Siles lived with his parents in Ngatpang. Soon after they met, Siles started spending the weekends with Marcelina at her apartment. During the week, Marcelina would frequently stay with Siles at his parent's house.

In June 1985 Marcelina gave birth to Robin, the couple's only child. At the ngasech, or childbirth ceremony, Sile's parents gave Marcelina \$1,000, as sengk, for Robin.

¶113 Over the years Marcelina participated in various customs with Siles' family. For example, when a cousin of Siles died she took ngeliokl, or starched food, to the funeral. When Siles' sister had her omengat, or steam bath ceremony, Marcelina brought ten cooked foods. Marcelina also prepared several meals for Siles' grandfather when he was ill. However, Siles' family never presented Marcelina's family with bus, or marriage money, and never received ngader, the gift of food that typically accompanies a bride when she is brought to her husband's

family.

In September 1987 Marcelina and Robin moved into a house owned by her brother Singeru. Shortly thereafter, Siles moved to Koror and began living with Marcelina and Robin. They lived together in Singeru's house for a year and a half.

In 1989 Siles and Marcelina built a house in Ngereas on land leased by Marcelina's sister. To secure funds for the house's construction, Siles sold land he owned for \$13,500. Siles and Marcelina also obtained several loans. They borrowed \$2,490 from the Farmer's Home Loan Administration. Siles signed this note as Marcelina's "spouse." Marcelina alone is responsible for repaying this loan. The parties also borrowed \$5,000 from the Bank of Guam. Siles and Marcelina share this loan's repayment costs. In addition to undertaking these financial obligations, Marcelina and Siles also had an ocheraol for their house, for which they collected almost \$5,000. They moved into their new house in August 1989.

In September 1989 Marcelina went to the United States to study on a Bureau of Education scholarship. When she returned, in ¶114 August 1990, trouble ensued. Siles, who became involved with another woman in Marcelina's absence, began abusing Marcelina. His beating was so severe that Marcelina sometimes had to miss work. Siles broke Marcelina's right arm by hitting it with a piece of wood. Marcelina was taken to the hospital, where her arm was put in a cast. Two weeks later, Siles stabbed Marcelina in the buttocks with a fork.

In December 1990 two meetings were called at Singeru's house to talk about Siles' beating of Marcelina. Present at both were Marcelina, her mother and brother, Siles and his parents. At these meetings, Siles and Marcelina were asked whether they wanted to be married. The parties dispute the meaning of this question. Marcelina contends the query was whether they wanted to remain married while Siles asserts the families wanted to know if Siles and Marcelina intended to get married. At the second meeting Siles' father asked if they were married and Siles said no. Marcelina remained silent throughout the meeting.

Contemporaneous with these meetings, Marcelina moved out of the house and filed for divorce. At the time of trial Siles was living in the Ngereas house with another woman. Marcelina's sister continues to make the lease payments on this property.

After hearing testimony from Marcelina, her sister, Siles, his mother, and an expert on Palauan custom, the trial court found that Siles and Marcelina were married pursuant to Palauan custom. The trial court granted Marcelina's petition for divorce based on Siles' cruelty. The court awarded Marcelina custody of ¶115 Robin and continued its earlier child support award of \$75 a month. Finally, the court awarded Marcelina the family house.

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DISCUSSION

Siles argues that Marcelina failed to prove the existence of a customary marriage by clear and convincing evidence. This exacting standard, however, applies only to establish the existence of a custom. See *Udui v. Dirrechetet*, 1 ROP Intrm. 114, 117 (1984) (whether clan custom allowed a party to be named chief without formal approval must be proven by clear and convincing evidence). There is no question that Palauan customary marriage exists; the question therefore is whether, viewing the record as a whole, the trial court correctly determined that Siles and Marcelina had entered into such a marriage. We find that it did.

Siles' expert on Palauan custom, Johannes Ngirakesau, testified that there are valid customary marriages today where no bus or ngader have been given. In finding that Siles and Marcelina were married pursuant to the Palauan marital custom of kesaulreng¹, the trial court therefore discounted the fact that there was no ngader or bus. The court relied instead on the presence of other factors which it found are part of a Palauan customary marriage: that the parties lived together for almost eight years, that they had a child, that Marcelina "played the role of a Palauan wife by discharging her obligations vis-a-vis Siles' family," that they ¶116 built a house together, that they held themselves out together when Siles signed a loan application as Marcelina's "spouse," and that they "were recognized as husband and wife by relatives, friends, and the community at large."

Each of these findings is supported by the record. Ngirakesau described the custom of ngmla soiseb ra blai, or entering the house. He testified that under Palauan custom a man and woman would not live together if they were not married. Ngirakesau also testified that a man's family only brings sengk for a child if the couple is married. The obligations which Marcelina undertook as Siles' "wife" are well documented, as are the general perceptions in the community regarding the existence of the parties' marriage. In particular, the trial court's decision not to credit Siles' version of the disputed family meeting--i.e. that the question was whether they wished to marry, rather than whether they wished to remain married--was not clearly erroneous.

Siles argues that to recognize a marriage in the absence of ngader or bus is to erode and devalue Palauan tradition. We do not agree. The trial court's decision, and our affirmance of it, does nothing more than recognize, as Siles' expert testified, that--for better or worse--these particular customs are no longer the sine qua non of a valid customary marriage. We do not hold that they are irrelevant, nor do we mean to foreclose the possibility that the absence of ngader or bus may take on greater significance in a different factual setting. We find simply that on the facts ¶117 presented here the trial court did not err in its conclusion that Siles and Marcelina were married pursuant to Palauan custom.

Siles' remaining arguments, which are tied to his position that there was no customary marriage, fall accordingly. Siles argues that he should have been awarded the house. It is not true, as Siles contends, that he built the house with his own money. As the facts above indicate,

¹ Under this custom, the parties themselves decide to marry. Its two counterparts in Palauan custom are mowar rar mekedung, where the fathers of the couple arrange the marriage, and omoch, whereby a high ranking woman forces herself onto the man of her choice.

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the financing of the house was a joint enterprise. Marcelina is the sole obligor on one of the two outstanding loans and is jointly responsible for the other. Additionally, Marcelina's sister has always paid, and continues to pay, the lease payments for the land on which the house is situated. Under these circumstances, it makes sense to award the house to the party awarded custody of the child.

Finally, Siles argues that he should not have to pay child support. To the contrary, by statute Siles is obligated to pay child support because his physical cruelty toward Marcelina caused their customary marriage to terminate. 21 PNC § 335(a).

The trial court's judgment is AFFIRMED.