Shmull v. Ngirirs Clan, 11 ROP 198 (2004)
ETIBEK SHMULL,
Appellant,

v.

NGIRIRS CLAN,
Appellee.

CIVIL APPEAL NO. 03-033
LC/R 05-98

Supreme Court, Appellate Division
Republic of Palau

Argued: May 21, 2004
Decided: July 26, 2004
⊥199
⊥200
Counsel for Appellant: Moses Uludong, T.C.

Counsel for Appellee: Honora E. R. Rudimch

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice.

Appeal from the Land Court, the Honorable RONALD RDECHOR, Associate Judge; the Honorable J. ROMAN BEDOR, Part-Time Judge; and the Honorable ROSE MARY SKEBONG, Associate Judge, presiding.

SALII, Justice:

Etibek Shmull appeals from the Land Court's determination of ownership concerning a parcel of land known as Ngirirs, located in Ngesias Hamlet, Peleliu State ("the land"). The land is listed in the Peleliu Tochi Daicho as Lot No. 1991, and it later became identified as Cadastral Lot No. 037 R 13. On reconsideration, the Land Court reversed its original decision and concluded that Ngirirs Clan, not Shmull, owned the land. We affirm the Land Court's second determination of ownership in favor of Ngirirs Clan because the Land Court had the inherent authority to reconsider its earlier decision as to the ownership of the land.

BACKGROUND

As Ngikleb, chief of Ngirirs Clan, Shmull filed a claim to the land on behalf of the Clan on two separate occasions: once on December 27, 1988, as a claim for public land, and again on August 8, 1998, as a claim for private land that he would administer as trustee for the Clan. On both occasions, Shmull stated in the claim form that he was representing Ngirirs Clan and was

claiming the land for the Clan. Shmull and the Palau Public Lands Authority ("PPLA") were the only two claimants to appear at the hearing concerning this land held on September 24, 1998. Even though Shmull had never filed a claim for individual ownership of Ngirirs, he changed the nature of his claim at the hearing to an individual claim without the Clan's knowledge or consent. After the hearing, the Land Court entered its first determination of ownership awarding the land to Shmull. The court determined that Shmull was the only person who had timely filed a claim to the land. Based on Shmull's uncontroverted testimony at the hearing, the Land Court found that the land was originally owned by Ngirirs Lineage and was given to Shmull's grandfather as his property. When Shmull's grandfather died, the land was inherited by his father, Mengirarou, and Shmull inherited the land in turn as the heir of Mengirarou.

Neither Shmull nor the PPLA filed an appeal, but Haruko Sengebau filed a Motion for Reconsideration of the determination as a representative of Ngirirs Clan. Ngirirs Clan asserted that Shmull's claim of individual ownership should not have been accepted because Shmull himself had never filed a claim. Instead, the only claim that had been filed was the claim filed by Shmull as the title bearer for the Clan on behalf of the Clan. A status conference was held with Shmull and a representative of Ngirirs Clan, and with Shmull's consent to a new hearing, the Land Court granted the Clan's Motion for Reconsideration. After the Land Court held a second hearing, it issued a new determination of ownership canceling the original determination in favor of Shmull and awarding the land to Ngirirs Clan. The Land ⊥201 Court found that Shmull had never filed a claim of individual ownership of the land, and Ngirirs Clan had never given the land to any individual and was the only claimant to file a timely claim to the land through its representative, Shmull. Shmull's appeal of the second adjudication and determination followed.

STANDARD OF REVIEW

This Court reviews the Land Court's factual findings under the clearly erroneous standard. *Tesei v. Belechal*, 7 ROP Intrm. 89, 90 (1998). Conclusions of law are reviewed *de novo*. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

DISCUSSION

Shmull presents two arguments for consideration. First, Shmull argues that the Land Court had no legal authority to reconsider its earlier decision awarding ownership of the land to him. However, Ngirirs Clan asserts that, under the particular facts and circumstances presented by this case, the Land Court had the inherent authority to cancel its prior determination and enter a new determination to correct its own mistake and prevent injustice. We agree.

The statutes creating the Land Court[1] and the Land Court's own rules and regulations do not contain any provision allowing it to reconsider its determinations of ownership.[2] Under 35

[1]The Land Court's enabling act is 35 PNC §§ 1301-21.

[2]Rule 2 of the Land Court Rules of Procedure, however, states that the Land Court rules "shall be construed to ensure fairness in the conduct of hearings and presentation of claims." Arguably, considerations of fairness authorized the Land Court to reconsider its determination and allow Ngirirs

PNC § 1312, as well as Rule 16 of the Land Court Rules of Procedure, the only remedy provided to parties aggrieved by a Land Court's determination of ownership is to appeal that determination directly to the Appellate Division of the Supreme Court. However, this statutory remedy is not a complete bar to any other form of relief. We recently explained that "if the Land Court may afford a party relief from a determination of ownership, it must be through some inherent Land Court authority." *Sadang v. Ongesii*, 10 ROP 100, 102 (2003). We did not have occasion to decide whether the Land Court had inherent power to vacate its determinations in that case because we held that the Land Court had "abused its discretion and exceeded whatever inherent power it might have had" in reconsidering and vacating its first determination. *Id*. In his concurring opinion in the *Sadang* case, Chief Justice Ngiraklsong disagreed that the Land Court had any inherent authority to reconsider its determination, stating that "[t]here is no legal basis, expressed or inherent, for the Land Court to give a party a second chance to present his case through a motion to reconsider." *Id.* at 103 (Ngiraklsong, C.J., concurring). However, the *Sadang* case is distinguishable from the case at hand. In *Sadang*, the appellee had failed to present his best case in the first hearing and had requested reconsideration to give him a second chance to present additional witnesses and evidence in support of his claim. Here, the Land Court's erroneous consideration of Shmull's claim prevented Ngirirs Clan from presenting any evidence at all and resulted in an award of ⊥202 land to a individual who had never filed his own claim to the land. Where, as here, a court misapprehends the evidence or commits an inadvertent mistake, that court historically has had the inherent authority to correct its own erroneous decision.

