Fritz v. Blailes, 6 ROP Intrm. 62 (1997)
LTELATK FRITZ and MARIA SILMAI,
Appellants,

v.

FRANCISCA BISMARK BLAILES,
Appellee.

CIVIL APPEAL NO. 2-95
Civil Action Nos. 387-9 and 395-91 (Consolidated)

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: February 6, 1997

Counsel for Appellant Fritz: David J. Kirschenheiter (MLSC)

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:

INTRODUCTION

This appeal involves a dispute over the ownership of three pieces of Palauan money. The money consists of a bachel called Imetengel, a bleob called Mengungau, and a kldait with no name. These pieces of money were designated as PM1, PM2 and PM3 respectively by the trial court, and will retain that designation herein. The trial court found that PM1 was owned by appellee Francisca Blailes ("Blailes"), that PM2 was owned by Johana Derbai, a sister of Blailes, and that PM3 was owned by Kesewaol, a daughter of Blailes, with Blailes as trustee for both. We affirm in part and reverse in part.

⊥63 I.

PM1

The bachel known as Imetengel was the property of Scott Towai ("Scott"). Scott, who had obtained PM1 as children's money, pawned (olsirs) it to Delemel during the Japanese administration of Palau. He died toward the end of World War II without having redeemed PM1 from Delemel. After the time for redemption expired, Emaimelei Bismark ("Emaimelei")

obtained PM1 by "chasing" it (oltoir), paying Delemel $500 for it.

Emaimelei was Blailes' adoptive mother and Scott's sister. Emaimelei told Blailes that she was giving PM1 to her and, several months before Emaimelei died, she gave possession of it to Blailes.

The Trial Court held that Emaimelei became the owner of PM1 after obtaining it from Delemel. It then held that Emaimelei made an inter vivos gift of it to Blailes. Therefore, it held that Blailes was the owner of PM1.

Maria Silmai ("Silmai") claims that Scott had told her that PM1 would be given to her as children's money upon his death. Silmai was the biological daughter of Scott, but she was adopted by one of Scott's relatives shortly after her birth. The Trial Court found that the evidence was insufficient to support Silmai's claim. That finding was based largely on expert testimony that it would be a violation of Palauan custom, as well as a grave insult to the adoptive father, for an adopted child to receive children's money on the death of her biological father. Accordingly, the finding of the Trial Court that PM1 was not designated by Scott to be children's money for Silmai was not clearly erroneous.

Ltelatk Fritz ("Ltelatk"), is the biological daughter of Emaimelei's sister, Ucheliei, and was adopted by Ucheliei's mother. Ltelatk argues that PM1 became "house money", or lineage money, when Emaimelei successfully chased after it. Therefore, when she obtained possession from Delemel, she held the money in trust for her house, the Ngerdengoll lineage.

The Trial Court noted that the "expert [witness] stated that . . . once the redemption period for pawned property expires, the holder of the pawned property may sell the property to a sister of the pawner of the property and that upon the sale, the sister becomes the owner . . ." This statement resulted in its conclusion that "under Palauan custom Emaimelei could, and apparently did, decide to keep PM1 for herself."

⊥64 The flaw in the Trial Court's conclusion stems from the fact that the holder of the pawned money did not sell it to Emaimelei -- the Trial Court made a finding of fact that Emaimelei chased the pawned money. The undisputed expert testimony was that, if a person pawns Palauan money and dies without redeeming it, and then a family member obtains it by chasing it after the redemption period, the money becomes house money unless the person who pawned it had designated it as somebody's money before he died. The reason for this is that chased money returns to the original status it held before it was pawned. [1] If the owner who pawned the money

[1] The transcript quotations set forth on pages 1 and 2 of the dissent cast no doubt on the otherwise clear expert testimony. It is clear that when the expert answered those questions regarding the consequences of giving the lender U.S. money for the pawned money, he was referring to merukem, not oltoir. This is made clear from a question that just precedes the testimony quoted by the dissent:

Q. Tell me again the definition of merukem.

is deceased and had not designated it as anybody's money before he died, the money becomes lineage money.[2]

⊥65 The Trial Court found that Scott had not designated PM1 as children's money for Silmai. It further found that Emaimelei chased, or oltoir, PM1 after the redemption period had expired. Viewing the record as a whole, we are left with the firm conviction that the Trial Court erred in finding that there was clear and convincing evidence that, under Palauan custom, PM1 became the property of Emaimelei rather than the lineage, and we therefore view the finding as clearly erroneous.[3]

> A. You can say that, uh, if you have a Palauan money and I could ask you, uh, how much U.S. dollars is your money? And if he says, a hundred dollars, I give him hundred dollars and I take the money. You, you take the money in exchange, you don't buy it.

