IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

KIKUKO NGIRAINGAS,
Appellant,
v.
ROMAN RIDEP,
Appellee.

Cite as: 2016 Palau 30
Civil Appeal No. 15-022
Appeal from Civil Action Nos. 10-217, 12-068

Decided: December 22, 2016

Counsel for Appellant .....Salvador Remoket
Counsel for Appellee .....J. Uduch Sengebau Senior

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

Appeal from the Trial Division, the Honorable Kathleen M. Salii, Associate Justice, presiding.

OPINION

PER CURIAM:

[¶ 1] This appeal involves a dispute about the ownership of land in Peleliu State known as *Ngetichirur*. Kikuko Ngiraingas claims to be the sole owner of *Ngetichirur* and seeks to eject Roman Ridep from the land. Roman claims that his mother, Kelbid, a sister of Kikuko, was one of several co-owners of *Ngetichirur* along with Kikuko, and that he and his siblings inherited Kelbid's interest in the land upon her death. The Trial Division issued judgment in Roman's favor. For the reasons below, we **AFFIRM**.[1]

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[1] Pursuant to ROP R. App. P. 34(a), we determine that oral argument is unnecessary to resolve this matter.

BACKGROUND

[¶ 2] The land known as *Ngetichirur* is located in Ngerchol Hamlet, Peleliu State.[2] The Tochi Daicho[3] listed *Ngetichirur* as the individual land of Ridep. Ridep and his children used *Ngetichirur* for decades. In 1975 one of Ridep's sons, Malchiyanged Ridep, arranged to have the Palau District Land Commission set boundary monuments for *Ngetichirur*.

[¶ 3] Ridep died in 1979. In June 1980, Malchiyanged filed a claim for *Ngetichirur* with the Land Commission. Malchiyanged claimed the land on behalf of Ridep's children, specifically himself, Ngirngelitel Ridep, Kelbid Ridep, Omekedelad Ito, Kikuko Ngiraingas, Delbotb Kebekol, Siwei Ridep, and Dilboi Suzuki. Malchiyanged claimed the siblings owned *Ngetichirur* as tenants in common. In August 1983, while the claim was pending, Kelbid Ridep passed away.

[¶ 4] Claims for *Ngetichirur* were heard in 1990 before the Land Claims Hearing Office ("LCHO").[4] The LCHO issued a decision on November 23, 1990. The decision stated that *Ngetichirur* was owned as a "tenancy in common" by the siblings named by Malchiyanged. *See* Decision, LCHO File No. 13-194-88, at 5 (November 23, 1990). The day of the decision, the LCHO issued a "Determination of Ownership" stating "that Malchiyanged Ridep, Ngirngelitel Ridep, Kelbid Ridep, Omekedelad Ito, Kikuko Ngiraingas, Delbotb Kebekol, Siwei Ridep, and Dilboi Suzuki are the tenants in common" of the "fee simple estate" in *Ngetichirur*.[5]

[¶ 5] The Bureau of Lands and Surveys finalized a Cadastral Plat survey encompassing *Ngetichirur* on October 20, 2003. Based on the LCHO determination of ownership, in 2008 the Land Court issued a certificate of title for *Ngetichirur*. The certificate stated "that Children of Ridep, namely:

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[2] The land is further identified as Cadastral Lot No. 052 R 09, consisting of an area of approximately 26,944 square meters.

[3] Tochi Daicho Lot No. 1065.

[4] The LCHO was the successor to the Land Commission.

[5] The Trial Division affirmed the determination of the LCHO. *See* Decision on Appeal, Civil Action No. 12-91 (November 18, 1991).

Malchiyanged Ridep, Ngirngelitel Ridep, Kelbid Ridep, Omekedelad Ito, Kikuko Ngiraingas, Delbotb Kebekol, Siwei Ridep, and Dilboi Suzuki are the owners of an estate in fee simple in land . . . particularly described as . . . Cadastral Lot No. 052 R 09 . . . known as 'Ngetichirur.'" The title did not track the express language in the determination of ownership; it omitted the phrase "tenants in common."[6]

[¶ 6] In 2008, a single house stood on *Ngetichirur*. At some time thereafter the house came to be primarily occupied by Roman Ridep, a son of Kelbid Ridep. In May 2010, a dispute arose about the house between Roman and a son of Kikuko Ngiraingas.

[¶ 7] On December 20, 2010, Kikuko filed a civil complaint, seeking to eject Roman from *Ngetichirur*. Kikuko argued that as the last surviving child of Ridep, she was the sole owner of *Ngetichirur* and could therefore eject Roman. Roman's claim was that *Ngetichirur* had been owned by the children of Ridep, including both Kelbid and Kikuko, as tenants in common. Therefore their interests passed to their heirs, not to the surviving co-tenants. As such, Roman claimed, he and his siblings, as Kelbid's heirs, possessed Kelbid's interest in *Ngetichirur*.

