IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

LELENG LINEAGE, rep. by Ikreked ra Idis Cleophas Robert,
Appellant,
v.
HAIM REKISIWANG,
Appellee.

Cite as: 2020 Palau 5
Civil Appeal No. 19-010
Appeal from Civil Case No. 16-055

Decided: March 6, 2020

Counsel for Appellant …… Siegfried B. Nakamura
Counsel for Appellee …… C. Quay Polloi

BEFORE: JOHN K. RECHUCHER, Acting Chief Justice
GREGORY DOLIN, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

Appeal from the Trial Division, the Honorable Lourdes F. Materne, Associate Justice, presiding.

OPINION

DOLIN, Associate Justice:

[¶ 1] This is an appeal from an action to quiet title in a certain piece of property known as *Ngelid*. Finding no error in the Trial Division's reasoning, we **AFFIRM**.

BACKGROUND

[¶ 2] This case concerns property called *Ngelid*, Cadastral Lot No. 066 E 12 (Tochi Daicho Lot No. 444). Appellee Haim Rekisiwang filed an action to quiet title to the property, and, as relevant here, Appellant Leleng Lineage objected.

[¶ 3] The ownership of this same parcel was previously adjudicated by the Land Claims Hearing Office ("LCHO") and awarded to "Ngiralbong's Family" in 1992. At that hearing LCHO concluded that Ngiralbong Etelul, who died in 1971, transferred the land to his adopted children *inter vivos*.[1]

[¶ 4] Leleng Lineage consists of descendants of Leleng Blesam, the grandmother of Sadang Silmai and a member of Idis Clan and Ngereblong Lineage. Silmai, in turn, participated in the 1992 LCHO proceedings which rejected the claims he made on behalf of Ngereblong and Idis.

[¶ 5] All three of Ngiralbong's adopted children have passed away. At issue before the Trial Division, and now us, is the disposition of Simis' estate in the absence of a will. [2]

[¶ 6] The Trial Division held that although, as a general matter 25 PNC § 301 would govern intestate succession, because Simis did not die without issue the requirements of the statute were not fulfilled. Accordingly, the Trial Division concluded that the case is governed by Palauan customary law. *See, e.g.*, *Bandarii v. Ngerusebek Lineage*, 11 ROP 83, 87 (2004).

[¶ 7] Applying Palauan customary law and our precedent in *Matchiau v. Telungalk ra Klai*, the Trial Division concluded that where decedent's property is not distributed at an *eldecheduch*[3] "under custom, a decedent's land passes

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1 Another Land Court case affirmed that Ngiralbong adopted a son, Olikong Sadang, and two daughters, Simis Ngiralbong ("Simis"), and Losau Ngiralbong ("Losau"), and that his only biological child pre-deceased him. *See* Determination, *In re: Tochi Daicho Lot Nos. 251, 255, 271, 410, and 414* (July 6, 1998), Pl.'s Ex. 10. Ngiralbong's biological daughter's heirs did not file a claim to this property.

2 Two of Losau's grandsons, Curtis Tony and Carter Ngiralbong, filed a claim, but they entered a stipulation to withdraw their objection in exchange for an agreement by Rekisiwang to give them part of a different property, Cadastral Lot No. 066 E 09. Sadang's daughter, Anita Montelongo, also filed a claim and reached a settlement with Rekisiwang in which she agreed to withdraw her objection in exchange for Rekisiwang agreeing not to file an objection if any of Sadang's children claimed three other lots, Cadastral Lot Nos. 111 E 09, 111 E 01, or 66 E 02.

3 *Eldecheduch* is a "a gathering at which the disposition of a decedent's property is decided by his clan." Jon M. Van Dyke, *The Pacific judicial Conference: Strengthening the Independent Judiciary and the Rule of Law in the Pacific*, 22 W. Legal Hist. 189 (2009) (discussing the concept of *eldecheduch* in the context of the biographical sketch of Chief Justice Arthur Ngiraklsong).

to his children." 7 ROP Intrm. 177, 179 (1999). Rekisiwang was one of Simis's children and was the only one who made a claim to the land in question.

[¶ 8] On April 30, 2019, the Trial Division entered a Judgment that Rekisiwang owns Lot No. 066 E 12 in fee simple. Leleng Lineage timely appealed.

STANDARD OF REVIEW

[¶ 9] Appellant claims that in reaching its conclusion the Trial Division committed errors of law, both in matters of statutory interpretation and Palauan customary law. We exercise plenary review over questions of law, including those of customary law. *See Kiuluul v. Elilai Clan*, 2017 Palau 14 ¶ 4; *Beouch v. Sasao*, 20 ROP 41, 48 (2013).

