Ucherremasech v. Wong, 5 ROP Intrm. 142 (1995)

HIROICHI UCHERREMASECH,
Appellant,

v.

AKIKO WONG and HUYUKO ELEDUI,
Appellees.

CIVIL APPEAL NO. 21-94
Civil Action No. 443-93

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: November 9, 1995

Counsel for Appellant: John K. Rechucher

Counsel for Appellees: William L. Ridpath
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BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; PETER T. HOFFMAN, Associate Justice.

BEATTIE, Justice:

Hiroichi Ucherremasech appeals from a judgment of the trial division which held that he may not collaterally attack a Land Claims Hearing Office ("LCHO") Determination of Ownership of land and that he is therefore bound by the LCHO determination. We affirm.

Also before this Court is a motion to dismiss the appeal by appellees Wong and Eledui for appellant's failure to comply with Rule of Appellate Procedure 31. The motion is denied.

I. MOTION TO DISMISS

Before discussing the merits, we first address appellees' motion to dismiss this appeal, made pursuant to Rule 31(c) of the Rules of Appellate Procedure. Although appellant filed a brief, he did not file it within the time allowed by Rule 31(b) of the Rules of Appellate Procedure. Appellees moved to dismiss the appeal because of the appellant's tardy filing of his brief.

The Court can dismiss an appeal *sua sponte* for failure to comply with the Rules of Appellate Procedure, including Rule 31, without any showing of prejudice. When a party moves for dismissal for failure to comply with Rule 31, however, the Court normally will not grant the motion unless the party shows prejudice from the appellant's failure. *See Kedung Clan v.*

Kerradel, 3 ROP Intrm. 13, 15 (1991). Here, the appellees, who also failed to comply with the Rule 31 time limits, have not demonstrated any prejudice due to the tardy filing of appellant's brief, and the motion to dismiss is denied. We now turn to the merits.

II. BACKGROUND

Appellees filed this action to eject the appellant's sister, Dilyolt Etumai, and her husband Johanes ("Etumais") from the subject property, which is a portion of the land known as "Owang" located in Ikelau Hamlet. [1] The property had been awarded to ⊥144 appellees by an LCHO determination of ownership in September of 1991. Appellant intervened below, contending that he owned the property and that the LCHO determination was not binding on him because the LCHO did not provide adequate notice of its proceedings.

Insofar as the record shows, the Etumais were the only occupants of the subject property in 1991. In June of 1991, an LCHO representative went to the property and notified Dilyolt Etumai that the LCHO was going to conduct a hearing to determine ownership of the land. Appellant testified that Dilyolt was taking care of the property for him and that she should have notified him of the LCHO hearing. Dilyolt, however, testified that she assumed it was the LCHO's job, not hers, to notify appellant of the hearing. Rather than notifying appellant of the hearing, Dilyolt filed her own claim, asserting that she and her husband owned the property.

Notice of the LCHO hearing was posted at the post office, the courthouse, and the Koror State Office and was sent to all persons who had filed claims to the property. After the hearing, the LCHO issued a Determination of Ownership stating that the property was owned by appellees. No appeal was filed, and a Certificate of Title issued to appellees.

In the Trial Division, appellant asserted two reasons why the LCHO determination should not be binding on him. First, appellant contended that he was entitled to actual notice from the LCHO because the LCHO knew that he might have a claim to the property. Second, appellant asserted that the LCHO neglected a required element of constructive notice by failing to post notice on the land or broadcast notice on the radio. After trial, the trial court rejected the argument that appellant was entitled to actual notice under the statute. Regarding constructive notice, the trial court found that appellant did not establish that the LCHO failed to post notice on the property. The court further held that, even assuming there were no posting, there was no defect in constructive notice absent a showing by the appellant that posting notice on the land would have caused him to be made aware of the hearing.

III. LCHO NOTICE PROCEDURES

Appellant contends on appeal that the Trial Division erred in holding that the LCHO Determination of Ownership was binding on him. He contends the Determination was not binding on him because, ⊥145 due to the LCHO's failure to comply with statutory notice procedures, he had no notice of the LCHO hearing. Appellant argues that due process requires the LCHO to substantially comply with the notice procedures specified in 35 PNC § 1109. In

[1] The subject property is a part of Tochi Daicho lot 904.

this case, he claims the notice was deficient in that (1) a copy of the notice of the hearing was not mailed to him or served on him, (2) the LCHO failed to post a copy of the notice on the subject property; and (3) the notice was not broadcasted over the radio.

A certificate of title issued as a result of a LCHO determination of ownership "is conclusive upon all persons who have had notice of the proceedings and all those claiming under them. . . ." 35 PNC § 1114. Thus, unless appellant lacked either actual or constructive notice of the LCHO hearing regarding the property, the determination of ownership is binding on him.

A. Failure to Mail or Serve Notice

The statutory procedures regarding notice require the LCHO to serve a copy of the notice of hearing, either personally or by mail, "upon all parties shown by the preliminary inquiry to be interested. . . ." 35 PNC § 1109(c). The LCHO did not provide a copy of the notice of hearing to appellant by mail or by personal service. We must therefore determine whether the record shows that appellant was shown to be interested.