The Land Court is a legislative- or statutorily-created court, as opposed to a constitutionally-created court, but both types of courts have traditionally had the inherent authority to reconsider their own decisions. *See In re Met-L-Wood Corp.*, 861 F.2d 1012, 1018 (7th Cir. 1988) ("Long before there was a Rule 60(b), [statutorily-created] bankruptcy courts exercised what they conceived to be, and what in fact has traditionally been regarded as, an inherent judicial power to reconsider their judgments within a reasonable time."); *Cent. Ill. Co. v. Irving Trust Co.*, 79 F.2d 613, 616 (2d Cir. 1935) (stating that a statutorily-created court had the "ancient and elementary power" to reconsider an order). The doctrine of inherent authority originated hundreds of years ago, along with other ancillary common law and equitable remedies, as a way for courts to grant relief from their final judgments long after the expiration of the term of court at which they were rendered. 12 James Wm. Moore et al., *Moore's Federal Practice* ¶ 60App.100[1] (3d ed. 1998). A court's inherent power to reconsider its own orders and rulings dates back to at least the 1700s in England and the early-1800s in the United States and was used when different facts had arisen since the court's first decision or when that decision was the product of mistake, inadvertence, surprise, or excusable neglect. *Belmont v. Erie Ry. Co.*, 52 Barb. 637 (N.Y. 1869) (Cardozo, J.) (collecting cases). As Justice Cardozo noted, a court may, in its discretion, reconsider its decision if the moving party has shown "any material facts which were not presented to the court upon the previous motion, and if they have, [that they were], so far as such matters then existed, prevented from bringing them to the notice of the judge by mistake, inadvertence, surprise, or excusable neglect." *See id.* (quotation omitted). In other words, a court has the inherent authority to reconsider its previous decision when there is an intervening change in the law, a discovery of new evidence that was previously unavailable,

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Clan, the only party who had timely filed a claim to the land, to be heard.

or a need to correct clear error or prevent manifest injustice due to the court's misapprehension of the facts, a party's position, or the controlling law.[3] *Servants of the Paraclete*, 204 F.3d at 1012.

This ancient doctrine of inherent authority was correctly applied by the Land Court in this case to allow it to reconsider its original determination of ownership. Here, the Land Court was misled as to Shmull's status as a claimant, resulting in an erroneous decision. Under the facts of this case, the Land Court had the inherent power to reconsider a determination that was erroneously issued in favor of Shmull in order to reach a just result and protect the integrity of its proceedings. Further, the second hearing was not a second opportunity for a party to present additional arguments or evidence, but instead it was held in an effort to correct a mistake that had led to an unfair result. Under these circumstances, we believe ⊥203 that the Land Court had the inherent authority to reconsider its original, erroneous determination and enter a new determination of ownership.

Shmull's second argument is that the Land Court violated his right to due process by failing to mention the testimony and evidence he presented in the second hearing in its decision. Shmull points out that the Land Court named the Clan's witnesses and summarized their testimony, but omitted the names of Shmull's witnesses and did not mention the testimony or evidence that they presented. Rule 15 of the Land Court Rules of Procedure requires the determination of ownership to be accompanied by a summary of the proceedings. Shmull argues that the Land Court's failure to record the testimony of his witnesses in its summary of the proceedings was a violation of his due process right to call witnesses to testify on his behalf.

We disagree. "Due process requires notice and an opportunity to be heard." *Pedro v. Carlos*, 9 ROP 101, 102 (2002). Although it is true that Shmull had a due process right to be heard, that right does not include an obligation on the part of the Land Court to record his witnesses' testimony in its decision. The Land Court is not required to reiterate every fact alleged at the hearing in its summary because normally, the availability of a transcript allows meaningful review to take place. *Ngirakebou v. Mechucheu*, 8 ROP Intrm. 34, 35-36 (1999). Shmull's failure to provide us with a transcript does not change this result. Shmull was given an opportunity to explain his claim and present his witnesses during the second hearing. That hearing was recorded, and Shmull could have requested a transcript of the hearing if he wanted the substance of his witnesses' testimony to be considered on appeal. An appellant is not required to file a trial transcript, but the absence of a transcript largely precludes any challenge to the findings of fact made below. *Fanna Mun. Gov't v. Sonsorol State Gov't*, 8 ROP Intrm. 9, 9 (1999); *In re Tellei*, 7 ROP Intrm. 195, 196 (1999) (citing *Smau v. Emilian*, 6 ROP Intrm. 31, 33 n.1 (1996)). The Land Court's failure to summarize all of the testimony in its decision does not mean that it failed to consider all of the testimony, or that it gave the testimony of the Clan's witnesses more weight than it gave to the testimony offered by Shmull's witnesses. Therefore,

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[3]Motions to reconsider should be granted only under extraordinary circumstances and cannot be used by parties to rehash the same arguments that were originally presented to the court. *In re Oil Spill by Amoco Cadiz*, 794 F. Supp. 261, 267 (N.D. Ill. 1992). Nor can a motion to reconsider be used to advance new arguments or supporting facts that were available at the time of the original briefing or argument. *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000).

this argument is without merit.

CONCLUSION

For the foregoing reasons, we affirm the Land Court's second adjudication and determination of ownership awarding Cadastral Lot No. 037 R 13 to Ngirirs Clan.