DISCUSSION

A.

[¶ 10] As far as we can understand Appellant's argument,[4] it claims that the Trial Division erred in not deciding as an initial matter whether Simis held the land in the form of an individual ownership interest or a form of communal ownership. *See Children of Dirrabang v. Children of Ngirailild*, 10 ROP 150, 152-53 (2003) (holding that the phrase "*ongalk ra*" can give rise to either form of ownership depending on the circumstances). We are somewhat at a loss as to why resolving this question matters in the present case. As Appellant itself (ultimately incorrectly) argues, it should prevail under either theory. According to Appellant, *see infra* Parts II-III, if the land was held in the form of individual ownership, then it prevails under 25 PNC § 301(b), but if the land was held in a communal form of ownership, it prevails under Palauan customary law. Thus, even under Appellant's view of the case, the resolution of this preliminary matter seems irrelevant to the outcome of the case. Although Appellant is wrong as to the ultimate conclusion, *see infra*, we agree

4 We note that Appellant's brief only identifies one vague issue on appeal, whether the trial court erred in entering judgment "in a manner contrary to Palauan Custom and Palau's Statutes," yet contains three or four separate arguments. Our Rules require that a brief "set forth, in clear and concise terms, each question the party submitting the brief deems to be presented in the appeal." ROP R. App. P. 28(a)(6). Appellant's brief fails to meet this requirement, but we shall attempt to address each of the arguments actually made.

that we do not need to resolve the nature of Simis' ownership to dispose of the matter. We therefore decline to do so, *See PDK Labs., Inc. v. Drug Enforcement Admin.*, 362 F.3d 786, 799 (D.C.Cir. 2004) (Roberts, J., concurring in part and concurring in judgment) ("[I]f it is not necessary to decide more, it is necessary not to decide more.").

B.

[¶ 11] Appellant seems to argue that it is unclear who was included in "Ngiralbong's Family" by the LCHO, and that this lack of clarity opens the door to his present-day claim. We disagree.[5]

[¶ 12] In 1994, the Trial Division affirmed LCHO's judgment that Ngiralbong "gave out [his] lands to [his] children before [his] death[] in 1971." *Silmai v. Sadang*, Civil Action No. 473-92, 2-3 (Tr. Div. Oct. 7, 1994), Pl.'s Ex. 8 [hereinafter "*Sadang*"], *aff 'd by Silmai v. Sadang*, 5 ROP Intrm. 222 (1996). The Trial Division explicitly held that because Olikong Sadang had entered a settlement agreement with the other claimants and amended his claim before the LCHO to include *all* of Ngiralbong's children, he was bound by that agreement. *Id.* at 5.

[¶ 13] *Res judicata*, also called claim preclusion, "prevents the subsequent litigation by either party of any ground of recovery that was available in the prior action, whether or not it was actually litigated or determined." *Ngerketiit Lineage v. Ngirarsaol*, 9 ROP 27, 29 (2001). It binds not only the parties to the original action but also their privies:

> While "[p]rivity is a concept not readily susceptible to a uniform definition[,]" *Troutt v. Colo. W. Ins. Co.*, 246 F.3d 1150, 1159 ([9th Cir.] 2001), the Ninth Circuit has explained that "[p]rivies are those who are so connected with the parties in estate or in blood or in law as to be identified with them in interest." *Id.* In other words, "[w]ith reference to a judgment,

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5 We have held that, where it is unclear who the members of the *ongalk ra* group are, the trial court should look to customary law rather than automatically including all children. *See Rechesengel v. Mikel*, 2018 Palau 20 ¶ 23 (vacating the trial court's determination that a customarily adopted daughter was a member of *ongalk ra* along with the biological children and remanding for a determination of Palauan customary law on the issue). In this case, however, it was clearly determined by the LCHO who belonged to the group.

> privity applies to one who was not a party in the prior proceeding but whose interest was legally represented at trial." *Id.*

Odilang Clan v. Ngiramechelbang, 9 ROP 267, 271 (Tr. Div. 2001). The doctrine is "highly favored in the courts of Palau" in order to "give finality and legitimacy to judgements." *Ngetelkou Lineage v. Orakiblai Clan*, 17 ROP 88, 94 (2010).

