IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

The Children of ADELBAI REMED, namely MASAYUKI, JOSEPH, ELLEN, BENJAMIN, KUBARII, SIMEON, SAMUEL, WESLEY, LOMISANG, PETER, TARKONG, MAGGIE, AYSIA, and NGEAOL,
Appellants,
v.
TELBADEL LINEAGE and GEGGIE ANSON,
Appellees.

Cite as: 2017 Palau 18
Civil Appeal No. 15-021
Appeal from LC/N 11-158

Decided: April 10, 2017

Counsel for Appellants .....S. Remoket
Counsel for Appellees.....M. Uludong

BEFORE: R. BARRIE MICHELSEN, Associate Justice
DANIEL R. FOLEY, Associate Justice
DENNIS K. YAMASE, Associate Justice

Appeal from the Land Court, the Honorable Rose Mary Skebong, Associate Judge, presiding.

OPINION

PER CURIAM:

[¶ 1] This appeal arises out of a dispute over ownership of a single lot of private land in Airai State. The Land Court awarded part of the lot to Telbadel Lineage and the other part to Geggie Anson. The named children of Adelbai Remed appealed ("Appellants"). Appellants have not raised any meaningful challenge to the Land Court's determination of the merits of the land claims. They argue only that the court should have found those claims procedurally barred. For the reasons below, we reject this argument and affirm.

BACKGROUND

[¶ 2] The disputed lot, known as *Telbadel*, is in Ordomel Hamlet, Airai State.[1] The lot contains a primary lineage house and a burial platform ("*odesongel*") for Telbadel Lineage. The only claims initially submitted by BLS to the Land Court were the claims of Appellants and Geggie Anson. At the hearing, Rosania Masters appeared and sought to participate at the hearing on behalf of Telbadel Lineage. Rosania stated that Telbadel Lineage had not been given notice of the proceedings and the court allowed the lineage to present its claim.

[¶ 3] Appellants claimed the lot was individually owned by their father, Adelbai, and that they had acquired the lot as his heirs.[2] Benjamin Adelbai testified that the lot was part of a larger piece of land, *Telbadel*, which had been owned by Remed. Before he died, Remed transferred *Telbadel* to his eldest son, Ngiratitib; when Ngiratitib died, ownership of Telbadel passed to Adelbai. Benjamin testified that his aunt, Swars, had lived on this land, and that he had lived on the land from 1985 to 2000 in what was formerly Swars's house. Other witnesses testified that various relatives of Remed, Ngiratitib, and Adelbai had lived on or been connected with activities in and around *Telbadel*.

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[1] Lot No. 10N001-015 on BLS Worksheet No. 2004 N 002. The Land Court ultimately split the lot. The portion awarded to Telbadel Lineage became Lot No. 10N001-015A. The portion awarded to Anson became Lot No. 10N001-015B.

[2] The children of Adelbai are Masayuki, Joseph, Ellen, Benjamin, Kubarii, Simeon, Samuel, Wesley, Lomisang, Peter, Tarkong, Maggie, Aysia, and Ngeaol. Although the children are individually named in certain parts of the record, many filings refer, not always consistently, to "the Children of Adelbai" or "the Heirs of Adelbai" without specifying who the children or putative heirs of Adelbai are. There are numerous problems inherent in bringing claims in the name of a group of "Children" or "Heirs" without defining who those children and heirs are, and we have long counseled against doing so. *See, e.g.*, *Mokoll v. Ibutirang*, 8 ROP Intrm. 114, 115 n.3 (2000). Among other things, even favorable judgments may not be fully enforceable if it is unclear who was, or was not, a party in suit. *See id.* Suits should always clearly identify each of the individual parties-in-interest.

[¶ 4] Anson in turn claimed that a portion of the lot was known as *Spesong*. She testified that *Spesong* belonged to Ngirchochit and he "must have lived there because there is an *odesongel* on the property." Ngirchochit was the father of Sechelong, who was the father of Baules, who in turn was Anson's father. Anson testified that Baules had been a strong contributor to Ngirchochit's lineage and in recognition, Ngirchochit gave *Spesong* to Baules. Baules in turn gave *Spesong* to his children by Ngetwai, namely Anson, Toshi, and Moded. Anson testified that Toshi and Moded were adopted and "told her that she could have the property." She explained that Baules had shown her *Spesong* and at some point had marked the boundaries. She also claimed that her grandfather Sechelong is buried at the *odesongel* at *Spesong*.

