

Kerradel v. Elbelau, 8 ROP Intrm. 36 (1999)

SESARIO KERRADEL,

Appellant,

v.

MASAMI ELBELAU,

Appellee.

CIVIL APPEAL NO. 98-14

D.O. Nos. 3-51 and 3-52

Supreme Court, Appellate Division
Republic of Palau

Argued: August 18, 1999

Decided: September 3, 1999

Counsel for Appellant: Moses Uludong

Counsel for Appellee: Oldiais Ngiraikelau

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice;
R. BARRIE MICHELSEN, Associate Justice.

BEATTIE, Justice:

This is an appeal from a determination of ownership issued by the Land Court. In 1984, Appellant Kerradel, one of six children, was appointed Administrator of lands formerly owned by his deceased father in Ngaraard State, Tochi Daicho Lots 801 and 802. (The actual heirs to the land were not determined in the estate proceeding.) Two months later, when Kerradel approached Appellee Elbelau, offering to sell the land in exchange for Elbelau canceling debts that Kerradel had accumulated in Elbelau's store, Elbelau inquired as to Kerradel's authority to sell the property. Although there is conflicting testimony in the record concerning 137 Kerradel's response,¹ the parties entered into an agreement by which Elbelau would purchase the land for \$5,835, and would retain \$5,000 of the sum as satisfaction of Kerradel's debts. Kerradel issued a quitclaim deed to the property, along with an affidavit, signed by himself and his two older brothers, warranting that the properties "are free from any and all claims by any person or persons other than us," and received the \$835 excess payment in cash.

Five years later, Kerradel filed a claim before the Land Claims Hearing Office, seeking

¹ Kerradel testified that Elbelau agreed to obtain the signatures of the other siblings on the deed. Elbelau testified that Kerradel stated that there were several other siblings who also had ownership interests in the properties, but that since he and his brothers were the oldest, the younger children will have to abide by their wishes.

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title to the properties in question on behalf of himself and his siblings. Elbelau also filed a claim, asserting ownership by virtue of the quitclaim deed. At the hearing, Kerradel argued that his three younger siblings had not consented to the sale, and claimed that, as Administrator, he lacked the legal authority to enter into a sale without the court's permission, and that the sale should therefore be declared void. ² None of the three younger siblings filed any claim or appeared at the hearing, but Kerradel did offer into evidence a 1996 memorandum assertedly sent from them to him, explaining their objections to the sale.

The Land Court found that none of the children besides Kerradel had authority to discuss the lands, and that the lands did not belong to the siblings. Rather, the Land Court found that the properties were owned by Elbelau pursuant to the quitclaim deed. Kerradel now appeals.

We review the Land Court's findings of fact under a "clearly erroneous" standard. *Masters v. Paulis*, 7 ROP Intrm. 148 (1999); *Tesei v. Belechal*, 7 ROP Intrm. 89 (1998). Under that standard, we will usually defer to the lower court's findings regarding the credibility of witnesses. *Lakobong v. Anastacio*, 6 ROP Intrm. 178, 181 n.6 (1997).

Here, the Land Court was presented with a credibility issue. On the one hand was Kerradel's and his older brothers' sworn statements in the affidavit that they had full authority to convey title to the land. On the other hand was Kerradel's testimony at the hearing that the younger siblings did not consent to or authorize the sale, and an unsworn memorandum by them to that effect. On the facts before it, we cannot say that the Land Court erred in accepting the representations in the affidavit--that Kerradel had the family's authorization to dispose of the property--over the hearsay assertions that the younger siblings disapproved of the sale. While the rules of evidence do not apply in Land Court cases, the Land Court may consider the nature of the evidence before it in weighing credibility. *Osarch v. Wasisang*, 7 ROP Intrm. 82, 83 (1998). Here, the Land Court gave greater weight to the sworn statements in the notarized affidavit were more persuasive than the unsworn statements made by parties who did not appear at the hearing to authenticate their own writing. Moreover, the Land Court was entitled to give stronger weight to the affidavit, a document L38 that was drafted contemporaneously with the challenged transaction, than to the memorandum, which was written nearly eight years after Kerradel had already filed a claim that sought to repudiate the sale ³ and only a short time after Elbelau had filed an opposing claim relying on the sale.

On these facts, we cannot say it was error for the Land Court to credit the assertions in the sworn affidavit over the self-serving testimony of Kerradel, *Ongklungel v. Uchau*, 7 ROP Intrm. 192, 194 (1999) (finder of fact not required to credit even uncontradicted testimony), and

² Despite his claim that the sale is void, nothing in the record indicates that Kerradel has ever made any effort to return the \$5,835 to Elbelau.

³ Indeed, the timing of Kerradel's filing of his claim before the LCHO casts doubt on his assertion that the claim was filed with the knowledge and at the request of his other siblings. Presumably, if the siblings asked him to file the claim to the land in 1988, he would have informed them at that time that he had already sold the land to Elbelau. Since the siblings claim to have learned about the sale in 1996, it is reasonable to believe that Kerradel filed his 1988 claim on their behalf without consulting them.

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the contents of the unsworn memorandum from the siblings alleging that he never had such authority.

Since the Land Court was permitted to believe the contents of the affidavit over the conflicting claims that the younger siblings did not authorize the sale, it was justified in finding that Kerradel had full authority to convey the lands to Elbelau at the time of the sale. Based on the combination of Kerradel's authority to sell the lands, and the uncontradicted evidence that Kerradel did, in fact, sell the lands to Elbelau, the Land Court's finding that the land does not belong to any of the siblings was not error. Therefore, the decision of the Land Court is **AFFIRMED**.