Nakamura v. Sablan, 12 ROP 81 (2005)

ESTHER NAKAMURA,
Appellant,

v.

DORSHA SABLAN,
Appellee.

CIVIL APPEAL NO. 03-035
Civil Action No. 01-171

Supreme Court, Appellate Division
Republic of Palau

Argued: November 18, 2004
Decided: February 24, 2005

Counsel for Appellant: Douglas Parkinson

Counsel for Appellee: David J. Kirschenheiter

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

Appeal from the Supreme Court, Trial Division, the Honorable R. BARRIE MICHELSEN, Associate Justice, presiding.

MILLER, Justice:

This appeal follows the trial court's determination of a Petition to Settle Estate brought by appellee Dorsha Sablan following the intestate death of Minor Ngiratumerang ("Minor"or "decedent"). The Trial Division applied 25 PNC § 301(b) to Minor's estate and found that the paternal lineage had expressed a desire that Minor's land be returned to his father, Ngiratumerang. The appellants now assert that the Trial Division erred because 25 PNC § 301(b) does not apply to decedents -- like Minor -- who are survived by issue, and therefore that § 301(b) should not have been applied to Minor's estate. The appellants contend in the alternative that the Trial Division misapplied the statute on the facts before it. We find that the issues now on appeal were not adequately raised to the Trial Division or are without merit, and accordingly, we affirm the judgment of the trial court.

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Minor, the fee simple owner of Klbael, Lot No. 008 L 08 in Ngatpang State, received his land by Deed of Transfer from his father, Ngiratumerang, in November 1995. Minor died intestate in August 2000, survived by his father and four children. Following Minor's death, Ngiratumerang's adopted daughter, Dorsha Sablan, initiated a Petition to Settle Estate. Once

Minor's children learned of the action, they filed a Notice of Claim.

At trial, after applying § 301(b), the trial court found that the paternal lineage was primarily responsible for Minor prior to his death, and that the lineage had expressed a desire that the land be returned to Ngiratumerang. The court therefore awarded Minor's land to Ngiratumerang.

The appellants raise four points of error on appeal. First, they contend that the trial court erroneously applied § 301(b) to Minor's estate even though he had four children. They next contend that the trial court erred in finding that Minor's paternal lineage expressed a desire regarding the disposition of the land. They also argue that the trial court erred in failing to consider the desires of members of the immediate paternal lineage only. Finally, they assert that the paternal lineage waived its right to decide how the lands should be disposed because it did not express its desire until after the instant litigation began.

Appellants concede that they did not raise the argument that §301(b) does not apply to decedents with issue to the trial court. Ordinarily, an argument raised for the first time on appeal is considered waived. *ROP v. S.S. Enter., Inc.,* 9 ROP 48, 52 (2002). When there are exceptional circumstances, however, the court will relax this stricture to reach the issue. *Id.* The appellants assert that this case presents an exceptional circumstance because of the importance of the statutory interpretation question. We disagree principally because even were we interpret the statute as appellants' counsel urges, there is insufficient information in the record for us to decide this case in their favor.

If appellants are correct, then § 301(b) would not apply to the distribution of Minor's estate because Minor did have issue. Consequently, custom would govern the distribution of Minor's estate. *See Bandarii v. Ngerusebek Lineage,* 11 ROP 83 (2004) (holding that custom fills the gap when the relevant intestacy statute does not apply to the decedent's estate). Ordinarily, Palauan custom is established by expert testimony, which traces the historical application of the custom to the facts at hand. *Silmai v. Rechucher,* 4 ROP Intrm. 55, 59 (1993). The appellants here did not introduce such evidence; thus, the appellants have not shown that they were entitled to inherit as a matter of custom. Addressing the statutory issue, therefore, would not resolve the conflict because a remand to the trial court would be necessary. As a result, this case does not present an exceptional circumstance. *See S.S. Enter., Inc.,* 9 ROP at 52. (finding that an exceptional circumstance existed when no additional fact-finding was needed and the issue was limited to one of law). We decline to address the issue and consider it waived.

There are similar difficulties with the remainder of appellants' arguments. They contend, for example, that the trial court applied the statute incorrectly because it did not consider the desires of the *immediate* paternal lineage only, and that the paternal lineage waived its right to decide how the lands should be disposed because it did not express its desire until after the instant litigation began. It appears that the appellants also failed to raise the first of these issues ⊥83 before the trial court, and it is at best unclear whether they raised the second. In any event, the bottom line of both of these arguments appears to be a request to remand the matter to the Trial Division "to determine inheritance of the land without application of 25 PNC § 301(b),"

see Appellants' Opening Brief at 18, *i.e.*, to direct the trial court to apply Palauan custom notwithstanding appellants' failure to introduce any evidence on that score. We decline to do so.

