

In re Kubarii, 7 ROP Intrm. 27 (1998)
IN THE MATTER OF THE ESTATE OF KOTARO KUBARII.

CIVIL APPEAL NO. 41-97
Civil Action No. 289-92

Supreme Court, Appellate Division
Republic of Palau

Submitted on the Briefs.¹
Issued: March 17, 1998

Counsel for Appellant: David J. Kirschenheiter, Esq.

Counsel for Appellee: Johnson Toribiong, Esq.

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; and R. BARRIE MICHELSEN, Associate Justice.

PER CURIAM:

In July 1992, appellant Zacheus Kotaro filed a petition asking the court to appoint him as the administrator of his deceased father's estate. Several months later, the decedent's brother, Ibelas Kubarii, filed a similar petition seeking to be appointed the administrator of the estate. On February 23, 1996, the Trial Division awarded Kubarii, as the representative of Oirremch Lineage, a number of lands owned by the decedent. Appellant filed an appeal, but abandoned it and on May 23, 1997, filed a motion to set aside the judgment pursuant to ROP R. Civ. P. 60(b)(6). Attached to the motion was a **128** purported "Last Will and Testament of Kotaro Kubarii" that left the disputed lands to appellant and two of his brothers. According to appellant, he found the will only after he had been instructed to look for it by his appellate counsel.

The Trial Division denied appellant's motion, holding that Rule 60(b)(6) is intended to cover "unforeseen contingencies" and that a motion to reconsider based on newly discovered evidence must be filed pursuant to ROP R. Civ. P. 60(b)(2). The court determined that even if appellant had filed his motion pursuant to Rule 60(b)(2), it would have been rejected as untimely. *See Secharmidal v. Tmekei*, 6 ROP Intrm. 83, 85 (1997) (Rule 60(b)(2) motion must be filed within one year after judgment). In addition, the court found that although appellant had alleged that his attorney had failed to advise him to look for the will, an attorney's negligence is never a ground for Rule 60(b) relief. Shortly thereafter, appellant filed this timely appeal.

Appellant's sole argument is that the Trial Division erred by not allowing him to seek reconsideration of the judgment on the ground that his attorney was negligent. Appellant acknowledges that the Appellate Division has held that Rule 60(b) does not permit relief from judgment because of an attorney's inexcusable neglect. *See Doe v. Doe*, 6 ROP Intrm. 221

¹ Because oral argument would not materially assist the Court in resolving this appeal, we are considering this appeal on the briefs alone. *See* ROP R. App. Pro. 34(a).

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(1997). However, appellant contends that *Doe* was decided incorrectly and that we should take this opportunity to reverse that opinion. We see no reason to alter our holding in *Doe*. Accordingly, appellant's appeal is DENIED.