Anderson v. Masami, 6 ROP Intrm. 321 (1996)

MARIE ANDERSON,
Plaintiff,

v.

BRENGIEI MASAMI,
Defendant.

CIVIL ACTION NO. 206-96

Supreme Court, Trial Division
Republic of Palau

Decision
Decided: July 26, 1996

Counsel for Plaintiff: David J. Kirschenheiter

Counsel for Defendant: Oldiais Ngiraikelau

LARRY W. MILLER, Associate Justice:

This case, concerning the ownership of two motor vehicles, arose after the untimely death earlier this year of Harold Masami. Plaintiff Marie Anderson is Harold's surviving wife; defendant ⊥322 Brengiei Masami is his mother. Although this case had the potential to present a conflict between custom and law, the Court finds that both lead to the same result. For the reasons that follow, the Court concludes that plaintiff has the better claim and accordingly enters judgment in her favor.

Although custom is arguably the first place the Court should look, [1] the Court believes that the issue herein is best approached by looking at the law first, and then seeing whether custom provides a different answer. The legal analysis turns on the following rule:

> "For the purpose of determining title to household goods and furnishings between husband and wife, the property that has been acquired in anticipation of or during marriage, and which has been possessed and used by both spouses, will, in the absence of evidence showing otherwise, be presumed to be held jointly."

41 Am. Jur. 2d *Husband and Wife* § 25 (1995 ed.). [2] This presumption plainly applies here: Both

---

[1] 1 PNC § 303, which directs the Court to United States common law, comes into play only "in the absence of . . . customary law applicable under" 1 PNC § 302.

[2] As set forth in the sections cited by defendant, by allowing Harold to deal with the vehicles in his name, *see infra*, Marie may well have been estopped from claiming ownership vis-a-vis his *creditors*. *See id.* §§ 26, 27. There is no basis for finding an estoppel, here, however.

vehicles were purchased during the marriage, and both had been used by both spouses before Harold's death. Moreover, the vehicle most keenly sought after -- a 4 x 4 pickup truck -- was purchased with funds taken from a joint bank account in the names of Harold and Marie. This fact is not crucial,[3] but is yet additional evidence of joint, and not separate, ownership.

The presumption is rebuttable; it may "give[] way to direct or ⊥323 circumstantial evidence to the contrary, sufficient to lead a different conclusion." *Id.* Here, however, the contrary evidence is not sufficient, in the Court's view, to overcome the presumption. The strongest evidence for defendant's position is the fact that both vehicles were registered in Harold's name alone. However, "such documents do not ordinarily establish conclusively the ownership [of motor vehicles], but are merely prima facie evidence thereof." 7A Am. Jur. 2d *Automobiles and Highway Traffic* § 25 (1980 ed.). Weighed against the evidence of joint purchase and joint use of the vehicles, the Court believes a conclusion of joint ownership is still appropriate. As a legal matter, then, plaintiff became the sole owner of the vehicles upon Harold's death. *See Husband and Wife, supra*, § 48.[4]

Does custom call for a different result? The Court heard testimony from three experts in Palauan custom. Although their views were not identical, the Court believes that a general principle can be discerned from all of their testimony that also supports plaintiff's claim. As the Court understood the testimony, under Palauan custom -- and remarkably similar to the situation under law -- property acquired during the marriage of a husband and wife is considered marital property.[5] If the husband predeceases his wife, she has the right under the custom of rimelel to take ⊥324 that property with her when she returns to her family. [6] Although in traditional times,

---

[3] "It is rebuttably presumed that a spouse who uses individual property to purchase household goods for the family unit makes a gift resulting in joint ownership." *Id.* Thus, it is the family use of the goods, rather than the source of the funds used to purchase them, that is most significant.

[4] It is worth noting, but need not be further addressed now, that a conclusion that the vehicles were Harold's separate property would still not resolve whether plaintiff or defendant should receive them upon his death. In the United States, the disposition of separate property (assuming, as here, the absence of a will) is governed by intestate succession statutes (of which Palau has none with respect to personal property, *see* 39 PNC § 102), or by the common law or statutory right of dower. *See generally* 23 Am. Jur. 2d *Descent and Distribution* §§ 115-120 (1983 ed.), 25 Am. Jur. 2d *Dower and Curtesy* § 1 (1996 ed.).