The Etumais had a sketch map of the land which showed a structure labeled "Store & Dwelling Hiroich Ucherremasch." They submitted the sketch map to the LCHO in support of their claim, although there is no indication that the sketch was in the files of the LCHO at the time the notice of hearing was distributed for posting. Also, a land claims hearing officer who grew up in Koror knew that appellant had lived on the property for awhile in the 1950s or 1960s and then had moved away to Peleliu. These circumstances did not establish that appellant was a party "shown to be interested." Although appellant cites several cases from the United States holding that in quiet title or condemnation cases actual notice must be provided to known claimants, the cases are inapposite here because appellant was not a known claimant. He neither filed a claim nor was he "shown by preliminary inquiry to be interested." More on point are the quiet title cases in which unknown, potential claimants were notified by publication. The U.S. Supreme Court has long held that such notice is adequate under the due process clause. *See, e.g., Hamilton v. Brown* , 16 S.Ct. 585 (1896). *Compare, Walker v. City of Hutchinson* , 353 U.S. 112, 77 ⊥146 S.Ct. 200 (1956) (Notice by publication alone did not satisfy due process where person was listed as property owner on the city's official records).

B. Posting of the Notice

The statutory provisions regarding notice require that notice of the LCHO hearing must be posted "on the land involved." 35 PNC § 1109(a). Appellant claims that a copy of the notice of hearing was not posted on the subject property. The trial court noted the Senior LCHO Officer's testimony that he had no recollection of any posting of a notice on the property. However, applying a presumption that public officers complied with the notice provisions of the statute, the trial court rejected appellant's claim.

In *Uchellas v. Etpison*, 5 ROP Intrm. 86, 89 (1995), *reh'g denied* 5 ROP Intrm. 94 (1995), we held that the burden is on a party who collaterally attacks a prior determination of ownership of a Land Title Officer to show any lack of due process that would render the determination

invalid. There are compelling reasons to place that burden of persuasion on a party who asserts a collateral attack on a determination of ownership, whether made by a Land Title Officer, the Land Commission, or the Land Claims Hearing Office.

One reason for placing the burden on the person attacking the determination is the presumption that public officials follow the laws and regulations governing them. *United States v. Chemical Foundation Inc.* , 47 S.Ct. 1, 6 (1926) (courts presume that official duties of public officers have been properly discharged in the absence of clear evidence to the contrary). Another reason, especially compelling with respect to an allegation of non compliance with statutory notice provisions, is that often the collateral attack is made years after the determination of ownership and the public officials involved are unavailable or have no recollection of the details of the proceedings concerning a specific parcel of land. Finally, there is a strong public policy that favors finality in determinations of ownership of real property. *Ngirasibong v. Abelbai* , 4 ROP Intrm. 95, 100 (1993) (statutes regarding conclusive nature of certificates of title "are consistent with the important public policy favoring the final adjudication of land titles to promote certainty and to preclude endless litigation.").

⊥147 Although *Uchellas* placed the burden on a person attacking a prior determination of ownership, it left open the question of what standard of proof is required to meet the burden. *Uchellas*, 5 ROP Intrm. at 89 n.4. The same rationale that supports placing the burden on the person who collaterally attacks a determination also supports a higher burden than the usual "preponderance of the evidence" standard for a collateral attack challenging a determination of ownership. We now hold that a person who collaterally attacks a determination of ownership rendered by a Land Title Officer, the Land Commission, or the Land Claims Hearing Office on the grounds that statutory or constitutional procedural requirements were not complied with has the burden of proving the non-compliance by clear and convincing evidence. The clear and convincing evidence standard shall apply to all cases now pending or hereafter filed in the Trial Division.

In the instant case, applying the preponderance of the evidence standard, the trial court's finding[2] that the appellant failed to prove a lack of posting on the property was not clearly erroneous. Because of our holding, we need not address appellant's contention that the trial court erred in holding that, even assuming notice was not posted, the failure was of no consequence because, as appellant conceded at oral argument, appellant would not have seen the notice in any event.

C. Broadcasting Notice on the Radio

Appellant next contends that the notice procedures employed by the LCHO did not comply with statutory requirements in that the notice of hearing was not broadcasted over the radio. The trial court did not address this claim. Because the contention is without merit as a matter of law, however, there was no error.

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[2] Although the trial court's decision is somewhat ambiguous on this point, a fair reading is that the court, using a presumption of regularity, found that there was an insufficient showing by appellant that the LCHO failed to post notice on the property.

The statute provides that "additional public notice may be given by radio, local newspapers, or such other means as the Senior Land Claims Hearing Officer deems advisable." 35 PNC § 1109(e). Notice by radio broadcast is permissive and not mandatory. Even assuming that the Senior Land Claims Hearing Officer decided not to ⊥148 give additional public notice via radio, we see no abuse of his discretion under the facts of this case.

Appellant claims other deficiencies in the notice of hearing for the first time on appeal. Not having raised these issues at trial, appellant may not now assert them on appeal. *Sugiyama v. Ngirausui*, 4 ROP Intrm. 177, 179 (1994).

IV. CONCLUSION

The LCHO was not required to serve appellant with Notice of the LCHO hearing for the property because he was not a known claimant or a known interested party. Additionally, the trial court's finding that appellant failed to prove a lack of posting of notice on the land is not clearly erroneous. Accordingly, the LCHO certificate of title is conclusive upon appellant, and the judgment of the trial court is AFFIRMED.