Rebluud v. Fumio, 5 ROP Intrm. 55 (1995)
SALVADOR REBLUUD,
Appellant,

v.

KALISTA FUMIO and KALISTO RENG W L,
Appellees.

CIVIL APPEAL 16-94
Civil Action No. 466-92

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: January 25, 1995

Counsel for Appellant: Francisco Armaluuk

Counsel for Appellees: Yukiwo P. Dengokl

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; PETER T. HOFFMAN, Associate Justice

MILLER, Justice:

This appeal concerns ownership of land known as Olsachel in Choll Hamlet, Ngaraard State. The Land Claims Hearing Office (LCHO) determined that appellees acquired the land at the eldecheduch of their father, Renguul, who was the owner listed in the Tochi Daicho. Appellant claimed that Renguul gave him the land, that he used and occupied it, and that he should now be given title. The LCHO denied his claim, and the trial court affirmed based on the record before the LCHO. We AFFIRM.

FACTS

Appellees are the children of Renguul, who was listed in the Tochi Daicho as the owner of Olsachel, land more particularly described as Tochi Daicho Lot No. 456, Cadastral Plat 17-21. Appellant claimed Renguul had given him Olsachel and that he lived on the land for some six years, cleared it, and planted coconut trees. The LCHO rejected Rebluud's claim and awarded the land to Renguul's children. The LCHO found the land was given to Renguul's children at his eldecheduch, noting it would be inappropriate for a person with children to give land to someone else.

The trial court, finding that the LCHO heard conflicting testimony, and mindful that the LCHO had an opportunity to observe the witnesses, accepted the LCHO's findings and affirmed

the award to Renguul's children. The trial court denied a motion for reconsideration, and Rebluud appealed. See *Rebluud v. Fumio* , 5 ROP Intrm. 12 (1994) (denying motion to dismiss this appeal).

⊥56 DISCUSSION

A. Adverse Possession

Rebluud argues that appellees' claim should be barred because they did not commence their action within twenty years of his first possession, which he claims began in 1951. Individuals seeking to recover land must commence an action within twenty years "after the cause of action accrues." 14 PNC § 402(b); 6 TTC § 302(b). Rebluud argues that appellees had only until May 28, 1971 to commence their action. See 14 PNC § 410; 6 TTC § 310.

To acquire title by adverse possession, the claimant must show that the possession is actual, open, visible, notorious, continuous (for twenty years), hostile or adverse, and under a claim of right or title. *Osarch v. Kual* , 2 ROP Intrm. 90, 91 (1990). There can be no adverse possession where any element is lacking. Id. at 92.

The trial court concluded that Rebluud's claim of continuous occupancy and possession from 1951 to 1992 lacked factual support. This conclusion is not clearly erroneous. Rebluud did clear the land and plant coconut trees but he lived there for only six years. While this constitutes some evidence of possession, there is no proof that the possession was adverse, exclusive, or uninterrupted for the statutory period of twenty years. See *Osaki v. Pekea* , 5 TTR 255, 260 (Tr. Div. 1970). Moreover, appellant conceded a family relationship with appellees, and this negates any possibility that his possession was hostile or adverse. See *Osarch*, 2 ROP Intrm. at 92. Consequently, there is no merit to appellant's argument that 14 PNC § 402(b) should bar appellees' claim to their father's land.

B. Equity

Appellant also claims title because Renguul and his children neither used the land nor objected when Rebluud cleared the land, planted trees, and lived there for six years. Appellant argues his use of the land should vest ownership in him because appellees never used the land and because they waited to bring this claim before the LCHO.

This argument ignores the statutory period of twenty years for adverse possession. More important, there is no affirmative requirement for an owner of land to live on a lot to retain ownership. That would be especially true of land such as this, which the record describes as a "forest".

⊥57C. Customary Law

The third issue is whether the trial court correctly found that the land was given to appellees at their father's eldecheduch. Appellant claims the land could not have been transferred at the eldecheduch because Renguul previously gave him the land. He also argues that under the true custom for eldecheduch, the children should not have been given the land.

The trial court noted conflicting testimony before the LCHO about whether the land was transferred at Renguul's eldecheduch or whether it had been previously given to appellant. The LCHO reviewed the conflicting testimony and accepted the version presented by appellees. Finding no reason to doubt that conclusion, the trial court adopted the LCHO's findings as its own.[1]

Under the "clearly erroneous" standard of review, if the trial court's findings are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless this Court is left with a definite and firm conviction that a mistake has been made. *Idechiil v. Uludong*, 5 ROP Intrm. 15, 16 (1994). This Court will not re-weigh the evidence, for that is the province of the trial court. Since there is evidence to support the trial court's adopted findings, they are not clearly erroneous.

D. Tochi Daicho Listing

In his motion for reconsideration Rebluud claimed the Tochi Daicho listing was incorrect. Except for the states of Peleliu and Angaur, the identification of owners in the Tochi Daicho is presumed to be correct and the burden is on the party contesting a Tochi Daicho listing to show by clear and convincing evidence that it is wrong. *Elbelau v. Semdiu* , 5 ROP Intrm. 19, 21 (1994). Where, as here, the listing is for individual ownership, the evidence of error must be particularly clear and convincing. Id. Not only does Rebluud fail to meet this burden, but his argument ignores his own concession before the LCHO that the Tochi Daicho listing was correct. Indeed, his assertion that Renguul gave him the property, see supra , requires him to argue that Renguul was the owner as the Tochi Daicho recites.

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E. Trial De Novo

Rebluud finally claims that the trial court erred in not granting a trial de novo. Although the trial court may grant a trial de novo upon timely request, there is no right to demand a trial de novo. See *Remengesau v. Sato* , Civil Appeal No. 5-93, slip op. at 3 (June 3, 1994); *Arbedul v. Mokoll*, Civil Appeal No. 793, slip op. at 3 (Apr. 13, 1994). We find no evidence that the trial court abused its discretion in denying appellant's motion for trial de novo, especially here where it was first made after the trial court had rendered its original decision.

CONCLUSION

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[1] No evidence of custom having been presented, we have no occasion to address whether the result of the eldecheduch deviated from "true custom" or whether any such deviation would affect the result here.

For all of the reasons stated above, the judgment of the trial court is AFFIRMED.[2]

[2] At oral argument appellees requested the imposition of sanctions under ROP R. App. Pro. 38. Such requests should ordinarily be made in writing, in an appellee's responsive brief or by separate motion in accordance with ROP R. App. Pro. 27. While we have the power to invoke Rule 38 sua sponte, we decline to do so here.