Finally, the appellants claim that the paternal lineage never expressed a desire regarding the disposition of Minor's land. The trial court found that it was the lineage's desire to have the land returned to Ngiratumerang. As a factual matter, we find that this determination was supported by the evidence. *See Ngetchab Lineage v. Klewei,* 8 ROP Intrm. 116, 117 (2000) (factual findings will only be reversed if clearly erroneous and when there are two permissible views of the evidence the court's choice between them is not clearly erroneous). And again, even were appellants correct on this point, they made no showing that they were entitled to inherit as a matter of custom.

The arguments that appellants have brought to our attention were not raised to the trial court, or are without merit. The judgment of the Trial Division is accordingly affirmed.

NGIRAKLSONG, Chief Justice, concurring:

I concur in the judgment; my views on appropriate and applicable rules of statutory construction to use in interpreting 25 PNC § 301(b) are expressed elsewhere. See *Bandarii v. Ngerusebek Lineage*, 11 ROP 83, 87-88D (2004) (Ngiraklsong, C.J., concurring); *Ysaol v. Eriu Family*, 9 ROP 146, 148-49 (2002). I, however, write separately to address stare decisis.

The doctrine of stare decisis "requires that rules of law when clearly announced and established by a court of last resort should not be lightly disregarded and set aside but should be adhered to and followed." 39A Words & Phrases 602 (1953).

> Time and time again, this Court has recognized that the doctrine of stare decisis is of fundamental importance to the rule of law. Adherence to precedent promotes stability, predictability, and respect for judicial authority. For all of these reasons, we will not depart from the doctrine of stare decisis without some compelling justification.

Hilton v. S.C. Pub. Rys. Comm'n, 112 S.Ct. 560, 563-64 (1991) (internal citations omitted).

When an issue is raised for the first time on appeal, this Court has, with the exception of *Gibbons v. Seventh Koror State Legislature*, 11 ROP 97 (2004) (hereinafter *Koror State*), which I discuss below, followed its precedence or the doctrine of stare decisis. We have stated the general rule that an issue not raised in the trial court is waived and may not be raised on appeal. *Fanna v. Sonsorol State Gov't*, 8 ROP Intrm. 9, 9 (1999); *Ngermelkii Clan v. Remed*, 5 ROP Intrm. 139, 141 n.2 (1995); *Udui v. Temol*, 2 ROP Intrm. 251, 254 (1991). We have stated that absent "compelling circumstance," the Appellate Division will not consider an issue unless it was first presented to the Trial Court. *Ngerketiit Lineage v. Ngerukebid Clan*, 7 ROP Intrm. 38, 43 (1998); *Omrekongel Clan v. Ikluk*, 6 ROP Intrm. 4, 5 n.1 (1996); *KSPLA* ⊥84 *v. Diberdii Lineage*, 3 ROP Intrm. 305, 312 n.3 (1993). We have also recognized an exception to the general rule that permits a reviewing court to address an issue not raised below to prevent the denial of

fundamental rights in criminal case where defendant's life or liberty is involved. *Tell v. Rengiil*, 4 ROP Intrm. 224, 225-26 (1994).

Today, we hold that a legal issue like the meaning and application of 25 PNC § 301(b), which if decided in this case would require extensive additional factual determination, cannot be raised for the first time on appeal. There is no "compelling circumstance" to depart from our stare decisis. Our holding tracks our precedents.

The *Koror State* Case

As noted earlier, this Court failed to adhere to the principles of stare decisis in the *Koror State* case. The dispute in that case was whether the line item veto exercised by the House of Traditional Leaders (HOTL) in relation to the 2003 Budget Act was subject to the override power of the Legislature. The Legislature initiated a lawsuit seeking a declaratory judgment that line item vetoes, like the entire budget, were subject to legislative override power. Resolution of this dispute involved the interpretation of Article VI, Section 2(2) of the Koror State Constitution, and the trial court eventually agreed with the Legislature's interpretation. Gibbons and the HOTL appealed.

Even though no party raised the issue of standing before the trial court or in their appellate briefs, one member of the *Koror State* appellate panel asked for a briefing on the issue of standing. The parties, however, either ignored that suggestion or did not think it pertinent to prepare argument on standing. After oral argument, a majority of the panel members issued an order soliciting supplementary briefs on the issue of standing. Even then, however, one party declined to brief the issue, believing it was not properly before the Court.

The *Koror State* Court ultimately ruled that the Legislature had no standing to bring the lawsuit because it had no "injury." There was no injury to the Legislature, the majority reasoned, because the Legislature could have solved the dispute through political or legislative means.

> If the members of the Legislature had chosen to attempt a political solution and negotiate, or even dug in their heels and passed additional legislation, the matter might have been resolved long ago. In any event, resort to the courts should only occur when a litigant has suffered a redressable injury. It is not an injury for a legislature to have to engage in negotiation and compromise with the executive branch, or consider remedial legislation, when addressing monetary issues.

