Estate of Ngiratechekii v. Otiwii, 9 ROP 112 (2002)

ESTATE OF AKIWO NGIRATECHEKII and MARSELINO INGEREKLII,
Appellants,

v.

MARIA OTIWII,
Appellee.

CIVIL APPEAL NO. 00-32
LC/B 99-168

Supreme Court, Appellate Division
Republic of Palau

Argued: April 10, 2002
Decided: May 20, 2002

[1] **Appeal and Error:** Clear Error; Standard of Review

Findings of the Land Court are reviewed under the clearly erroneous standard.

[2] **Appeal and Error:** Clear Error; Standard of Review

The appellate court will not substitute its own judgment of the credibility of witnesses.

[3] **Appeal and Error:** Clear Error

Where there are two permissible views of the evidence, the Land Court's choice is not clearly erroneous.

[4] **Appeal and Error:** Record

It is the appellant's responsibility to designate the record for appeal, and if he or she considers that the record is inaccurate or incomplete in any important respect, to follow the procedures set forth in ROP R. App. Pro. 10(e).

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Counsel for Estate of Ngiratechekii: Clara Kalscheur

Counsel for Ingereklii: J. Roman Bedor, T.C.

Counsel for Appellee: Yosiharu Ueda, T.C.

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

Estate of Ngiratechekii v. Otiwii, 9 ROP 112 (2002)

Appeal from the Land Court, the Honorable J. UDUCH SENIOR, Associate Judge, presiding.

PER CURIAM:

This appeal involves the land known as Taoch Ra Emang, located in Iyebukel Hamlet, Koror State. Claimants for the land were Appellants Akiwo Ngiratechekii ("Akiwo")[1] and Marselino Ingereklii ("Marselino") and Appellee Maria Otiwii ("Maria"). Akiwo and Marselino appeal the Land Court's determinations of ownership awarding the land, registered as Tochi Daicho Lot No. 799 and as the individual property of Ngirdengoll, to the children of Otiwii in fee simple. For the reasons stated below, we affirm.[2]

BACKGROUND

Ngirdengoll was the natural father of Otiwii, Ngodrii, Ongelungel, Ingereklii, and Oruul. At the hearing held in May 2000, Maria's version of the events was that Ngirdengoll was still alive when he distributed his property among his sons and that Ngirdengoll gave Taoch Ra Emang to his son Otiwii, Maria's father. Ngirdengoll died intestate in 1958 and at the time of Ngirdengoll's death there was no discussion of the land known as Taoch Ra Emang. In 1973, however, Otiwii died and his *eldecheduch* was in 1974, where it was decided that Lot No. 799 would be surveyed, given to all of his children and would be entrusted to his eldest son, David. In the instant case, Maria claimed Lot No. 799 on behalf of the children of Otiwii. Her brother, David, lives on this land and has planted crops on this land. At the hearing, Maria presented numerous witnesses who were present at her father's *eldecheduch* and who testified that Taoch ra Emang was given to Otiwii's children.

Marselino did not dispute the chain of events as proffered by Maria for the most part. Marselino is the son of Ingereklii, who is the brother of Otiwii. Marselino agreed that the land was the individual property of Ngirdengoll, who then gave the property to his son Otiwii. Marselino further agreed that at Otiwii's *eldecheduch*, the land was given to Otiwii's children. However, Marselino produced a document, signed in 1988 by his father, Ingereklii, that states that Otiwii's land was given to Otiwii's children conditionally. The document states that the agreement at the *eldecheduch* was that Lot No. 799 would go to Otiwii's children on the condition that the children of Otiwii gave Lot No. 742, known as Baibeluu and registered as Otiwii's individual property, to the Bares Lineage. ⊥114 Marselino claims that Baibeluu was never given to the Bares Lineage, violating the condition of the *eldecheduch* and rendering the transfer of Lot No. 799 invalid. In 1992, Marselino's father, Ingereklii, filed a quitclaim deed, transferring the land that he proclaimed to be his own, to Marselino. The deed states Ingereklii's father Ngirdengoll died intestate and left Ingereklii as the only heir. Marselino contends that the land was given to Ingereklii in 1977 by Ngirdengoll's relatives. That same year, Marselino built a house on the land and has lived there since.

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[1]Akiwo has since passed away. His appeal is being pursued on behalf of his estate.

[2]Tochi Daicho Lot No. 799 was originally also identified as temporary Lot No. 182-223 and after monumentation and survey on March 27, 2000, it was divided into Lot Nos. 182-223A and 182-223B.

Akiwo's core contention below was that the Tochi Daicho listing was incorrect and that Lot No. 799 actually belonged to his mother Ngirur, who is Ngirdengoll's sister and that the land was entrusted to him. Further, Akiwo contended that the land Otiwii's children are on is actually Lot No. 798 and that he is on Lot No. 799. Akiwo stated that he farmed on Lot No. 799 and raised pigs there for many years.