[¶ 8] In April 2012, while the ejectment action was pending, Roman petitioned to settle the estate of his mother Kelbid. The estate action was

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[6] Since 2008, the interests of various title holders have been transferred in estate probate proceedings. Delbotb Kebekol's interest was transferred to several of her children in an estate proceeding. *See* Judgment and Order, Civil Action No. 10-177, at 3 (May 18, 2011) (transferring "[Delbotb's] interest . . . to [named children] . . . as tenants in common"). Siwei Ridep's interest was transferred to Jenis Ridep in an estate proceeding. *See* Judgment and Order, Civil Action No. 14-059, at 2 (August 15, 2014) (awarding "ownership of [Siwei's] interests in the land known as Ngetichirur . . . [to] Jenis Ride[p]"). Malchiyanged's interest was transferred to his children in an estate proceeding. *See* Judgment and Order, Civil Action No. 15-083, at 2 (October 16, 2015) (transferring Malchiyanged's "interest to the land known as [Ngetichirur] . . . to [named children] . . . as their tenancy in common property"). New certificates of title were issued subsequent to each of these estate actions, replacing the names of the former title holders with the adjudicated new title holders.

consolidated with the ejectment action in the Trial Division. Trial on the disputed interests in the land and house was held in March 2015.

[¶ 9] Following trial, the Trial Division issued judgment in Roman's favor. The court concluded that the LCHO had determined in 1990 that *Ngetichirur* was owned by various children of Ridep as tenants in common. Because the 1990 determination of ownership was not successfully appealed, it became final and the certificate of title issued pursuant to it was presumptively valid. The Trial Division noted that several title holders' interests had been subsequently conveyed in estate proceedings as interests in a common tenancy. The Trial Division ultimately held that Kelbid had owned *Ngetichirur* together with various other children of Ridep as tenants in common.

[¶ 10] The court rejected the argument that operation of customary or common law had subsequently converted the legal nature of the ownership of *Ngetichirur*. The court found that there was no evidence in the record that the tenants in common had agreed to convert the ownership of the land to another form, such as a joint tenancy. The court also credited customary testimony in concluding that once ownership of land has been fully adjudicated in court, custom will not change that adjudicated ownership.

[¶ 11] The Trial Division concluded that Kelbid's interest passed to her children, including Roman, as her heirs. The court accordingly entered judgment transferring Kelbid's interest in *Ngetichirur* to Roman and his siblings and instructed the Land Court to issue a new title for *Ngetichirur* consistent with the decision and judgment.[7] Kikuko timely appealed.

STANDARD OF REVIEW

[¶ 12] We review a lower court's conclusions of law de novo. *ROP v. Terekiu Clan*, 21 ROP 21, 23 (2014). We review findings of fact for clear error. *Imeong v. Yobech*, 17 ROP 210, 215 (2010). Under the clear error standard, we will reverse only if no reasonable trier of fact could have reached the same conclusion based on the evidence in the record. *Id.*

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[7] The Trial Division also determined that Roman owned the house on the land. This determination has not been appealed and we do not address it.

DISCUSSION

[¶ 13] Although Appellant frames this appeal as presenting a single question, her brief assigns two distinct errors to the decision of the Trial Division. First, Appellant argues that the trial court erred in concluding that the named children of Ridep had owned *Ngetichirur* as tenants in common. Second, Appellant argues that the trial court erred in transferring Kelbid's interests in *Ngetichirur* to her children. We address each argument in turn.

I. The Nature of the Ownership of *Ngetichirur*

[¶ 14] Appellant argues that the LCHO's 1990 determination of ownership is "insufficient evidence" to establish that the children of Ridep owned *Ngetichirur* as tenants in common. This argument fundamentally misunderstands the legal character of a determination by the LCHO. The LCHO did not provide "evidence" of ownership; the LCHO *determined* ownership. As explained below, final LCHO—and Land Court—determinations of ownership are generally conclusive as to ownership rights.