(Tr. Vol. III, p. 188). Any lingering confusion is cleared up at the end of the expert's testimony:

> Q. . . . If I understand you, though, when a sister goes to oltoir [pawned money], it returns to, that means it returns to the status it was before the parting which would mean it goes back to the person who had it whether it was that sister or somebody else. Is that correct?
>
> A. That's correct. She goes to bring the money to the . . . original status of the money.
>
> (Tr. Vol. IV, p. 23).

[2] The expert testimony was that only a member of the family can oltoir pawned money. Anyone can merukem the money. If, instead of oltoir, or chasing it, the money is obtained by merukem or the exchange of other money for it, it becomes the property of the person who merukem it. The record amply supports the Trial Court's finding that Emaimelei oltoir PM1.

[3] We do not suggest that findings must always be consistent with uncontradicted expert testimony. Contrary findings may be stem from plausible bases such as a finding that the expert's testimony lacked credibility on certain points. Yet, these bases are not set forth in the record here. *See Udui v. Dirrecheteet*, 1 ROP Intrm. 114 (1984) (clear record necessary for appellate review of custom); *Ngiratulemau v. Merei*, 6 TTR 245 (Tr. Div. Palau Dist. 1973).

II.

PM2

The Palauan money referred to as PM2 was owned by Emaimelei. The Trial Court found that Emaimelei had, on several occasions, expressed her intention to give PM2 to Johana, Blailes' sister. She called them together and told them that Blailes would hold PM2 for Johana until Emaimelei's death. The money was put in Emaimelei's safe, and Emaimelei gave Blailes the combination to the safe. The Trial Court held that these actions amounted to an inter vivos gift of PM2 to Johana. Ltelatk claims that Emaimelei told her that PM2 would become lineage money after her death.

Based upon the record before us, we cannot say that the finding that Emaimelei gave PM2 to Johana was clearly erroneous. There was evidence that Emaimelei intended to make the gift, and the placement of the money in her safe, coupled with giving the combination of the safe to Blailes, constituted delivery of the gift. 38 Am. Jur. 2d Gifts § 23.

III.

PM3

PM3 was owned by Emaimelei's husband. He had received it as bus for the marriage of their daughter, Johana. The Trial Court found that Emaimelei's husband placed PM3 around the neck of Blailes' daughter, Kesewaol, when she was four or five years old ⊥66 and said "This will be your money." Blailes kept the money until Kesewaol was eight years old, when Kesewaol started wearing it. At the time of Emaimelei's death, PM3 was in her safe, the same safe to which she had given the combination to Blailes. The Trial Court held that PM3 had been given to Kesewaol. Ltelatk claims that Emaimelei had intended that the money become lineage money upon her death.

Ltelatk's claim requires proof that PM3 was owned by Emaimelei. That was never proven. In any event, there was sufficient evidence to support the Trial Court's finding of a gift to Kesewaol under the clearly erroneous test.

CONCLUSION

The Trial Court's holding that PM1, Imetengel, is the property of Blailes is REVERSED, and the case is remanded for entry of judgment declaring the Ngerdengoll lineage to be the owner. The
Trial Court's holding with respect to PM2 and PM3 is AFFIRMED.

MILLER, Justice, concurring in part and dissenting in part:

I concur in parts II and III of Justice Beattie's opinion for the majority and with part I to the extent that it upholds the trial court's rejection of Maria Silmai's claim to PM1. I agree that the findings of fact with respect to that claim and those underlying the decisions as to PM2 and

PM3 are not clearly erroneous. I believe, however, that the decision as to PM1 should also be upheld, and would affirm the trial court's judgment in its entirety.

The majority is quite right that there is support in the record for the proposition that PM1, when it was chased (oltoir) by Emaimelei after Scott's death, became family property. There is also expert testimony, however -- confusingly from the same expert -- that supports the trial court's conclusion that Emaimelei was entitled to keep the money as her own and to give it to her daughter, Francisca Blailes.

