Ysaol v. Eriu Family, 9 ROP 146 (2002)

TWILLA J. YSAOL,
Appellant,

v.

ERIU FAMILY,
Appellee.

CIVIL APPEAL NO. 01-01
Civil Action No. 99-280

Supreme Court, Appellate Division
Republic of Palau

Argued: January 25, 2002
Decided: July 12, 2002

[1] **Descent and Distribution:** Wills

Where a will is presented for probate, the Trial Division must consider its authenticity and enforceability and may not restrict, pursuant to 25 PNC § 301(b), a testator's intent to devise his property by will because the deceased did not acquire the land as a bona fide purchaser.

[2] **Appeal and Error:** Standing on Appeal; **Descent and Distribution:** Administrator

The estate administrator has standing to appeal an adverse decision against her in her capacity as administrator of the estate.

Counsel for Appellant: David J. Kirschenheiter

Counsel for Appellees: Raynold B. Oilouch

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice.

Appeal from the Supreme Court, Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

PER CURIAM:

The subject of this dispute is the disposition of land in Ngaraard State known as Ngerkesirs, Cadastral Lot No. 17-36 and Tochi Daicho Lot No. 425, which Joseph Ysaol ("Joseph") owned in fee simple after successfully claiming it with the Land Claims Hearing Office in 1992. Shortly after Joseph's death in 1998, Joseph's oldest daughter, Twilla Ysaol ("Twilla"), petitioned for a transfer of ownership of the land to Farrington and Lassen Ysaol

("Farrington and Lassen"), who are two of Joseph's sons. The children and grandchildren of Eriu ("Eriu claimants") also claimed the land, arguing that, pursuant to custom and 25 PNC § 301(b), Joseph's lineage, Idung, should be responsible for the disposition of his land after his death. The Eriu claimants moved for partial summary judgment, after which Twilla filed a notice of will, attaching a copy of an alleged holographic will purportedly bequeathing Ngerkesirs to Farrington, Lassen, and Ellois B. Ysaol. The Trial Division, in granting the Eriu claimants' motion for summary judgment, determined that Palau's inheritance statute, 25 PNC § 301, precluded the application of a decedent's will if the land was not purchased for value and so did not consider the legality of the purported will. Twilla now appeals. Because there is a genuine issue of material fact regarding whether the purported will is valid and enforceable, we reverse the Trial Division's grant of summary judgment and remand for further proceedings.

On September 30, 1999, Twilla filed a petition to probate Joseph's estate, in which she requested that the ownership of ⊥147 Ngerkesirs be transferred to Farrington and Lassen. In the petition, and later in a January 2000 notice to the court, Twilla attested that Joseph did not leave either a written or oral will. On December 7, 1999, the Trial Division appointed Twilla as the administrator of Joseph's estate, and ordered that notice be given to the public and all potentially interested parties regarding the disposition of the estate.

During January 2000, the Eriu claimants notified the court that they claimed ownership of four of Joseph's plots of land, including Ngerkesirs. In support of their claim, they attached to their notice a document in Palauan entitled "Omesodel Ma Bingel A Chutem Ma Klalou," which, roughly translated into English, means "Distribution and Disposition of Land and Property." This document was signed by members of Joseph's lineage Idung, who, according to the document, distributed Ngerkesirs to the Eriu claimants. Additionally, Sasao Ikeya, a member of Idung, claimed ownership of two of Joseph's real properties besides Ngerkesirs, stating that the Omesodel Ma Bingel A Chutem Ma Klalou demonstrated that Idung gave him the lands.

The Eriu claimants and Ikeya subsequently filed a joint motion for partial summary judgment, arguing first that 25 PNC § 301(b) governed the disposition of Joseph's land because Joseph had not left a will and had not purchased the land in question.[1] Second, the Eriu claimants and Ikeya contended that Idung was qualified under § 301(b) to dispose of Joseph's property because, pursuant to custom, it was the lineage primarily responsible for Joseph before his death. Last, the Eriu claimants and Ikeya pointed to the Omesodel Ma Bingel A Chutem Ma Klalou to demonstrate that Idung decided that they should inherit the plots of land that they claimed. Twilla responded to the joint motion for partial summary judgment on May 12, 2000. On that same date, she filed an amended notice of will, attaching a copy of an alleged holographic will,

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[1]Section 301(b) provides that:

> If the owner of fee simple land dies without issue and no will has been made 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 decedent was related by birth or adoption and which was actively and primarily responsible for the deceased prior to his death.

25 PNC § 301(b).

purportedly bequeathing Ngerkesirs to Farrington, Lassen, and Ellois B. Ysaol.

After the Eriu claimants and Ikeya replied to Twilla's opposition to the partial summary judgment motion, challenging among other things the validity of the alleged will, the Trial Division granted partial summary judgment in favor of the movants. The court decided, among other issues not relevant to this discussion, that irrespective of the will's validity, Joseph could not devise his property because he was not a bona fide purchaser of the land. Thus the Trial Division concluded that § 301(b) controlled, and that, under that statute, the Eriu claimants were entitled to dispose of Joseph's property as they saw fit.