[¶ 14] Silmai is part of the Leleng Lineage. Silmai's claims were adjudicated by the LCHO in 1992, with the decision affirmed by the Trial Division in 1994, and the Appellate Division in 1996. As the Trial Division in this case found, Appellants herein are "the descendants of the people who lost before the LCHO." Trial Division, Findings of Fact and Decision at 3. Thus, Appellants' claims, which are derivative of Silmai's claims for Ngiralbong and Idis Clans, are foreclosed.

[¶ 15] In order to get around the *res judicata* issue, Appellant argues that in fact Ngiralbong transferred a different property (rather than *Ngelid*) to his children and as a result under customary law they could not inherit *Ngelid*. This argument is at odds with the LCHO's judgment that Ngiralbong's children owned *all* of Ngiralbong's lands at issue in that case as a result of the *inter vivos* transfer of the properties. *Sadang* at 5. Simply put, Appellant seeks to relitigate a claim that was rejected a quarter century ago. No reason for why preclusion should not apply in this case has been proffered. We therefore reject Appellant's attempt to revisit a decades-old judgment.

C.

[¶ 16] Finally, Appellant presses the argument that the disposition of *Ngelid* must be controlled by 25 PNC § 301(b). Acknowledging that our precedent clearly holds that this statute is inapplicable because Simis died with issue, *see Marsil v. Telungalk ra Iterkerkill*, 15 ROP 33, 36 (2008), Appellant invites us to reconsider that precedent. We decline the invitation.

[¶ 17] Section 301(a) applies to land held in fee simple by a decedent who was a bona fide purchaser for value and died intestate. Simis was obviously not a bona fide purchaser, because she inherited the land from her father. Subsection (b) provides:

> If the owner of fee simple land dies without issue and no will has been made in accordance with this section [or 39 PNCA § 403] or the laws of the Republic ***or*** *if such lands were acquired by means other than as a bona fide purchaser for value*, then the land in question shall be disposed of in accordance with the desires of the immediate maternal or paternal lineage to whom the deceased was related by birth or adoption and which was actively and primarily responsible for the deceased prior to his death. . . .

(Emphasis added). In *Marsil*, we held that the phrase "such lands" meant "lands owned in fee simple by an individual who dies without issue and without a will." *Marsil*, 15 ROP at 36 (emphasis omitted). This interpretation essentially converts the "or" before "such lands" to an "and," and means that three requirements must be met in order for the subsection to apply. Therefore, Simis would have to have died: 1) intestate; 2) without issue; and 3) without being a bona fide purchaser for value in order for the statute to apply.

[¶ 18] *Marsil* was not the first case to address this issue. *Ysaol v. Eriu Family*, 9 ROP 146 (2002), in which, quite unusually, this Court issued a *per curiam* opinion and two Justices issued concurrences, we held that "§ 301(b) should not be read to restrict [decedent]'s ability to devise his land by will" simply because he was not a bona fide purchaser of the land. *Id.* at 48.[6] This was the sum total of the analysis in the *per curiam* opinion.[7] The two concurrences advocated two different readings of the statute. Chief Justice Ngiraklsong advocated the position we eventually adopted in *Marsil*. *See id.* (Ngiraklsong, C.J., concurring). The Chief Justice argued that the statute was not intended to "nullify all customary law on inheritance," which would be a "drastic measure," and that Justice Miller's interpretation would involve "rewrit[ing]

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6 Both concurring opinions strongly agreed on this point. Chief Justice Ngiraklsong argued that to conclude otherwise would "lead[] to absurd results"; *id.* at 48, and Justice Miller argued that concluding otherwise would be inconsistent with § 301's preamble, which permits lands held in fee simply to be "devised . . . in such a manner as the owner alone may desire." *Id.* at 51.

7 The Court remanded to the Trial Division to "consider[] the authenticity and enforceability of the alleged will" in the first instance, as the Trial Division had granted summary judgment on the basis that the will was invalid because it attempted to devise property where decedent had not been a bona fide purchaser of the land.

the statute." *Id.* at 49. Justice Miller's concurring opinion examined the legislative history of the statue and concluded that the legislative intent was to govern all transfers of fee simple land, so the Chief Justice's interpretation left "a gap" in "what was a comprehensive statute." *Id.* at 52. Justice Miller would have interpreted the statute such that subsection (b) would apply if there was no will and a decedent *either*: 1) died without issue; or 2) was not a bona fide purchaser for value. *Id.* at 52. Justice Miller's opinion argued that "the legislature chose the right words, but simply put them in the wrong place," and could instead have written: "If the owner of fee simple land dies without issue or if such lands were acquired by means other than as a bona fide purchaser for value and no will has been made in accordance with this section or the laws of the Trust Territory, then . . . .").[8]