[¶ 15] The LCHO was established via the Palau Lands Registration Act. *See* RPPL 2-24, § 3 (February 16, 1987). The Act directed the LCHO to hold hearings and make determinations of ownership for lands not yet registered in the Republic. *Id.* § 4. A determination of ownership by the LCHO was appealable to the Trial Division of the Supreme Court. *Id.* § 13. If no appeal was taken, or if the determination was affirmed, the LCHO was directed to issue a certificate of title "pursuant to the determination." *Id.* § 14. The Act provided that such a certificate of title would be conclusive evidence of ownership, subject to certain specific exceptions. *Id.*[8]

[¶ 16] The Palau Lands Registration Act was subsequently repealed and replaced by the "Land Claims Reorganization Act of 1996." *See* RPPL 4-43, § 22 (March 5, 1996). The 1996 Act established the Land Court to replace the LCHO. The 1996 Act specifically provided that the Land Court was to treat final determinations of the LCHO as binding. *Id.* § 9(b). Like its predecessor act, the 1996 Act directed the Land Court to issue certificates of title pursuant

[8] The 1987 Act was codified at Title 35, Chapter 11 of the Palau National Code.

to final determinations of ownership and provided that such titles were conclusive evidence of ownership, subject to certain specific exceptions. *Id.* § 13(a).[9]

[¶ 17] Under this statutory scheme, a final determination of ownership is generally conclusive as to ownership rights. *See, e.g.*, *Mikel v. Saito*, 20 ROP 95, 99-101 (2013); *Bechab v. Mesubed*, 13 ROP 233, 234 n.2 (Tr. Div. 2006) (collecting cases). The statute provides for memorializing a determination of land ownership in the form of a certificate of title. 35 P.N.C. § 1314. That certificate of title then becomes prima facie evidence of the content of the determination of ownership and, accordingly, the ownership rights in the land. *Midar v. NSPLA*, 22 ROP 151, 152 (2015); *Wong v. Obichang*, 16 ROP 209, 212 (2009).

[¶ 18] Specifically, the certificate statute provides that the certificate arising out of a determination "shall be conclusive . . . and shall be prima facie evidence of ownership." 35 P.N.C. § 1314(b). However, the conclusiveness of that certificate is subject to the statutory requirement that the certificate be issued "pursuant to" the determination of ownership. *Id*. Thus in the event that the original certificate contains a description of ownership inconsistent with the underlying determination, the certificate cannot be said to be issued "pursuant to" that determination and the determination will prevail. *See, e.g.*, *Mikel*, 20 ROP at 100 ("Because a certificate of title arising from a determination must be issued 'pursuant' to such determination, *see* 35 PNC § 1314(b), it follows any ambiguity as to the meaning of a certificate must be resolved by reference to the underlying determination."); *Ngirameong v. Ngiraibai*, 8 ROP Intrm. 331, 332 (Tr. Div. 1999). The original determination of ownership and certificate of title are maintained in a permanent register under the supervision of the Clerk of Courts. *See* 35 P.N.C. § 1316. Subsequent transfers of title are then subject to various recording requirements. *See, e.g.*, 35 P.N.C. § 1317.

[¶ 19] With these principles in mind, Appellant's argument clearly lacks merit. The LCHO determined "that Malchiyanged Ridep, Ngirngelitel Ridep,

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[9] The 1996 Act, as amended, is codified at Title 35, Chapter 13 of the Palau National Code.

Kelbid Ridep, Omekedelad Ito, Kikuko Ngiraingas, Delbotb Kebekol, Siwei Ridep, and Dilboi Suzuki are the tenants in common" of *Ngetichirur*. *See* Determination of Ownership, LCHO File No. 13-194-88. The determination was affirmed on appeal. *See* Decision on Appeal, Civil Action No. 12-91.[10] Once that appeal was resolved, the LCHO determination became final.

[¶ 20] Final determinations of ownership may only be collaterally attacked on the grounds that statutory or constitutional procedural requirements were not complied with or that the determination was a product of fraud. *See Tebelak v. Rdialul*, 13 ROP 150, 154 n.4 (2006); *Wong v. Obichang*, 16 ROP 209, 212-214 (2009); *see also, e.g., In re Estate of Tellames*, 22 ROP 218, 223-24 (Tr. Div. 2015). The person attacking the determination bears the burden of proof by clear and convincing evidence. *See, e.g.*, *Tebelak*, 13 ROP at 154 n.4; *In re Estate of Tellames*, 22 ROP at 223-24. Appellant does not develop any argument that the LCHO hearing was procedurally deficient or tainted by fraud; as such, Appellant has necessarily failed to meet her burden.