After considering all of the evidence and hearing two full days of testimony, the Land Court held that:

> The court accepts Maria Otiwii's testimony as credible and finds that Otiwii's relatives distributed this land called Taoch ra Emang to the children of Otiwii. In light of the court's finding, Marselino Ingereklii's Exhibit L, which was prepared in 1977 to acknowledge that Emiliano Ingereklii owned T.D. Lot No. 799 is irrelevant. Three years before, in 1974, the children of Otiwii owned this land. The Court also finds that there was no discussion of exchange of Baibeluu with Taoch ra Emang at the eldecheduch. . . .
>
> Because the court finds that ownership of this land called Taoch ra Emang, T.D. Lot No. 799, vested in the children of Otiwii at the eldecheduch held in 1974, the court must reject the quitclaim deed (Marselino Ingereklii's Exhibit B) conveying all of Emiliano Ingereklii's rights to T.D. 799 to his son, Marselino Ingereklii. Emiliano had no rights or interests in T.D. Lot No. 799 to convey to his son.

With respect to Akiwo's claim, the Land Court found that:

> Akiwo Ngiratechekii testified that he has farmed on this land and raised pigs on the land for many years but he offered no corroborating testimony to support his allegation that he used this land since World War II. Not only that, his testimony is also internally inconsistent. Akiwo Ngiratechekii begins by testifying that his mother Ngirur owns this property, T.D. Lot No. 799 which he calls Ilebrang. However, under cross-examination, Akiwo testifies that in a trial in a case which he alleges involves this very same land he claimed this land through his father Ngiratechekii. Akiwo cannot even clearly identify the true owner of this land . . . . Akiwo ⊥115 Ngiratechekii failed to show by "clear and convincing evidence" that Ngirdengoll was merely as trustee of this land.

DISCUSSION

[1-3] Findings of the Land Court are reviewed under the clearly erroneous standard. If the factual findings made by the Land Court are "supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion," those findings will not be set aside unless this court is left with a definite conviction that a mistake has been committed. *Tesei v. Belechal*, 7 ROP Intrm. 89, 90 (1998). The appellate court will not substitute its own judgment of the credibility of witnesses based on its reading of a cold record for the trial court's assessment of the witness's veracity. *Umedib v. Smau*, 4 ROP Intrm. 257, 260 (1994).

Here, the Land Court essentially found Maria and her witnesses to be more credible than Appellants and their witnesses. As to Marselino's claim, the Court believed the testimony of Maria and her witnesses that Taoch Ra Emang was given to the children of Otiwii at Otiwii's *eldecheduch* and rejected Marselino's contention that that decision was made conditional on an exchange of the land Baibeluu. Where there are two permissible views of the evidence, the Land Court's choice is not clearly erroneous. *Arbedul v. Romei Lineage*, 8 ROP Intrm. 30, 31 (1999).

As to Akiwo's claim, the Land Court was not clearly erroneous in finding that he had not presented clear and convincing evidence that the Tochi Daicho was incorrect, the factual contention that was at the heart of his claim. Likewise, even were we to consider his Estate's argument that the Land Court should have awarded the land to Akiwo on the basis of adverse possession – an argument that was not presented below – such an argument is untenable in light of the Land Court's factual finding that Otiwii's son had lived and planted crops on the land and its rejection of Akiwo's allegation that *he* had used the land since World War II.

In short, evidence was presented in support of the claims of all parties, and the Land Court's findings were not so unreasonable that a reasonable trier of fact could not have reached the same conclusion. *Tmol v. Ngirchoimei*, 5 ROP Intrm. 264, 265 (1996).

[4] Akiwo's Estate also argues that we should remand for a new hearing because the appellate record is incomplete – in particular, that there is a missing map that would have shown that a portion of the land was claimed by Akiwo alone. We reject this contention. It is an appellant's responsibility to designate the record for appeal and, if he or she "considers that the record . . . is inaccurate or incomplete in any important respect," to follow the procedures set forth in Rule 10(e) of the ROP Rules of Appellate Procedure. Counsel's explanation at oral argument that she could not comply with Rule 10 because her client had died during the pendency of the appeal, although unfortunate, does not warrant further relief, but suggests, if anything, that a remand would "not improve the fact-finding process." *Ngiracheluolou v. Baules*, 8 ROP Intrm. 293, 294 (2001). The parties in this case have already fully aired their claims below and Akiwo presented all of the documents he wished to present at that time.

Finally, we reject the Estate's argument that the Land Court erred by not giving notice of the hearing to those parties involved in a prior case involving this land. ⊥116 *See Terekiu Clan v. Sasao*, Civil Action No. 203-90 (Tr. Div. 1994). It suffices to say that Akiwo *was* given notice and had a full opportunity to present his claim, and thus was not prejudiced by any lack of notice to other potential claimants.

CONCLUSION

For the reasons stated above, the Land Court's determination of ownership is affirmed.