[¶ 5] Finally, Telbadel Lineage claimed that *Telbadel* was lineage land. *Telbadel*, including the lot at issue, had "belonged to their maternal uncles (*kloklir a rukdemelam*) so it belonged to all of the descendants." Telbadel Lineage asserted that the lot includes "the house site for Telbadel Lineage with an *odesongel* that has six or seven graves of lineage members." The lineage conceded to Anson's claim that a portion of the lot was called *Spesong*, had belonged to Ngirchochit, and "also has an *odesongel*."

[¶ 6] The Land Court resolved these claims in July 2015. The court first addressed the timeliness of Telbadel Lineage's claim and the propriety of allowing them to present it at the hearing. The court found that the lineage "had a proper claim to *Telbadel*, including [this specific lot], but BLS failed to transmit said claim to the court." The court observed that BLS's March 3, 2008, notice calendar lists "Telbadel Lineage" as "claiming land known as Telbadel." The court also noted a long record of other cases in which the lineage had filed claims to *Telbadel* properties.

[¶ 7] On the merits of the claims, the court identified the key issue as whether Remed had individually owned the lot and later, through Ngiratitib, had transferred the lot to Adelbai to become his individually property. If so, his children would prevail. If the land Remed occupied had been lineage land, then Telbadel Lineage would prevail. The court first found that the lot "is *Omsolel a Blai ra Telbadel* ['Telbadel's principal house site'] containing a house and the lineage traditional burial platform *odesongel*." The court noted

that lineage members have occupied the land and the house there is currently occupied by "a senior strong member of Telbadel Lineage." "Six or seven unnamed members of the lineage are buried in the *odesongel*." The court found the record of litigation for the larger area of *Telbadel* "overwhelmingly support[s] a conclusion that [the lot] was owned by Telbadel Lineage, and contradict[s] [the] position that . . . Adelbai acquired individual ownership of Remed's land. As Adelbai did not individually own *Telbadel*, his children's claim as successors to his individual ownership of the [lot] cannot prevail." The Land Court found that, as between the lineage and the children of Adelbai, the lineage had the stronger claim to the entire lot.

[¶ 8] The court then turned to Anson's claim for the portion of the lot known as *Spesong*. The court found her claim "quite credible" and noted that Telbadel Lineage acknowledged and conceded its validity. The only challenge to the award of *Spesong* to Anson came from Adelbai's children, who argued that her claim was untimely. The Land Court rejected this argument and issued determinations of ownership in favor of Telbadel Lineage and Anson for their respective portions of the lot. The named children of Adelbai timely appealed.

STANDARD OF REVIEW

[¶ 9] We review the Land Court's factual findings for clear error. *ASPLA v. Esuroi Clan*, 22 ROP 4, 5 (2014). Conclusions of law are reviewed de novo. *Id*.

DISCUSSION

[¶ 10] As previously noted, Appellants do not bring any meaningful challenge to the Land Court's determination of the substantive merits of the claims to *Telbadel*. They instead argue only that the claims of both Telbadel Lineage and Anson should have been disallowed for procedural reasons. As explained below, we conclude that the Land Court did not err in allowing the lineage's claim. We also conclude that because the Land Court found the lineage had a stronger claim to the entire lot than Appellants, we need not address Appellants' procedural argument about Anson's claim.

I. Challenge to Telbadel Lineage's Claim.

[¶ 11] Appellants assert that "Telbadel Lineage was not a proper claimant at Land Court." They also assert that the lineage had not filed "a proper and timely claim." Therefore, they contend, the Land Court erred "when it allowed the claim of Telbadel Lineage to be presented."

[¶ 12] It is not wholly clear from Appellants' use of "proper claim" and "proper claimant" whether they are arguing that the lineage had not filed any claim until appearing at the hearing, or merely that the claim was untimely. With respect to Anson's claim, for example, Appellants specifically argue that it was untimely under 35 PNC § 1309(a) and point to record evidence they contend shows that the statutory deadline had passed. In contrast, their argument with respect to the lineage's claim does not cite Section 1309(a) or clearly explain how the record evidence relates to that statutory deadline. Clarity and precision in arguments are important aspects of an appellant's burden on appeal. *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*. That said, construing Appellants to be making both arguments, we address each in turn.

