In re Dengokl, 6 ROP Intrm. 142 (1997)
IN THE MATTER OF THE ESTATE OF KYOTA DENGOKL, Deceased.

CIVIL APPEAL NO. 28-95
Civil Action No. 496-93

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: April 4, 1997

Attorney for Appellants: Carlos H. Salii

Attorney for Appellees: Oldiais Ngiraikelau

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice.

BEATTIE, Associate Justice:

INTRODUCTION

This appeal involves a dispute over three pieces of property that were disposed of at Kyota Dengokl's *eldecheduch*. The three pieces of property were a piece of real property called Ternguul, a piece of real property called Delui, and a house located on Delui. Appellants [1] claimed that Ternguul and Delui were jointly owned by Kyota and his wife Mellekl, and therefore, pursuant to law, Kyota's relatives could not dispose of them at Kyota's *eldecheduch*. Appellants further argued that pursuant to custom, ⊥143 Kyota's relatives could not give the house, which was built through the joint efforts of the husband and wife, to a *ngalek ulaol*[2] at the *eldecheduch*.

The trial court dismissed appellants' claims to Ternguul and Delui at the close of of the plaintiffs' case-in-chief. After trial the trial court also ruled against appellants on their claim that the house on Delui was jointly owned by Kyota and his wife. In addition, the trial court apportioned the attorneys' fees incurred by the estate in defending the action among the recipients of property from the *eldecheduch*. Appellants appeal from all of the trial court's rulings. We affirm with respect to the ownership of the three pieces of property and reverse on the issue of attorneys' fees.

---

[1] Appellants are the claimants against the estate: Mellekl Kyota, Huyuko K. Rdialul, Pilomena Kyota, Ngiraterang Kyota, and Clifford Kyota. In opposition to appellants are the administrators of the estate, Yukiwo P. Dengokl and Frank Kyota.

[2] A *ngalek ulaol* is a child adopted through the father's side of the family.

ANALYSIS

Findings of Fact and Conclusions of Law

Appellants argue that the Court should remand this matter to the trial division because of the inadequacy of the trial court's findings of fact and conclusions of law in its decision and order dismissing plaintiffs' claims to Ternguul and Delui pursuant to Rule 41. Read together, Rule 41(b) and Rule 52(a) require the trial court to make findings of fact and conclusions of law as part of an involuntary dismissal of plaintiff's claims. It is sufficient under Rule 52(a) if the findings of fact and conclusions of law are set forth in an opinion or memorandum of decision by the court. All that is necessary to comply with the mandate of the rules is that "an opinion reveal an understanding analysis of the evidence, a resolution of the material issues of 'fact' that penetrate beneath the generality of ultimate conclusions, and an application of the law to those facts." James Moore, 5A *Moore's Federal Practice* ¶ 52.05[1] (1984).

In this case, the trial court's opinion sets forth sufficient facts, and their evidentiary foundation, to understand how the law has been applied to the facts. Thus, the opinion cannot be said to be so deficient as to fail to apprise the litigants and appellate court of the basis for the court's decision. *See id.* ¶ 52.06[1] ("The ultimate test as to the adequacy of findings is whether they are sufficiently comprehensive and pertinent to the issue to form a basis for the decision and whether they are supported by the evidence."). Accordingly, we decline to remand this case for ⊥144 failure to comply with the ROP Rules of Civil Procedure.

Ownership of Ternguul

The trial court found that Ternguul was given solely to Kyota by his paternal uncle. Appellants argue that Ternguul was acquired as *ulsiungel*[3] by the decendent and Mellekl, and as a result Mellekl had joint ownership of Ternguul, which would prevent Kyota's relatives from disposing of Ternguul at the *eldecheduch*. The trial court's determination that Ternguul was given solely to the decedent can be overturned only if the finding is clearly erroneous. *See Umedib v. Smau*, 4 ROP Intrm. 257 (1994). Although appellants point to some testimony in the record that the land was given to both the decedent and Mellekl, the record contains ample evidence to support the trial court's finding. Moreover, the transcript of the hearing discloses that the parties stipulated that the decedent had individual title to the property. Thus, the finding that the property was owned by Kyota was not clearly erroneous.

Bona Fide Purchase of Ternguul

Appellant next claims that since Kyota's uncle gave the property out as *ulsiungel*, Kyota acquired is as a " *bona fide* purchaser for value" and that, therefore, Kyota's relatives could not give out the property at the *eldecheduch*. Palau's statute of descent and distribution, 39 PNC § 102(d), provides that "[i]f the owner of the fee simple land dies without issue and no will has

[3] *Ulsiungel* has been described as "a gift of land for services performed by the donee for the donor when the donor was ill or infirm." *Maidesil v. Remengesau*, 6 T.T.R. 453, 456 (Tr. Div. 1974).

been made in accordance with this section or the laws of the Republic or if such lands were acquired by means other than as a bona fide purchaser for value, then the land in question shall be disposed of in accordance with the desires of the immediate . . . lineage . . . ." Thus, the appropriate lineage members may dispose of an intestate decedent's fee simple property under two circumstances: either (1) the decedent dies without issue, or (2) the decedent acquired the land by means other than as a *bona fide* purchaser.