[5] As one expert explained, in traditional times, it was understood that the husband worked to earn money and the wife then kept and controlled it. Thus, if anything, traditional Palauan custom was, if anything, more egalitarian in its concept of marriage than was English and American common law, which generally did not allow married women to own or control property until last century, *see Husband and Wife, supra*, § 18; and which as recently as forty years ago presumed that household goods jointly possessed were owned by the husband. *See Wagner v. Wagner*, 293 P.2d 224, 225 (Or. 1956), *overruled by Remington v. Landolt*, 541 P.2d 472, 481 n.4 (Or. 1975).

[6] This principle may be limited to property not discussed at the husband's eldecheduch, although the Court understood one expert to say that such property could not be discussed in any event. Since it is undisputed that there was no discussion of the vehicles at the eldecheduch for

rimelel involved primarily kitchen implements, it has been understood and applied in modern times to include all household goods, including such items as TV's, VCR's and furniture that obviously were not part of a traditional Palauan household.[7]

The vehicles at issue here were indisputably purchased during the marriage of Marie and Harold. Defendant nevertheless resists the conclusion that plaintiff has a right to take them on two grounds: that motor vehicles are different, and that, even if not, plaintiff forfeited her right to claim them. The Court finds neither argument persuasive.

As to the first, although defendant's expert attempted to draw an analogy between cars and canoes, the Court agrees with plaintiff that the comparison is inapt. Simply put, while it is clear that canoes were traditionally considered men's property, the same cannot be said of cars today. It is self-evident that men and women both own and drive cars and it is undisputed that both vehicles here were operated by both husband and wife. [8] Cars and trucks are likely to be among the most valuable of a couple's possessions; nevertheless, the Court sees no basis to treat them differently from other marital property.

⊥325 It was also argued that plaintiff lost her right to take the two vehicles because she left the marital home and returned to her family before the mourning period was completed. The Court does not believe it necessary to discuss the circumstances of that departure. Simply put, the Court is not convinced that any such forfeiture is required as a matter of Palauan custom. That defendant's expert had never heard of a situation as that presented here makes it difficult, if not impossible, for the Court to discern "those elements of certainty, generality, fixedness, and uniformity, as are recognized by the law as essential to constitute a custom." *Shipley v. Pittsburgh and L.E.R. Co.*, 83 F. Supp. 722, 749 (W.D. Pa. 1949) *quoted with approval in Udui v. Dirrecheteet*, 1 ROP Intrm. 114, 116 (1984). One of plaintiff's experts agreed with the abstract proposition that once a wife leaves with her rimelel, she does not go back to the marital home. Given his subsequent testimony, however, this answer is best understood as expressing a tautology, *i.e.*, that once a wife has taken all of her things, she has no reason to go back for more. When asked directly, the witness was quite emphatic that there was nothing to prevent a wife, as happened here, from taking some of her things and returning or sending her relatives to retrieve the remainder.

A final word should be said about the custom of mad el chad, by which defendant claimed at least one of the vehicles as a memento of her lost son. On the Court's understanding

---

Harold, the Court need not reach any conclusion as to the existence or extent of any such limitation.

[7] Defendant's counsel correctly pointed out at oral argument that each of the experts inquired into the couple's living arrangements. As the Court understood the testimony, however, the situation here -- Harold and Marie were living in a house owned by defendant, but not in defendant's home -- did not warrant different treatment under custom. To the Court's understanding, there might well be a different result if they were living with defendant and using *her* household items.

[8] Indeed, it was defendant's contention that one of the vehicles at issue was purchased particularly for plaintiff's use.

of the expert evidence, including the testimony of defendant's expert, the retention of some item of a deceased's property is not a matter of right, but is a subject for peaceful discussion. If such discussion is not possible -- as, regrettably, was the case here -- there was unanimous agreement that custom had no further role to play: Custom cannot patch up a relationship between two people. Thus, it appears to the Court that, at best for defendant, Palauan custom simply does not provide any direction for the Court to resolve this dispute.

Because the law favors plaintiff and because custom either does the same or is inconclusive, the Court concludes that judgment should be entered in her favor.