Koror State, 11 ROP at 109. Additionally, in footnote 13, the Court commented on an economic benefit to the parties if they were to resolve their dispute through negotiation, compromise, or legislation

These are factual findings by the majority on an issue that was not even mentioned at trial, and such findings were inappropriate. First, there is no law, constitution, statute, or custom that requires a political branch of the state or national government to exhaust all political and ⊥85 legislative means of dispute resolutions before coming to court for an interpretation of a

provision of a state or national constitution. Second, I find it difficult to believe that a court will, instead of deciding the statutory and constitutional issue before it, give political advice to a political branch of a state government. Interpreting statutes and constitutions is the core function of the court. Telling a political branch of government how to solve a dispute through political and legislative means is not. It is at the very least presumptuous of any court to think it knows politics better than the politicians.

STANDING

"Standing" is defined as "(a) party's right to make a legal claim or seek judicial enforcement of a duty or right." *Black's Law Dictionary* 1442 (8th ed. 2004).

Where does this principle of standing requiring injury come from? It comes directly from Article III, Section 2 of the United States Constitution, which limits the jurisdiction of the Federal Courts to "cases or controversies." *See N.E. Florida Contractors v. Jacksonville*, 113 S. Ct. 2297, 2301 (1993); *Los Angeles v. Lyons*, 103 S. Ct. 1660, 1665 (1993); *Lujan v. Defenders of Wildlife*, 112 S. Ct. 2130, 2136 (1992). To make sure the U.S. Federal Courts confine their power to "cases or controversies," a litigant is constitutionally required to allege a present or imminent injury before he can expect the court to decide the merits of his case. *Lujan*, 112 S. Ct. at 2136. As the *Lujan* Court stated, "the core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III" of the U.S. Constitution. *Id.* (internal citations omitted).

The Palau Constitution does not limit the jurisdiction of this court to "cases or controversies." Instead it defines the jurisdiction of this Court as extending to "all matters in law and equity." Palau Const. art. X, § 5. We have said that this provision of the Palau Constitution means at least those "matters which traditionally require judicial resolution." *See Gibbons v. ROP*, 1 ROP Intrm. 634, 637 (1989). We did not say, however, that the jurisdiction of the Palau Judiciary is limited to only those "matters which traditionally require judicial resolution,"[1] vague as this scope of jurisdiction may be. Neither did we say that our jurisdiction is limited to "cases or controversies," because the "all matters of law and equity" phrase in the Palau Constitution is intentionally and sufficiently different from the "cases or controversies" language in the ⊥86 United States Constitution.[2] It cannot be denied that the Palau Constitution confers broader

[1]The Court in *Senate v. Nakamura*, 7 ROP Intrm. 8, 9 (1998) misquoted the *Gibbons* holding in saying that the judicial power of the Palau Supreme Court is *limited* to those "matters which traditionally require judicial resolution." The *Gibbons* opinion instead stated:

> The jurisdictional language of the Palau Constitution expresses the intent of the Framers that this Court exercise jurisdiction over any and all matters which traditionally require judicial resolution. The extremely broad language of the Palau Constitution thus compels us to adopt a very liberal approach in determining whether a plaintiff has standing to bring a particular action. For this reason alone, we must hold that plaintiffs possess standing in this case.

Gibbons, 1 ROP Intrm. at 637.

[2]Article III, Section 2 of the U.S. Constitution reads in part: "The judicial power shall extend to all *cases*,

jurisdiction on the Supreme Court than the "cases or controversies" limitation on the U.S. Federal Courts.

In ordering the *Koror State* parties to brief the issue of standing when it was neither mentioned at trial nor raised by the parties on appeal and when one party declined to brief the issue, believing that it was not before the appellate court, the *Koror State* Court ignored our precedent concerning when we will address an issue not raised below. Moreover, in deciding that the Legislature did not suffer any "injury," and thus lacked standing to bring the suit, because the parties could have resolved the dispute through political or legislative means and that without injury, the *Koror State* panel relied on case law based on the U.S. Constitution which limits the Federal Courts powers to "cases-or-controversies." The Court in the *Koror State* case departed from the doctrine of stare decisis not because of "compelling circumstance" but for factually and constitutionally wrong reasons. The holding in the *Koror State* case has no precedential value.

The jurisdiction of this Court is yet to be fully defined. It shall be done on a case-by-case basis as we develop our jurisprudence consistent with our Constitution. We should not adopt case law based on a foreign constitution when its language is dissimilar to our constitution.

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in *law* and *equity*, . . . [or] to *controversies* . . ." (emphasis added). Since the Palau Constitution in many respects is either identical or similar to the United States Constitution, it is safe to assume that the framers of the Palau Constitution looked at the U.S. Constitution as either a model or for guidance. The Palau constitutional provision on judicial power reads simply: "The judicial power shall extend to *all matters in law and equity*." Palau Const. art. X, § 5 (emphasis added). The Palau Constitution adopts "in law and equity" from the U.S. Constitution, omits the "cases or controversies" limitation in the U.S. Constitution, and adds the words "all matters." It is hard to make an argument that the two are the same or even similar.