In this case, the decedent clearly did not die without issue. Therefore, whether the lineage had the right to dispose of the property turns on whether, as appellants contend, decedent was a ⊥145 "*bona fide* purchaser for value."

Appellants correctly point out that the phrase "*bona fide* purchaser for value" is not defined in the statute and that the trial court provided no authority in support of its assertion that the decedent, as the donee of Ternguul, was *not* a *bona fide* purchaser for value. The problem with the appellants' argument, however, is that even if the decedent were considered a *bona fide* purchaser for value of Ternguul, under 39 PNC § 102(c), Ternguul would go to appellee Frank Kyota, the decedent's oldest son, rather than to any of the appellants. [4] Therefore the trial court did not err in denying appellants' claim to Ternguul.

Ownership of Delui

Appellants claim that the trial court erred in finding that Delui was owned by Kyota and not owned jointly with his wife. The record shows that the Techekii Clan conveyed the property to Kyota by deed and that he prevailed in a quiet title action in which the Court determined that Kyota was the owner. Moreover, the appellants stipulated at trial that title to the property was in the name of Kyota Dengokl at the time of his death, not in the name of Kyota and his wife. Therefore, the trial court was not clearly erroneous in finding that the property was owned by Kyota rather than jointly owned by Kyota and his wife.

Ownership of the House on Delui

At Kyota's *eldecheduch*, the house on Delui was given to Frank Kyota, subject to the right of appellant Mellekl to live in the house for the rest of her life. Appellants contend that it was improper to dispose of the house at the *eldecheduch* because it was not Kyota's property but rather the joint property of Kyota and Mellekl. Appellants argue that the house was built with funds contributed by both Kyota and Mellekl and that, under the common law of the United States, the house therefore became their joint property. We will not consider this argument. There is no indication that it was presented to the trial court, [5] and, even in ⊥146 this court,

---

[4] Accordingly we need not decide whether, for purposes of 39 PNC § 102, receipt of property as *ulsiungel* amounts to a *bona fide* purchase for value. *See Ngiradilubch v. Nabeyama*, 3 ROP Intrm. 101 (1992).

[5] To the contrary, although appellants now argue that this issue is not governed by custom, they presented two expert witnesses at the trial who testified that the house was jointly owned under custom and improperly awarded at the *eldecheduch*. The trial court ultimately concluded that the actions of the *eldecheduch* were in accordance with custom, and appellants

appellants do not cite any authority to support their contention. Accordingly, we affirm the trial court's decision without further discussion.

Failure to Disqualify Expert Witness for Bias

By consent of the parties, Judge Mokoll testified as an expert on Palauan custom. He testified that contrary to appellants' contention below, [6] custom did not prevent relatives of a decedent from giving a house built jointly by a decedent and his wife to a *ngalek ulaol* at decedent's *eldecheduch*.

After this appeal was filed, appellants filed a motion for relief from judgment under Rule 60(b) on the grounds that Judge Mokoll was biased in favor of appellees. The alleged bias stems from the fact that they had learned that Judge Mokoll's half -brother was buried on Dai Lineage land. The trial court found that, even considering the location of the grave of Judge Mokoll's half-brother, Mokoll's testimony was truthful, and denied the 60(b) motion. Appellants' claim is that Judge Mokoll should have been disqualified to testify as an expert and it was error to deny their motion. We disagree.

Appellants do not suggest that Judge Mokoll lacked the knowledge and experience to qualify as an expert on Palauan custom. See Rule 702, ROP Rules of Evidence. Rather, they claim he was biased. Facts from which a reasonable trier of fact might conclude that a witness is biased in favor of a party may be elicited on cross-examination. The facts may well affect the weight given to the testimony of the witness, but will not normally disqualify him from testifying.[7] Here, the trial court, after learning of the new facts, concluded that the weight to be given Judge Mokoll's ⊥147 testimony did not change to the point where relief from judgment was appropriate, and it is not the province of this Court to reweigh the evidence. *Rebluud v. Fumio*, 5 ROP Intrm. 55, 57 (1995). Accordingly, we find no abuse of discretion in the denial of the 60(b) motion.

Attorney's Fees

Based on an analogy to the law regarding wills, the trial court apportioned the cost of defending the estate among the beneficiaries of the *eldecheduch* in proportion to the amount of property they received. Appellants argue that it was error to assess attorneys' fees against the parties in the absence of a statute authorizing such an award. We agree. Although attorneys' fees are sometimes apportioned or charged to the estate in probate proceedings in the United States, it is done pursuant to a statute authorizing this procedure. See Annotation, Right to Allowance Out of Estate of Attorneys' Fees Incurred in Attempt to Establish or Defeat a Will , 40 A.L.R.2d 1407, 1409, at n.4 (1955). Here, there is no such statute.

---

here raised no challenge to that conclusion.

[6] Appellants do not argue in their brief on appeal that it was error to find that, under customary law, Frank Kyota's status as *ngalek ulaol* prevented him from receiving the house.

[7] The Court notes that the case may be different when the expert has been called as a witness by the trial court.

CONCLUSION

For the foregoing reasons we affirm the judgment below with respect to the ownership of the property. We reverse the trial court's decision to distribute the estate's attorneys' fees among the parties; each party shall pay its own attorneys' fees.