Fritz v. Blailes, 6 ROP Intrm. 152 (1997)
LTELATK FRITZ and MARIA SILMAI,
Appellants,

v.

FRANCISCA BISMARK BLAILES,
Appellee.

CIVIL APPEAL NO. 2-95
Civil Action Nos. 387-91 and 395-91 (Consolidated)

Supreme Court, Appellate Division
Republic of Palau

Order on petition for rehearing
Decided: April 4, 1997

Counsel for Appellant Fritz: MLSC, by David J. Kirschenheiter

Counsel for Appellant Silmai: Carlos H. Salii

Counsel for Appellee: Kevin N. Kirk

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

BEATTIE, Justice:

This case comes before the Court on Appellee's petition for rehearing. The Court has determined that a further hearing would not be of assistance, and so this matter is decided without oral argument. The Court grants appellee's petition in part.

With respect to appellants' argument that the chased money, PM1, reverts to its prior status before it was pawned, the trial court stated: "This theory must fail for the same reason that Maria Silmai's theory fails, under Palauan custom Emaimelei could and apparently did decide to keep PM1 for herself." Tr. Ct. Decision at 17-18. This statement could be based on any number of findings. For example, the trial court could have found that (1) under custom, chased money becomes property of the chaser, or (2) there was no clear and convincing evidence regarding the custom concerning chased money, and therefore the chaser would own it, or ⊥153 (3) under custom chased money does revert to its prior status, but "Palauan custom did not and does not provide a remedy" for a breach of the custom, and the "court should provide no greater penalty." Tr. Ct. Decision at 19.

Under Rule 52(a) a trial court's decision must "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). Where custom is applied it "must be reduced to written form by the record at [trial] . . . ." *Udui v. Dirrecheteet*, 1 ROP Intrm. 114, 117 (1984). The trial court's findings of fact and conclusions of law were not specific enough for us to determine the basis for deciding that Emaimelei could keep PM1. Thus, we now conclude that we cannot adequately review that aspect of the decision on appeal.

We therefore withdraw that portion of Part I of our Opinion, in which we held that the finding that PM1 became the property of Emaimelei Bismark was clearly erroneous, and remand the case to the trial court with instructions that it make specific findings of fact and conclusions of law regarding PM 1.[1] Because the judge who conducted the trial is no longer on the Court, a new judge will have to make these findings. This presents problems because he cannot know the basis for the first judge's decision. Therefore, we make it clear that he need not draw the same ultimate conclusions as the first judge, but rather, after reviewing the record, he is to make such findings and conclusions as he deems appropriate regarding PM1. In addition, if the trial court finds that PM1 did not become Emaimelei's property, it should make findings of fact and conclusions of law on any other issues which were raised by appellee but not resolved below, such as statute of limitations and laches.

[1] Our affirmance of the trial court's denial of Silmai's claim to PM1 remains intact, as it was based on a clear finding that it was not designated as children's money for Silmai.