

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

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2018 DEC 11 AM 9:25

SUPREME COURT
OF THE
REPUBLIC OF PALAU

ELENA TELLEI,
Appellant,
v.
CHILDREN OF KINSIANA BECHTEL, ERICA ELECHUUS,
and MARIANA WONG,
Appellees.

Cite as: 2018 Palau 28
Civil Appeal No. 18-006
Appeal from Civil Action No. 11-231

Decided: 12/11, 2018

Counsel for Appellant..... J. Uduch Sengebau Senior
Counsel for Appellees..... Vameline Singeo

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
JOHN K. RECHUCHER, Associate Justice
R. BARRIE MICHELSEN, Associate Justice

Appeal from the Trial Division, the Honorable Oldiais Ngiraikelau, Presiding Justice.

OPINION

PER CURIAM:

INTRODUCTION

[¶ 1] This appeal arises from the Trial Division’s Decision on remand to award a joint ownership interest in *Cheuang*, a property listed as the sole asset in Akiko Wong’s estate after her death intestate, to Wong’s grandchildren rather than to her adopted son, Kabitei Kimo Kee (“Kee”). The Trial Division determined that Wong’s grandchildren “are entitled to inherit Wong’s interest in and to the land known as *Cheuang*, described as Cadastral

Lot No. 045 B 20 (TD Lot 904-part), containing an area of 348 square meters, more or less, and located in Ikelau Hamlet of Koror State.” Judgment.

[¶ 2] The Court now **AFFIRMS** the Trial Division’s decision and judgment.

STANDARD OF REVIEW

[¶ 3] Appellant argues that the Trial Division “disregard[ed] the overwhelming evidence of Palauan custom” that Kee was Wong’s only adopted son and her proper heir. “Challenges related to the sufficiency of the evidence are questions of fact, which are reviewed for clear error.” *Ngeptuch Lineage v. Airai State*, 20 ROP 64, 65 (2013). The Trial Division’s determinations “will not be set aside if they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, unless this Court is left with a definite and firm conviction that a mistake has been made.” *Rengulbai v. Baules*, 2017 Palau 25 ¶ 5.

FACTUAL BACKGROUND

[¶ 4] The factual background of this case was adequately set out in the first appeal of this case, *Kee v. Ngiraingas*, 20 ROP 277, 278 (2013), and is repeated below:

Two sisters, Akiko Wong (“Wong”) and Huyuko Eledui (“Eledui”), owned a piece of property together called *Cheuang*. Wong had four children: Kinsiana Bechtel (“Bechtel”), Erica Elechuus (“Elechuus”), Mariana Wong (“Mariana”), and Kabitei Kimo Kee (“Kee”)^[1]

In 1996, Wong’s sister Eledui transferred her interest in the property to Wong’s son, Kee. A Certificate of Title soon issued showing that Wong and Kee jointly owned *Cheuang*. Wong died one year later, in 1997. For the next several years, Kee treated *Cheuang* as his property, living on it, improving it, renting it, and ultimately selling [his interest in] it. No one sought to intercede or affect these decisions in any way.

¹ Mariana and Kee are Wong’s adopted children, and Kee was Wong’s only son. All of the children are now deceased. All except Kee have surviving children.

In 2003, Kee sold [the] interest in the property [conveyed to him by Eledui] to Adalbert Eledui (“Adalbert”), who was married to Elena Tellei (“Tellei”). An updated Certificate of Title was issued listing Wong and Adalbert as joint owners of *Cheuang*. Adalbert [sic] treated the property as his own, also without objection by anyone.

PROCEDURAL BACKGROUND

[¶ 5] In 2011, Terry Ngiraingas brought suit as administratrix to settle Wong’s estate. The Trial Division appointed Ngiraingas as temporary administratrix. She then gave notice to the public of her intent to probate the estate. Kee filed a timely notice of claim, but argued that the estate’s only asset, *Cheuang*, was not actually an estate asset. He claimed that Wong transferred the property to him through an oral conveyance prior to her death in 1997 and that he subsequently sold the property to the Appellant’s husband in 2003. When Appellant’s husband died, Kee argued, Appellant became the sole owner of the property.

[¶ 6] The Trial Division found that the property was jointly owned by Appellant and Wong’s estate because an oral transfer would have violated the statute of frauds. The Trial Division further appointed Ngiraingas as permanent administratrix and directed her to administer the estate for Wong’s beneficiaries. It, however, did not determine who the beneficiaries of Wong’s estate were, leading Appellant to file her first appeal.² Appellant appealed the Trial Division’s rejection of her argument that Kee was the only of Wong’s children to have an interest in *Cheuang*, its failure to consider her objection to Ngiraingas’s appointment as permanent administratrix, and its failure to identify Wong’s heirs with particularity.

