Nakamura v. Markub, 8 ROP Intrm. 39 (1999)

TAKATARO NAKAMURA,
Appellant,

v.

REMOKET MARKUB,
Appellee.

CIVIL APPEAL NO. 98-39
D.O. No. 3-192

Supreme Court, Appellate Division
Republic of Palau

Decided: September 7, 1999[1]

Counsel for Appellant: David J. Kirschenheiter

Counsel for Appellee: Raynold B. Oilouch

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

PER CURIAM:

This appeal from the Land Court concerns a parcel of land in Ngaraard State, designated as Tochi Daicho Lot 764 and registered in the name of Markub, who died in 1967. Appellant is Markub's brother, while Appellee is the natural son of Markub's second wife. The Land Court found that Markub adopted Appellee, and awarded the land to him pursuant to the terms of Palau District Code § 801.

Appellant challenges the Land Court's determination on several grounds. Appellant's primary argument is that Appellee was not adopted by Markub, but merely his stepson, and that Appellee was required to prove his customary adoption by clear and convincing evidence. We disagree. The clear and convincing standard applies only to a party trying to establish the existence of a custom, *Ngiraremiang v. Ngiramolau*, 4 ROP Intrm. 112, 115 (1993), and we have already held that "there is no question that Palauan customary adoption exists." *In re Estate of Delemel*, 4 ROP Intrm. 148, 150 (1994). Thus, the question of whether Markub adopted Appellee is simply a question of fact, to be resolved by reviewing the record as a whole. *Id.; Ngiraremiang*, 4 ROP Intrm. at 115. In reviewing such a factual determination, this Court will only reverse the Land Court if the Land Court's decision is clearly erroneous. *Tesei v. Belechal*, 7 ROP Intrm. 89 (1998); *Masters v. Paulis*, 7 ROP Intrm. 148 (1999).

[1] We have reviewed the briefs and record and find this case is suitable for resolution without oral argument pursuant to ROP R. App. Pro. 34(a).

The record as a whole contains several facts that support a finding that Appellee was adopted by Markub. The record reflects that Markub's first wife died during World War II, and that at some point soon thereafter, Markub married a woman from Kayangel who already had two children. Both Markub and the children considered themselves to be father and sons: the Appellee testified at the hearing that he "became [Markub's] son," and repeatedly referenced Markub as "my father," and a third-party witness testified to hearing Markub stating that "I'm married in Kayangel and have children," and that "should any of my children come to Ngaraard some day, see to it that he is settled on one of these properties." The record indicates that Markub lived with Appellee as his father from Appellee's earliest years until Markub's death ⊥40 when Appellee was about 16 years old. [2] Appellee took Markub's name as his own, and other people in the community recognized Markub as Appellee's father; claimant Mitsuo Klewei testified that Appellee and his brother Hatchins "became [Markub's] children." Furthermore, after Markub died, an eldecheduch was held where Appellee and Hatchins received Palauan money contributed by Markub's sister. In light of the close relationship between Markub and the children from Kayangel, Klewei testified that "it was decided that the children of Markub from Kayangel will remain with Markub's relatives as their children should they want to give them anything in the future."

Taken together, these facts, like those in *In re Estate of Delemel* , establish that Appellee was customarily adopted by Markub. The Land Court's finding to this effect was not clearly erroneous, and is therefore affirmed. Since Markub died intestate at a time when Palau District Code § 801(c)[3] was in effect, *Wally v. Sukrad*, 6 ROP Intrm. 38, 39 (1996) (§801 was enacted in 1959), his property passes to his oldest male child.[4]

Since the Land Court's findings of fact that Appellee was adopted by Markub are not clearly erroneous, the Land Court's determination is hereby AFFIRMED.

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[2] Appellant testified that Markub lived with the woman from Kayangel for only about two years before he died. The Land Court rejected this testimony, finding that Markub died in 1962.

[3] Markub's death in 1962 predated the 1975 amendments to Palau District Code § 801 that instituted differing treatment for property depending on whether it was purchased for value or not. Under the terms of the unamended statute in effect in 1962, all real property of an intestate passed to the oldest male child of sound mind, natural or adopted.

[4] We reject Appellant's contention that § 801 somehow violates Art. V, Sec. 2 of the Palau Constitution, which states that "in case of a conflict between a statute and traditional law, the statute shall prevail only to the extent it is not in conflict with the underlying principles of traditional law." We merely note that the Palau Constitution did not exist in 1962, at the time of Markub's death. We apply the law in effect at the time of his death. *Wally v. Sukrad*, 6 ROP Intrm. 38, 39 (1996).