

*Nobuo v. Ngiraked*, 8 ROP Intrm. 226 (2000)  
**BELMAI NOBUO, on behalf of the  
children and heirs of Ngirabiol,  
Appellant,**

v.

**DAVE NGIRAKED, JACKSON NGIRAINGAS,  
and JOHN DOES 1 to 5,  
Appellees.**

CIVIL APPEAL NO. 99-40  
Civil Action No. 522-96

Supreme Court, Appellate Division  
Republic of Palau

Decided: October 16, 2000<sup>1</sup>

Counsel for Appellant: J. Roman Bedor, T.C.

Counsel for Appellee Ngiraked: William Ridpath

BEFORE: LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice;  
DANIEL N. CADRA, Senior Land Court Judge.

PER CURIAM:

This is an appeal from the Trial Court's award of lots in Peleliu following a trial, where the Trial Court stated the findings of fact and conclusions of law in open court on the record, and did not issue a written opinion to accompany the judgment. That portion of the record was apparently not transcribed, and Appellant now asks this Court to remand the case for a new trial. Because counsel had a duty to ensure that all of the relevant portions of the transcript were available, and should have requested the missing portion, we affirm the Trial Court's judgment.

There is no dispute that the land at issue belonged to Ngirabiol, who died in the early 1970s. Defendant Dave Ngiraked ("Ngiraked") is the son of Ngeschedil, Ngirabiol's daughter. The plaintiff is Ngirabiol's daughter Nobuo, who brought suit on behalf of the children and heirs of Ngirabiol against Ngiraked and those to whom Ngiraked had sold some of the land. At trial, the main issues were whether Ngirabiol had adopted Ngiraked as his own son and thus Ngiraked properly inherited the land as Ngirabiol's only son, and whether Ngiraked had obtained by fraud a document whereby the daughters of Ngirabiol agreed to transfer the land to Ngiraked. Both parties testified and presented witnesses whose testimony was favorable to each side. The Trial

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<sup>1</sup> Because the panel has determined that oral argument would not materially assist the Court in resolving this appeal, we are considering this appeal on the briefs. ROP R. App. Pro. 34 (a).

Court's judgment simply stated: "For reasons stated in open court, judgment is entered in favor of all Defendants."

The plaintiff appealed, and in the notice of appeal, "designate[d] the entire records of the trial below and, therefore, respectfully requests that the records of the trial be transcribed and certified, including all the exhibits . . . ." Nonetheless, it is clear that only the testimony of the parties and witnesses was transcribed. Neither the closing arguments nor the trial court's announcement of its findings and conclusions are included in the transcript.

Appellant argues that the trial court is required by the Palau Rules of Civil Procedure to state findings of fact and conclusions of law so that the appellate court can review the decision, and its failure to do so results in a judgment unsupported by a proper record. Appellant asks this Court to remand the case for a new trial so that the record will be complete for appeal.

**¶227** Palau's Rule 10 of Appellate Procedure provides that "any party desiring to raise an issue on appeal depending on the whole or any part of the testimony of evidence adduced in the trial court shall request in writing that a transcript be made of such testimony and evidence." ROP R. App. Pro. 10(b). The Rule further provides that "[i]f any party considers that the record as assembled by the Clerk of Courts is inaccurate or incomplete in any important respect, he or she shall notify the other parties of the alleged error or omission and endeavor to secure written agreement as to what correction or addition should be made in the record." *Id.* R. 10(e).

The fact that the transcript does not contain the trial court's findings of fact and conclusions of law does not mean that the trial court did not make any, thus rendering the decision unreviewable. It is not that a critical portion of the transcript is missing that is fatal to the appeal, but rather that Appellant did not provide this Court with the necessary material to ensure review. Whether the trial court's findings and conclusions were simply not transcribed, or the tape containing that material was missing, it was Appellant's duty to ensure that the record on appeal was complete. *See* ROP R. App. Pro. 10(e) (requiring a party to notify the Clerk of Court if the record is incomplete, and detailing the steps for reconstructing a record if needed).

To the extent that Appellant contends that Ngiraked was in a confidential relationship with the parties to the document in question and suggests that the signers of the document were therefore subject to undue influence, there was no evidence in the record to support a finding of a confidential relationship. An aunt-nephew relationship is not inherently a confidential relationship; other factors establishing a subservient/dominant relationship must be shown. *See Lopacich v. Falk*, 5 F.3d 210, 213 (7th Cir. 1993) (to establish a fiduciary relationship, plaintiff must show she reposed confidence in the defendant, and the defendant had influence and superiority over her, considering disparities of age, health, mental condition, education, and trust the subservient person has put in the dominant party; brother-sister relationship not fiduciary where no trust reposed); *see also Labram v. Havel*, 43 F.3d 918, 921 (4th Cir. 1995) (brother-in-law did not have a fiduciary relationship to minor who lived with him temporarily).

We AFFIRM the judgment of the Trial Court.