[¶ 7] This Court found that the Trial Division did not err in rejecting Appellant’s contention that Kee was Wong’s only child to have an interest in *Cheuang*, but we reversed, remanding the other two issues to the Trial Division. We determined that Appellant’s objection to Ngiraingas’s appointment as permanent administratrix was not untimely, thus requiring the Trial Division to consider the objections. We further determined that the Trial

² Appellant and Kee appealed, but for ease of reference, we refer to Appellant only.

Division erred in prematurely closing the estate without determining a class of proper heirs and without providing more specific direction to the administratrix on closing the estate. *Kee*, 20 ROP at 285. We also provided direction for the Trial Division in this respect. We explained that “the Trial Division should be guided by 25 PNC §§ 301(a)–(b) and *Marsil v. Telungalk ra Iterkerkill*, 15 ROP 33 (2008).” *Kee*, 20 ROP at 283.

[¶ 8] The Trial Division followed that direction in its decision on January 8, 2018.³ It received testimony at the remand hearing regarding Wong’s acquisition of the land and determined that she was not a *bona fide* purchaser for value because her father had given the land to her and Eledui. It determined that 25 PNC §§ 301(a)–(b) did not apply and thus analyzed the distribution of property based on custom. It determined that Wong’s proper heirs were her grandchildren. It followed several possible routes to this same outcome. It explained that, according to the customary expert, even though Wong’s son would have been generally entitled to inherit *Cheuang*, because he was an adopted child, Wong’s biological children could, and did, object to his inheriting the property. The Trial Division determined that that objection would bar Kee from getting the land. It further opined that, even if Kee or his estate were awarded the property, custom dictates that the land should go to his sibling’s children because Kee did not have children, and his sibling’s children are considered to be his close relatives. Finally, it also discussed the expert witness’s testimony explaining that, if Wong’s estate is not settled, Lucio Hidemi, her adopted brother could determine the proper disposition of her property. Hidemi testified that the property should go to Wong’s children and had no objection to it going to her grandchildren. The Trial Division concluded that Hidemi’s “determination and wishes provide an independent ground to award Wong’s interest to her grandchildren.” Decision 8.

[¶ 9] The Trial Division also determined that its appointment of Ngiraingas as permanent administratrix stood because, on remand, no one appeared on Kee’s behalf to pursue his objection to Ngiraingas’s appointment.

³ While this case was pending remand, Kee passed away on February 4, 2016.

[¶ 10] Appellant now appeals the Trial Division’s decision with respect to the identity of Wong’s heirs.

DISCUSSION

[¶ 11] Appellant contends that “the overwhelming evidence” shows that Kee was Wong’s only adopted son and thus her proper heir. Opening Br. 7. We find no clear error with the Trial Division’s rejection of Appellant’s argument and identification of Wong’s grandchildren, the Appellees here, as Wong’s proper heirs.

[¶ 12] The Trial Division determined that Kee was Wong’s only son, but it also determined, based on expert witness testimony, that he was an adopted son whose inheritance of property could be objected to by Wong’s biological children. Decision 8. It further concluded that the biological children objected. Appellant does not challenge the Trial Division’s conclusion of law in this respect. Rather, she concedes that the law is as the Trial Division described, but, without evidentiary or legal support, she argues that, because Kee did not receive money or other property from Wong’s biological children to replace *Cheuang* after they objected to his inheritance of the property, Kee inherited *Cheuang*.⁴

[¶ 13] The Trial Division found that because Wong’s biological children objected, the “objection bars [Kee] from getting the land.” Decision 8. That resulted in *Cheuang* either going to Wong’s grandchildren or it left the property issue unsettled. The Trial Division further concluded that, based on the expert witness’s testimony, “Lucio Hidemi, given his status as Wong’s adopted brother, can determine the proper disposition of Wong’s property if it is not settled.” *Id.* The Trial Division noted that Hidemi testified “that the property should go to the children of Wong and he had no objection if it went to her grandchildren.” *Id.* Either way, the Trial Division determined that the children of Kinsiana Bechtel, Erica Elechuus, and Mariana Wong, were her proper heirs. Decision 10.

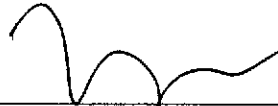
⁴ The expert witness testified that, when biological children object, it is their duty to provide the adopted child with money or property. Tr. 118:21–27. There is no evidence regarding what happens to the property if the biological children object and do not provide the adopted child with money or alternative property.

[¶ 14] As described above, the Trial Division based its decision on relevant evidence in the record from which “a reasonable trier of fact could have reached the same conclusion.” *See Rengulbai*, 2017 Palau 25 ¶ 5. As such, the Trial Division did not commit clear error in identifying Wong’s grandchildren as the proper heirs to Wong’s interest in *Cheuang*.

CONCLUSION

[¶ 15] For the foregoing reasons, we **AFFIRM** the Trial Division’s decision and judgment.

SO ORDERED, this ^{*}11 day of December, 2018.



ARTHUR NGIRAKLSONG
Chief Justice



JOHN K. REUCHER
Associate Justice



R. BARRIE MICHELSEN
Associate Justice