

In re Ngirausui, 5 ROP Intrm. 350 (Tr. Div. 1996)
**IN THE MATTER OF THE ESTATE OF
GREGORIO NGIRAUSUI,
Decedent.**

CIVIL ACTION NO. 400-94

Supreme Court, Trial Division
Republic of Palau

Order

Decided: July 3, 1996

Counsel for Executrix : David F. Shadel
Counsel for Claimant E. Ngirausui : *Pro se*

PETER T. HOFFMAN, Justice:

The Claimants have brought two motions, a motion to compel the estate of the decedent to pay alimony and to determine spousal property interest, filed March 6, 1996, and a motion to compel the estate to pay child support, filed the same date. The motions came on for hearing on March 27, 1996 and argument was heard. The motions will be discussed together.

The motions rely on 21 PNC §§ 302 and 335¹ contained in the Palau National Code chapter on divorce and annulment. Claimants' **1351** counsel stated at the hearing that these motions raise issues of first impression and acknowledged that he has not located any case law in support of the Claimants' position. The court, through its own efforts, is similarly unaware of any case law from Palau or any other jurisdiction that lends support to the Claimants' arguments.

¹ Section 302 provides, in pertinent part, that:

In granting or denying an annulment or a divorce, the court may make such orders for custody of minor children for their support, for support of either party, and for the disposition of either or both parties' interest in any property in which both have interests, as it deems justice and the best interests of all concerned may require.

Section 335 provides, in pertinent part, that:

(a) Any person legally married, either by law or in accordance with established custom, who causes such marriage to terminate, either on his own initiative or for any of the reasons enumerated in section 331, subsections (a), (b), (c), (d) or (I) of this title, shall provide support for each child of that marriage under 18 years of age, . . .

None of the reasons enumerated in § 331 includes death of a spouse.

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Divorce is a legislatively created remedy, not existing at common law. *See, e.g., Chapman v. Parr*, 521 P.2d 799, 803 (Okla. 1974). As such, this court in matters of divorce has only such jurisdiction as is given by statute. *See, e.g., Saxon v. Riddel*, 493 P.2d 127, 130 (Ariz. Ct. App. 1972); *State v. District Court of First Judicial District*, 401 P.2d 568, 569 (Mont. 1965). Therefore, it is to the statutory provisions at issue, §§ 302 and 335, this court must look for guidance.

Section 302 authorizes the granting of child support, alimony and the division of property. But this statutory provision is expressly conditioned on the "granting or denying [of] an annulment or divorce." Since this is an estate proceeding, the court is not granting or denying an annulment or divorce. Nor could it since "[a] cause of action for a divorce is purely personal and it has been held that such a cause of action terminates on the death of either spouse" 24 Am. Jur.2d *Divorce and Separation* § 176, (1983). Therefore, § 302 does not provide a basis for awarding the Claimants child support, alimony or a division of property.

Section 335(a) appears to provide an independent basis for awarding child support. The application of this section is conditioned on the marriage ending in a divorce because of certain enumerated reasons or because the party being ordered to pay the support "cause[d] the marriage to terminate, . . . on his own initiative." The Claimants have not presented any proof as to the marriage ending prior to the decedent's death, if indeed it had, nor the reasons for it ending. The only evidence before the court is that the decedent died. Putting aside the hypothetical situation of a suicide, the court does not believe that a decedent "causes" the marriage to end on his own initiative through dying by natural causes.

"[A]t common law a father's death terminated his liability to support his child." Annotation, *Death of Parent as Affecting Decree for Support of Child*, 18 A.L.R.2d 1126, 1127 (1951). Although there is authority to the contrary, the majority rule is that child support obligations end upon the death of the obligor, *id.* at 1127, unless a statute or the wording of the decree or order dictate otherwise. *Id.* at 1131. More importantly, the court has been unable to locate any authority imposing an obligation to pay child support or alimony under a divorce or separation statute **L352** where no order or decree was entered during the decedent's lifetime. Therefore, the Claimants' motions are DENIED.

Since this is a question of first impression, the Administrator's request for attorney fees is also DENIED.