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[1, 2] Twilla now appeals solely the Trial Division's decision that the Eriu claimants are the proper heirs to Ngerkesirs; she does not challenge the court's decision with regard to any other claimant, notably Ikeya, or the court's determination regarding any other parcel of land. She primarily argues that the Trial Division erroneously interpreted § 301(b) to preclude Joseph's alleged intent to devise his property by will. We agree and hold that § 301(b) should not be read to restrict Joseph's ability to devise his land by will. Accordingly, we conclude that the Trial Division should have considered the authenticity and enforceability of the alleged will and that summary judgment was incorrectly granted.[2]

Accordingly, the grant of summary judgment is reversed, and the case is remanded for further proceedings.

NGIRAKLSONG, Chief Justice, concurring:

Justice Miller has seen fit to interpret 25 PNC § 301(a) and (b) and 39 PNC § 403(b) even though the validity of the purported will would ultimately make the interpretation of those statutory provisions unnecessary. Accordingly, I disagree with Justice Miller to the extent that I believe that his interpretation of the above statutes is not the most reasonable one, nor is it the closest to the legislative intent.

The trial court's reading of § 301(b) is that no one can devise his land by will if the land was not purchased for value. The trial court relied on the conjunctive word "or". There may be several ways of reading this section, but the trial court's interpretation would nullify relevant provisions of Chapter 1, 25 PNC § 101, *et seq*. on the execution of wills on property, including land. *See* 25 PNC § 102. The interpretation not only leads to absurd results, it cannot possibly be the intent of the Olbiil Era Kelulau (OEK). *See* N. Singer, Statutes and Statutory Construction, § 45.12 at 54 (1984 rev. ed.).

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[2]We briefly note and ultimately reject the Eriu claimants' challenge to Twilla's standing to appeal the Trial Division's grant of summary judgment. As the Eriu claimants did not object to Twilla being named administrator of Joseph's estate at any time in the Trial Division, the court granted her motion for appointment. Twilla, therefore, has standing to appeal the adverse decision against her as administrator of Joseph's estate. And to the extent that Eriu claimants now contend that Franny Reklai, not Twilla, is the proper administrator for Joseph's estate, this argument was not raised in the trial court and should be deemed waived. *See Tell v. Rengiil*, 4 ROP Intrm. 224, 225 (1994) (arguments not presented to the Trial Division cannot be raised on appeal).

Rather, I would read the word "or" in § 301(b) as "and". This would not be judicial legislation. It is, in fact, within the court's "power to change . . . 'and' to 'or' and vice versa, whenever such conversion is required by the context . . . or, in general, to effectuate the obvious intention of the legislature." 73 Am. Jur. 2d *Statutes* § 156 at 357 (2001). When interpreting a vague statute, "the all-important or controlling factor is the legislative will." *ROP v. Palau Museum*, 6 ROP Intrm, 277, 278 (Tr. Div. 1995) (citations omitted).

By changing "or" to "and," § 301(b) essentially would read: "If the owner of fee simple land dies without issue, without a will and acquired such land by means other than as a *bona fide* purchaser for value, then . . . ." I believe this is the most reasonable interpretation of § 301(b) and the closest to legislative intent because it does not preclude ⊥149 people from devising by will. The interpretation reasonably follows the text of the statute. I also see no conflict between this reading of § 301(b) and other relevant statutory provisions on execution of wills or inheritances. Although I am reluctant to contemplate issues we do not have to address, I ask the following: under Justice Miller's interpretation of § 301(a) and (b), should the purported will be ruled invalid, what law would apply then?

The purpose of 25 PNC § 301(a) and (b) is to eliminate in certain circumstances existing customary law on inheritance. The one common requirement of both subsections (a) and (b) is that there be no will. Thus, if there is a will, neither (a) or (b) would apply. Subsection (a)'s two additional requirements are that there be children and that the land was purchased for value. Subsection (b)'s two additional requirements are that there be no children and the land was not purchased.

I believe the statute must be read *strictly*, not read with great liberality, but rather in the strict sense of the terms. Section 301(a) and (b) are not, in my view, intended to eliminate all customary law on inheritance. They are not repugnant to Article V of the Palau Constitution and can be read in harmony with 1 PNC § 302, which declares that customary law shall have the full force and effect of law not in conflict with statutory law. This complementary reading of the statute can be illustrated as follows: when all the requirements of § 301(a) and (b) are not met, and there is no will, the courts may then turn to customary law to determine where the land should go. If there is a will, then the courts may turn to 25 PNC § 101, *et seq*., to determine its validity.

Justice Miller and I agree that the statute is vague. He disagrees with my interpretation of the statute because it "leaves a significant gap in the coverage of the statute." First, if indeed there is a significant statutory gap, it is the function of the Olbiil Era Kelulau to rewrite the statute and place words in the right places. This is not the function of the Court. Second, there would be a significant statutory gap only if one reads the statute to nullify all customary law on inheritance. Nullifying all customary law on inheritance would be a drastic measure which I do not believe the statute intended at all.