Recounting the circumstances of Emaimelei's recovery of the ⊥67 money in its own questioning of the expert witness,[4] the trial court elicited the following responses:

> "Q: Well, she gets the Palauan money from the lender by giving the lender U.S. money after the redemption period has expired, who owns it then?
>
> A: If the redemption has expired and . . . the sister brings the money, and the lender tells her that the redemption is expired and . . . it will cost you two thousand dollars even though it was previously for a thousand dollars. If you give him two thousand dollars, you get the money.
>
> Q: And . . . the sister then would own it?
>
> A: Yes." (III 188-89)

The court asked the same question a little later, and got the same answer:

> Q: Assume that a brother has pawned money, Palauan money. The redemption period has expired. Can the sister of the brother give U.S. money for the Palauan money, receive the Palauan money, and keep it for herself?
>
> A: Yes, that's possible.
>
> Q: And is that consistent with Palauan custom?
>
> A: Yes . . . the redemption had expired, and as a sister, she takes the money and it depends on her whether she gives it to her brother or she can keep it. (III 198)

It is possible, as the majority surmises, that in answering ⊥68 these questions, the expert had in mind the concept of merukem rather than oltoir, and that his answers were limited, albeit

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[4] The trial court found that Emaimelei had paid $500.00 to chase PM1 with money that had been saved by her and her husband. *See* Decision at 4, Findings of Fact Nos. 26-28. Those findings have not been challenged. The court having accurately (and without characterization) presented these facts to the witness, I do not attach any significance to its having characterized the transaction at one point in its opinion as a "sale".

without saying so, to the former situation. It is not clear to me that that was the case [5] and, more important, it seems to me that neither my interpretation of the transcript -- nor the majority's -- should be dispositive. "Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Riumd v. Tanaka* , 1 ROP Intrm. 597, 602 (1989) (quoting *Anderson v. City of Bessemer City* , 105 S.Ct. 1504, 1511 (1985)). As we have repeatedly stated the rule: "if the trial court's findings of fact are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless this Court is left with a definite and firm conviction that a mistake has been committed." *E.g., Umedib v. Smau* , 4 ROP Intrm. 257, 260 (1994). I cannot say that it was unreasonable for the trial court to have concluded that "under Palauan Custom Emaimelei could and apparently ⊥69 did decide to keep PM1 for herself", Decision at 18, or, more to the point, that Fritz had not clearly and convincingly shown otherwise. *Id.* at 7, Finding of Fact No. 54. [6] Nor am I definitely and firmly convinced that a mistake has been committed. I simply do not know, and, because of my uncertainty, believe the proper course is to affirm.

I respectfully dissent from the portion of the judgment that reverses the trial court's

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[5] Immediately after the first passage excerpted above, the expert appeared (at least to me) to say that his answer would be the same if the hypothetical were changed and the sister chased the money during the redemption period:

> "A: If the redemption is not expired, and the sister redeemed the money, she and her brother . . . will discuss . . . about the chasing the money, and if she chase the money, she can get it.
>
> * * *
>
> Q: Could she keep it for herself?
>
> A: . . . [I]t would be in the same situation." (III 189)

This is significant to me for two reasons. First, since it was the expert who used the word for "chase," it seems doubtful that he had interpreted the previous questions differently. Second, while the logic of customary law is not always discernible to a Westerner, it seems to me not unreasonable for the trial court, in interpreting the whole of the expert's testimony, to have found that if Emaimelei was entitled to keep money that she chased during the redemption period, she should be equally (if not more) able to do so after the redemption period had expired. *See also* III 179-81 (testifying that a sister keeping money she had redeemed might cause "hard feelings" but would not violate custom).

[6] As I see it, although Blailes was a plaintiff, it was Fritz who bore the burden of proof on the customary issue. Without evidence of custom, Blailes clearly prevails: Her mother, using her own money, acquired a piece of Palauan money from a pawnbroker after the redemption period had expired and gave it to her. *See* n.1 *supra*. Thus, whether the customary evidence points in Blailes' direction or is simply inconclusive, we should affirm. We should reverse only if we can conclude -- as I do not believe we can -- that any reasonable trier of fact would have found that the customary evidence clearly and convincingly favored Fritz.

disposition as to PM1.