[¶ 19] In *Bandarii v. Ngerusebek Lineage*, 11 ROP 83 (2004), Justice Miller wrote the majority opinion. The Trial Division had distributed property under 25 PNC § 301(b) in circumstances where the decedent died intestate and with issue, but was not a bona fide purchaser for value—as Justice Miller had advocated in *Ysaol*. *Id.* at 85. These are the same circumstances at issue here. On appeal, however, Appellant's primary argument was that a Lineage could not distribute property to itself under § 301(b). The Court rejected this argument. *Id.* at 86. Appellant also attempted to argue, seemingly as an afterthought, that § 301(b) did not apply. The Court dismissed this argument, holding that even if were correct it would not help Appellant's case because "Appellant has not shown that he was entitled to inherit as a matter of custom." *Id.* at 87.

[¶ 20] Chief Justice Ngiraklsong authored a concurring opinion in *Bandarii*, reiterating his view that "I would read the word 'or' in § 301(b) as 'and.'" *Id.* He further argued that "[t]he words 'such lands' can only refer to the land owned in fee simple by the owner who died without issue and without a will." *Id.* The Chief Justice voted to affirm the Trial Division's holding on the basis of applicable Palauan customary law. *Id.* at 88. Our decision in *Marsil*, which acknowledged that the statute was "not a model of clarity," ended this debate

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8 Rather than rewriting the statute, this Court could have adopted Justice Miller's view by interpreting the phrase "such lands" in subsection (b) to mean "lands that were not devised by will."

by adopting the reasoning of the Chief Justice's concurrence in *Bandarii*. *Marsil*, 15 ROP at 35.

[¶ 21] The principle of stare decisis is particularly salient in these circumstances, where twelve years have elapsed, the statute has not been amended, and our interpretation has created settled expectations with regard to property rights. "Overruling precedent is never a small matter," *Kimble v. Marvel Entm't, LLC*, 135 S.Ct. 2401, 2409 (2015), because "the doctrine of stare decisis is of fundamental importance to the rule of law." *Nakamura v. Sablan*, 12 ROP 81, 83 (2005) (Ngiraklsong, C.J., concurring) (quoting *Hilton v. S.C. Pub. Rys. Comm'n*, 502 U.S. 197, 202 (1991)). It "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Olngebang Lineage v. ROP*, 8 ROP Intrm. 197, 203 (2000) (Michelsen, J., concurring) (quoting *Payne v. Tennessee*, 501 U.S. 808, 827 (1991)). "[S]tare decisis in respect to statutory interpretation has special force, for [Olbiil Era Kelulau] remains free to alter what we have done." *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 139 (2008) (internal quotations omitted).[9]

[¶ 22] "Respecting stare decisis means sticking to some wrong decisions. . . . Indeed, stare decisis has consequence only to the extent it sustains incorrect decisions; correct judgments have no need for that principle to prop them up." *Kimble*, 135 S. Ct. at 2409. This is "because in most matters it is more important that the applicable rule of law be settled than it be settled right." *Koror State Legislature v. KSPLA*, 2017 Palau 28 ¶ 17 (*quoting Markub v. KSPLA*, 14 ROP 45, 49 n.5 (2007)). This is especially so in the area of property law because individuals arrange their affairs in reliance on the clearly announced rules. *See Rimbert v. Eli Lilly & Co.*, 577 F. Supp. 2d 1174, 1225 (D.N.M. 2008) ("Stare decisis considerations are at their zenith in contract- and property-law settings . . . .").

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9 That, in the dozen years since we issued our decision in *Marsil.* the Olbiil Era Kelulau did not see fit to change the law further supports standing by that decision. *See Becheserrak v. ROP*, 8 ROP Intrm. 147, 150-51 (2000) (Miller, J., concurring) (noting that "if the OEK wishes" to change a rule that has become "settled law in Palau," "it now knows that it must say so expressly.").

[¶ 23] Our interpretation of the intestacy statute is, at this juncture, well settled, and Appellant proffered no good reason why we should reconsider it. We decline the invitation to overrule *Marsil*. Because the Trial Division was correct to conclude that 25 PNC § 304(b) did not apply, it was also correct to apply customary law to fill the gap and award the land to Simis' child. *See Delbirt v. Ruluked*, 10 ROP 41, 43 (2003) (holding that where 25 PNC § 301(b) does not apply the trial court "must turn to customary law to determine the proper heir of the deceased.").

CONCLUSION

[¶ 24] The judgment of the Trial Division is **AFFIRMED**.