[¶ 21] Appellant does suggest in her brief that "she did not intend to own the land as [a] tenant in common." At the LCHO hearing, Malchiyanged represented all the children of Ridep, including Appellant. To the extent Appellant is trying to suggest that Malchiyanged was wrong to bring the siblings' claim as one for a tenancy in common, such a suggestion is not a valid basis to re-open the final LCHO determination. It is a well-settled principle of law that an individual can be legally bound by the decisions of their representative or agent. *See, e.g.*, *Ngirmeriil v. Estate of Rechucher*, 13 ROP 42, 46-48 (2006). The Trial Division's judgment—that the named

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[10] The trial court here stated that "[f]ollowing the decision of the LCHO and the issuance of the Determination of Ownership, there was no appeal." It appears that the parties did not bring Civil Action No. 12-91 to the court's attention, perhaps because none of the parties here were appellants in that action. However, the existence of that appeal does not affect the result here. A determination of ownership becomes equally final whether no appeal is taken or the appeal is fully resolved. The important point is that the time for Appellant to bring a challenge to the LCHO determination was during the statutory appeal period. *See* RPPL 2-24, § 13; *cf.* 35 P.N.C. § 1313 (providing for appeals from Land Court determinations).

children of Ridep owned *Ngetichirur* as tenants in common—mirrors the LCHO's final determination of ownership; accordingly, we affirm that judgment.

[¶ 22] As a final note, Appellant observes that the certificate of title issued subsequent to the LCHO's final determination of ownership "did not include the term tenancy in common." However, the wording of a certificate of title cannot substantively alter the determination of ownership. Here, the failure to include the form of ownership as set forth in the determination, namely "tenancy in common," was a clerical error. The Trial Division's judgment and order resolves the discrepancy.[11]

II. Inheritance of Interests in *Ngetichirur*

[¶ 23] Appellant argues that even if Kelbid Ridep did hold an interest in *Ngetichirur* as a tenant in common with her siblings, it was error for the Trial Division to conclude that Kelbid's children inherited that interest upon her death. Appellant does not attempt to explain the legal standard governing inheritance of an interest in a common tenancy; nor does Appellant cite any relevant legal authority for the proposition that an interest in a common tenancy cannot be transferred via inheritance. *Cf.*, *e.g.*, 20 Am. Jur. 2d, *Cotenancy and Joint Ownership*, § 94 (noting that "it is clear" that a co-tenant's interest can be conveyed "the same as any other property"). Appellant simply asserts that "[t]here was no legal analysis by the lower court as to how Kelbid's interest passed to [her children] if the land was owned as tenancy in common."

[¶ 24] We have repeatedly explained that an appellant bears the burden of demonstrating error on the part of a lower court. *See, e.g.*, *Suzuky v. Gulibert*, 20 ROP 19, 22 (2012). "This general burden applies both to an appellant's specifications of factual and legal error, each of which requires clarity and proper citation." *Id*. Appellant's argument that the Trial Division erroneously

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[11] Although the Trial Division did not explicitly cite it, Rule of Civil Procedure 60(a) provides for correcting such clerical errors. Under Rule 60(a), "[c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative."

determined the heirs of Kelbid's interest in *Ngetichirur* is almost entirely unsupported by legal authority; we need not consider such an argument. *See id*. at 23; *Idid Clan v. Demei*, 17 ROP 221, 229 n.4 (2010).

[¶ 25] Regardless, the argument lacks merit. If the basis for a lower court's decision is unclear, remand for further elaboration may be appropriate. *See, e.g.*, *Anson v. Ngirachereang*, 21 ROP 58, 59 (2014). But here the basis for the Trial Division's decision is clear. The only estate claimants to Kelbid's interest in *Ngetichirur* were Appellant and Kelbid's children. The Trial Division explicitly rejected Appellant's arguments that she inherited Kelbid's interest under either a common law theory of survivorship or a customary theory applicable to other types of co-owned land. The Trial Division instead held that as Kelbid was deceased, "her ownership interest transferred to [Roman] and her other children." It is clear that the trial court concluded that Kelbid's children were her heirs for the purpose of inheriting her ownership interest. Appellant does not develop any argument that a co-tenant's children are not the proper heirs for intestate succession. *Cf.*, *e.g.*, *Marsil v. Telungalk ra Iterkerkill*, 15 ROP 33, 36 (2008) (upholding the legal conclusion that "if there is no applicable decent and distribution statute, if no [ch]eldecheduch was held regarding a decedent's property, and if no other evidence exists, property goes to the decedent's children as they are the customary heirs"). The basis for the Trial Division's decision is readily apparent and Appellant has not met her burden to show that the basis was erroneous. Accordingly, we affirm that decision.

CONCLUSION

[¶ 26] For the foregoing reasons, the judgment of the Trial Division is **AFFIRMED**.[12]

SO ORDERED, this 22nd day of December, 2016.

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[12] In his brief, Appellee argues that this appeal was frivolous and requests damages pursuant to ROP R. App. P. 38. After due consideration, we decline to award damages in this case.