

Ngowakl v. Ngoakl, 5 ROP Intrm. 150 (1995)
PEDRO NGOWAKL, et al.,
Appellants,

v.

JOSEPH NGOAKL,
Appellee.

CIVIL APPEAL NO. 6-95
Civil Action No. 471-92

Supreme Court, Appellate Division
Republic of Palau

Opinion
November 29, 1995

Counsel for Appellants: Moses Y. Uludong

Counsel for Appellee: Johnson Toribiong

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BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; PETER T. HOFFMAN, Associate Justice.

Per Curiam

This matter is before the Court on an appeal by siblings Pedro, Bandemar, Kalobt and Odelurengul Ngowakl ("appellants") of the Trial Division's reversal of a Land Claims Hearing Office ("LCHO") Determination of Ownership concerning land known as "Ngerengchong." Appellants contend that the Trial Division committed reversible error by considering evidence not presented in the LCHO hearing and by failing to conduct a fact-finding hearing concerning the new evidence. Because the Trial Division committed no reversible error, we affirm.

The parties have had a full and fair opportunity to brief the issues and both parties have expressly waived oral argument. After reviewing the arguments on appeal and the record as a whole, we conclude that oral argument would not materially assist the Court in resolving this appeal. Accordingly, pursuant to ROP Rule of Appellate Procedure 34(a), this case is ordered submitted on the briefs without oral argument.

I. FACTS

The underlying dispute concerns the ownership of land identified as Cadastral Lot Number 009 E 04 (Tochi Daicho Lots 463, 471 and 472), located in Ngaraard State. Competing claims to ownership of the land were made before the LCHO by appellants and appellee Joseph Ngoakl ("Joseph"), all of whom are siblings and the children of Ngoakl. It is undisputed that

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Ngoakl was the owner of the land at issue. In the LCHO hearing, appellants contended that, upon the death of their father Ngoakl, the land was transferred to all the children of Ngoakl. Joseph disputed his siblings' position and claimed that he owned the land individually. On January 13, 1995, the LCHO entered its determination of ownership ruling in favor of appellants and against Joseph.

Joseph appealed to the Trial Division. There, Joseph argued for the first time that his father died on March 15, 1964 and that, pursuant to Palau District Code section 801(c) as it existed at the ¶152 time of death,¹ he is the proper heir to the land. Joseph requested that the Trial Division conduct a de novo hearing on, among other issues, when the parties' father died. The Trial Division denied the request, but allowed Joseph an opportunity to submit a brief and evidence supporting the claimed date of death. The Trial Division also ordered that appellants could submit their own brief and evidence within thirty days after Joseph did so. The Trial Division further ordered that an evidentiary hearing would be held if the evidence submitted revealed a genuine issue of material fact concerning the date of Ngoakl's death.

Joseph filed his brief accompanied by a death certificate showing that Ngoakl died in 1964, and an affidavit corroborating the date shown on the certificate. Subsequently, appellants filed their own brief. Appellants did not take issue with the date of death asserted by Joseph or provide contradictory evidence, instead limiting their response to challenging the propriety of the trial court considering Joseph's evidence.

On January 13, 1995, the Trial Division issued its Decision and Order concluding that because Joseph was the oldest son, and because the father died intestate in 1964, the LCHO should have awarded the land to Joseph. Accordingly, the Trial Division ordered the LCHO to issue a certificate of title to Joseph. Appellants now appeal from the Order and Decision.

II. DISCUSSION

Appellants contend that the Trial Division committed reversible error by considering evidence of the date of the father's death which was not presented before the LCHO and that the Trial Division denied appellants their due process by not ¶153 conducting a hearing on the new evidence.² Appellants do not take issue with the Trial Division's interpretation of Palau District

¹ At the time of the death of the parties' father, Palau District Code section 801(c) provided for inheritance of land from an intestate decedent as follows, in pertinent part: "[L]ands held in fee simple by an individual shall, upon the death of the owner, be inherited by the owner's oldest living male of sound mind, natural or adopted. . . ." The section was later amended and codified at 39 P.N.C.A. § 102(c). It is undisputed that Joseph is Ngoakl's oldest living male child and is of sound mind.

² On May 26, 1995, Joseph filed a motion to dismiss based on appellants' purported failure to file their opening brief by the April 30, 1995, deadline. The record reflects, however, that on April 28, 1995, appellants requested and were granted until May 20, 1995, to file their opening brief. Subsequently, the parties filed several joint motions for extension of time to brief the matter based on the probability of settlement. (Apparently, a settlement was never reached). The Court construes the joint motions for extension of time as a withdrawal of the motion to

Code section 801(c), or any other finding of fact or conclusion of law.

A. New Evidence

Appellants first argue that the Trial Division should not have based its decision on evidence that was not presented to the LCHO. This proposition is plainly without merit and has been rejected by this Court time and again. *See, e.g., Diberdii Lineage v. Iyar*, 5 ROP Intrm. 61, 62 (1995) (and cases cited therein).

The Trial Division has a great deal of discretion in reviewing LCHO findings. The Trial Division may adopt in whole or in part the LCHO findings, may disregard them altogether and make its own findings based on the existing record (trial de novo on the record), may make its own findings based on evidence and testimony presented in a new trial (trial de novo), or may proceed with any combination of the above.

Id. at 62. There was nothing improper in the Trial Division's acceptance of new evidence.³

Appellants make the further assertion that the Trial Division was required to review the findings of the LCHO under the clearly **¶154** erroneous standard and therefore was not free to make its own findings. Again, this Court has long rejected this argument. *Id.* Although, as the cases cited by appellants make clear, the Appellate Division will not reverse the Trial Division's findings of fact unless they are clearly erroneous, the Trial Division is free to reject LCHO findings in whole or in part. Indeed, this Court has explicitly held repeatedly that it would be error for the Trial Division to review LCHO findings under the "clearly erroneous" standard. *See, e.g., Id.* (and cases cited therein); *see also Ngermelkii Clan v. Remed*, 5 ROP Intrm. 139, 140 & 142 (1995).

B. Due Process

Appellants argue that the Trial Division denied them their due process by not conducting a hearing concerning the date of their father's death. The Court disagrees with appellants that the process they were due was any more than that they received. Appellants had a full opportunity to show that the date of their father's death was different than that shown by Joseph and, had they presented any evidence that showed there was a genuine issue of material fact to be resolved concerning the date of death, the Trial Division offered to conduct a hearing.

Appellants made no such showing, nor did they even attempt to do so. Rather, appellants exercised the briefing opportunity provided by the Trial Division to argue only that the issue of their father's death should not be addressed. Appellants acted at their own peril in selecting this

dismiss. To the extent appellee did not intend the joint motions to constitute a withdrawal of the motion to dismiss, the motion to dismiss is denied. The record shows that appellants did file timely.

³ Appellants do not contend that the finding that Ngoakl died in 1964 was clearly erroneous. They argue only that the Trial Division should not have reached the argument.

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approach as opposed to presenting evidence which would justify a hearing. In the absence of any evidentiary indication that there was a genuine issue of material fact concerning the date of death, the Trial Division had no duty to conduct what would certainly have been a meaningless hearing.

Accordingly, we AFFIRM.