

Remeskang v. Eberdong, 9 ROP 59 (2002)
KIKUO REMESKANG,
Appellant,

v.

ALBERT EBERDONG,
Appellee.

CIVIL APPEAL NO. 00-19
LC/N 00-276

Supreme Court, Appellate Division
Republic of Palau

Decided: March 1, 2002

[1] **Appeal and Error:** Substitution of Parties; Dismissal of Appeal

Unlike Civil Rule 25, Appellate Rule 43 does not establish a timetable for substitution or provide grounds for dismissal.

Counsel for Appellant: David Kirschenheiter

Counsel for Appellee: Oldiais Ngiraikelau

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; KATHLEEN M. SALII, Associate Justice.

PER CURIAM:

[1] Before the Court is Appellee's motion to dismiss this appeal. Appellee asserts that dismissal is warranted under the terms of ROP R. Civ. Pro. 25 because Appellant has been deceased for over a year and no successor has been designated. Appellee's argument fails, however, because this case is already on appeal. Consequently, ROP R. App. Pro. 43 **160** rather than ROP R. Civ. Pro. 25 controls.¹ Rule 43 provides that "[u]pon the death . . . of a party to an appeal . . . the personal representative of the deceased party may be substituted as a party on motion filed by the representative or any party." Unlike ROP R. Civ. Pro. 25, Rule 43 does not establish a timetable for substitution or provide grounds for dismissal. Indeed, Rule 43 is also

¹Even were Rule 25 to apply in this case, Appellee's argument rests on a misreading of the rule. In relevant part, Rule 25 provides that "[u]nless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death . . . the action shall be dismissed as to the deceased party." Rule 25(a)(1) (emphasis added). In other words, Rule 25's 90 day limitations period "is not triggered unless a formal suggestion of death is made on the record, regardless of whether the parties have knowledge of a party's death." *Grandbouche v. Lovell*, 913 F.2d 835, 836 (10th Cir. 1990). As Appellee's motion itself constitutes the first suggestion of Appellant's death upon the record, Rule 25's 90 day limitations period has not yet run.

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silent on what should happen upon a party's death in the absence of either a motion for substitution or a suggestion of the death upon the record. To this end, the Court finds instructive the following language from Federal Rule of Appellate Procedure's Rule 43(a)(1): "If the decedent has no representative, any party may suggest the death on the record, and the court of appeals may then direct the appropriate proceeding." The opposition to Appellee's motion filed by the late Appellant's counsel indicates that Appellant does not presently have a personal representative. Further, Appellee's motion clearly constitutes a suggestion of death upon the record. In light of the representations of Appellant's counsel and Appellant's son, made in the opposition to Appellee's motion, that Appellant's son intends to file a petition to settle Appellant's estate and to move to substitute himself as a party in Appellant's stead once he is appointed administrator, the Court is satisfied that this course of action, assuming it is timely implemented, is the appropriate proceeding and is adequate to render dismissal of the appeal unwarranted at this time. Appellee's motion is therefore DENIED.