[¶ 13] The determination of whether and when a claim was filed are factual determinations. *See, e.g.*, *Etpison v. Skilang*, 16 ROP 191, 195 (2009). Thus to prevail on appeal, Appellants must establish that the Land Court clearly erred in determining that Telbadel Lineage filed a timely claim. *See Esuroi Clan*, 22 ROP at 4. Turning first to whether a claim was filed at all, the Land Court made an explicit finding of fact that the lineage had made a

claim and that "BLS failed to transmit said claim to the court." The court observed that the BLS notice calendar lists Telbadel Lineage by name "as claiming land known as *Telbadel*." The Land Court found that the lineage's inclusion on the notice calendar leads "to the inference that they are known to BLS, most likely because they had already filed a claim."

[¶ 14] Appellants argue that inclusion of a name on the BLS notice calendar is insufficient evidence to support an inference that a claim was filed. Appellants include examples of what they assert are errors or inconsistencies in the calendars. They argue that "BLS notices are not claims or indication of names of proper claimants. For the Land Court to make an assumption or to speculate [about a] BLS employee's state of mind without proper evidence is an error."

[¶ 15] The Land Court did not make any determinations about the "state of mind" of BLS's employees; nor do Appellants explain how those employees' states of mind are relevant to whether a claim was filed. The trial court drew an inference from the undisputed fact that Telbadel Lineage was listed by name on the BLS notice calendar. The inference was that BLS was aware of the lineage's interest in this particular land, most likely through its assertion of claims to it. This inference is not unreasonable. Even if there is an alternative reasonable explanation for the calendar entry—and Appellants have not provided one—the question on appeal is whether the Land Court's view of the evidence was a permissible one. "Where there are two permissible views of the evidence, the court's choice between them cannot be clearly erroneous." *Kebekol v. KSPLA*, 22 ROP 38, 46 (2015) (collecting cases); *cf. also, e.g.*, *Ngetchab Lineage v. Klewei*, 16 ROP 219, 221 (2009) (explaining that the appellant bears the burden of establishing clear error).

[¶ 16] Regardless, the court below did not solely base its determination on the calendar. The court noted the lineage's history of "consistently claim[ing]" the larger tract *Telbadel*, which would encompass the lot at issue. The decision noted—and Appellants have not contradicted—that "the parties herein agree that [the lot at issue] is part of the larger tract of land that the lineage had partitioned in the past." The court also noted the lineage's appearance at the hearing below and its position that it had filed a claim but had not been given notice of the proceedings.

[¶ 17] The Land Court has "flexibility to evaluate the validity of a claim on a case-by-case basis." *Etpison*, 16 ROP at 195. "The Land Court should look at relevant factors, such as the claimant's personal efforts to claim or register the land, the claimant's belief that a claim was filed, the claimant's communication with [BLS], and others, to gauge whether a claim was filed." *Id.* Here, the lineage's prior "consistent" claims to *Telbadel*, the lineage's appearance at the hearing and expressed "belief that a claim was filed," and the inference that the lineage's inclusion on the BLS calendar meant that the lineage had communication with BLS about the land, provide a sufficient evidentiary basis for the finding that Telbadel Lineage filed a claim. The finding is therefore not clearly erroneous. *See, e.g.*, *Heirs of Adachi v. KSPLA*, 20 ROP 241 (2013) (factual findings are clearly erroneous "only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion") (citations omitted).

[¶ 18] Having concluded that the Land Court did not err in finding that Telbadel Lineage had filed a claim, we consider whether Appellants have met their burden to show the court erred in finding that claim was timely. As noted, Appellants' timeliness argument regarding the lineage does not specifically cite 35 PNC 1309(a) as it does for Anson's claim, but we assume they are asserting the same bar. With respect to Anson's claim, Appellants "point to the attachment calendar and notice published by [BLS] on March 3, 2008, which indicates that the deadline for filing claims as 'closed.'" They cite the Land Court's statement that "if this notice is applied, then the court would have no choice but to deny Geggie Anson's claim because [it] was filed [after this date]." Appellants argue that "the Land Court analysis should have ended here." The problem with applying this argument to the lineage's claim is that unlike Anson, Telbadel Lineage was specifically listed on the "calendar and notice published by [BLS] on March 3, 2008." We have already concluded that the Land Court did not err in finding that the lineage had filed a claim by this time.

[¶ 19] Appellants also suggest—again, clearly only with respect to Anson, but which we will construe as with respect to the lineage as well—that the claim deadline was in April 2005. They assert that this deadline was the statutory deadline. Section 1309(a) provides that "claims shall be filed . . . no later than thirty (30) days after the mailing of the notice." The record here

does not include this actual mailed notice. Instead, Appellants point to the text of a March 3, 2008, radio announcement that references April 2005. The argument appears to be that this reference is evidence that the Section 1309(a) notice was mailed thirty days prior to April 2005. This inference from the 2008 BLS announcement is not wholly unreasonable, although it does run somewhat counter to Appellants' argument that it is unreasonable to draw inferences from the 2008 BLS calendar. Additionally, the Land Court apparently rejected Appellants' inference, stating that "no evidence was presented to show what the deadline date was."

[¶ 20] However, even assuming the Land Court erred on this point, Appellants have not shown why this establishes that Telbadel Lineage's claim was untimely. The 2008 calendar was issued on the same day as the 2008 announcement. That calendar included Telbadel Lineage's claim. Given our conclusion that the Land Court did not err in finding the lineage had filed a claim, Appellants would have to establish that the claim was filed sometime after April 2005 but nevertheless erroneously included by BLS on the calendar sometime before March 2008. Appellants point to no record evidence that would establish this. Their argument is simply that inclusion on the calendar does not rule out an inference that the claim was filed within this time window. They offer no reason that that inference is more reasonable than the Land Court's contrary inference. Where inferences are equally reasonable, "the court's choice between them cannot be clearly erroneous." *Kebekol*, 22 ROP at 46. Additionally, it is not clear that the inferences are equally reasonable. Appellants' inference requires BLS to have added the lineage to the calendar in violation of the statute; the trial court's inference presumes that BLS followed the statute. In the absence of evidence one way or the other, it is not clear error to presume the regularity of BLS's actions. *C.f., e.g.*, *Ucherremasech v. Wong*, 5 ROP Intrm. 142, 147 & n.2 (1995).

[¶ 21] In short, the Land Court has "flexibility to evaluate the validity of a claim on a case-by-case basis." *Etpison*, 16 ROP at 195. Appellants have not met their burden to show the record evidence is insufficient to provide a basis for the Land Court's finding that Telbadel Lineage had a timely claim. Accordingly, we affirm the decision to allow Telbadel Lineage's claim.

II. Challenge to Geggie Anson's Claim.

[¶ 22] Appellants also argue that the Land Court erred by not finding Anson's claim untimely. However, as explained below, even if we assume their argument is correct, it does not appear they are entitled to any substantive relief. Accordingly, we need not address their argument with respect to Anson's claim.

[¶ 23] The Land Court explicitly found that Telbadel Lineage had a stronger claim to title to the entire lot than Appellants. Only after that determination did the court then consider whether Anson had a stronger claim than Telbadel Lineage to a smaller portion of the entire lot (known as *Spesong*). Thus even if Appellants are correct that the court erred in allowing Anson's claim, reversing that error would not result in Appellants owning any portion of the lot. The lot would go in its entirety to Telbadel Lineage.

[¶ 24] In other words, the timeliness of Anson's claim could at best affect the right to *Spesong* as between Telbadel Lineage and Anson. Appellants have no substantial rights in that portion of the lot. Assuming without deciding that the Land Court erred, that error was harmless as to Appellants' substantial rights. We will not reverse a lower court decision due to an error where that error is harmless. *Ngiraiwet v. Telungalek Ra Emadaob*, 16 ROP 163, 165 (2009).[3]

CONCLUSION

[¶ 25] For the reasons above, we affirm the decision and determinations of the Land Court.

SO ORDERED, this 10th day of April, 2017.

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[3] Although Appellants do not frame it this way, they are in practical effect seeking a declaratory judgment about Anson's claim. Assuming we could otherwise issue such judgment on appeal, Appellants have not established a basis for it. "A party seeking declaratory relief must demonstrate the existence of a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant issuance of a declaratory judgment." *Senate v. Nakamura*, 8 ROP Intrm. 190, 194 (2000). Because Appellants would not legally benefit from a declaration adverse to Anson, Appellants do not have "adverse legal interests" to her.