MILLER, Justice, concurring:

I join in the judgment based on the following analysis. In 1959, § 801 of the Palau

District Code was enacted. Section 801 at that time governed all land transfers of fee simple land, including a devise by will, PDC § 801(b), and the inheritance of land in the absence of a will, PDC §§ 801(c) and (d). The pertinent parts of subsections (b), (c), and (d) provided that:

> (b) [l]ands held in fee simple by an individual may be devised by such individual by written will . . . .
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> (c) In the absence of instruments and statements provided for in subsection (b) above, lands held in fee simple by an individual shall, upon the death of the owner, be inherited by the owner's oldest living male child of sound mind, natural or adopted, or, if male heirs are lacking the oldest living female child of sound mind, natural or adopted, or, in the absence of any issue, by the spouse of the deceased, provided that such ⊥150 owner and spouse shall have been living as man and wife immediately prior to and at the time of the death of the owner. . . .
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> (d) If the owner of fee simple land dies without issue or eligible spouse and no will has been made in accordance with this Section or the laws of the Trust Territory, 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.

PDC §§ 801(b), (c), and (d) (1959). In its original form, application of the statute where the decedent had written a will was straightforward: if there was a valid will, under § 801(b), the will governed. PDC § 801(b). If there was not a will, pursuant to § 801(c) the land would pass to the decedent's oldest living male child, the decedent's oldest living female child, or the decedent's surviving spouse. PDC § 801(c). If there was not a will, and the decedent died without issue or eligible spouse, then, under § 801(d) the land would pass in accordance with the desires of the appropriate lineage. PDC § 801(d). In other words, if applicable, apply subsection (b), i.e., the will provision. If subsection (b) does not apply, apply subsection (c), and if neither subsection (b) nor subsection (c) applies, apply subsection (d).

Subsections (c) and (d) of § 801 were subsequently amended in 1975 to add the "bona fide purchaser for value" condition currently found in 25 PNC §§ 301(a) and (b). PDC §§ 801(c) and (d) (1980).[3] No change, however, was made to the will provision, subsection (b). The pertinent parts of the full statute thus provided that:

> (b) [l]ands held in fee simple by an individual may be devised by such individual by written will . . . .
>
> (c) In the absence of instruments and statements provided for in subsection (b) above, lands held in fee simple, which were acquired by the owner as a bona fide

[3]Other changes were also made, not pertinent here, including adding a legitimacy requirement for inheritance by children and deleting the provision that would pass the land to the decedent's spouse if the decedent had no issue.

> purchaser for value, shall, upon the death of the owner, be inherited by the owner's oldest legitimate living male child of sound mind, natural or adopted, or if male heirs are lacking the oldest legitimate living female child of sound mind, natural or adopted, of the marriage during which such lands were acquired; in the absence of any issue such lands shall be disposed of in accordance with subsection (d) hereof.
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> (d) If the owner of fee simple land dies without issue and no will has been made in accordance with this Section ⊥151 or the laws of the Trust Territory 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.

PDC §§ 801(b)-(d) (1980). In my view, in making these changes to subsections (c) and (d), but not to subsection (b), the legislature did not intend to alter the stepwise progression of the original statute – that is to say, if (b) (the will provision) applies, apply it, if not (b), then (c), and if not (b) or (c), then (d) – but rather to adjust the circumstances in which subsections (c) and (d) should be applied. The amendment limits the inheritance of real property by decedent's children under subsection (c) to lands "acquired by the owner as a bona fide purchaser for value," and adds to the applicability of subsection (d) those situations – now excluded from subsection (c) – in which the land at issue was "acquired by means other than as a bona fide purchaser for value."

I recognize that, as amended, subsection (d) can be read in isolation to preclude the application of a valid will. To read it that way, however, is to assume that the legislature intended to sharply limit the applicability of the will provision, subsection (b), even though it made no changes whatsoever to that subsection, which still referred, without limitation, to "lands held in fee simple," and even though it preserved the preamble to the statute which declared that:

> [l]and now held in fee simple or hereafter acquired by individuals may be transferred, devised, sold or otherwise disposed of at such time and in such manner as the owner alone may desire, regardless of established local customs which may control the disposition or inheritance of land through matrilineal lineages or clans.

PDC § 801 (1980). To the contrary, I believe that if the legislature had intended to change the overarching purpose of the statute and limit a landowner's right to devise his property, it would have altered that preamble and would have inserted such a limitation directly into the will provision by making subsection (b) applicable only to "lands acquired by the owner as a bona fide purchaser for value."

The recodification of the statute into two separate statutes has confused the issue, but does not affect my analysis. With the creation of the Palau National Code in 1985, § 801 was codified in substantially the same form at 39 PNC § 102. Not until either late 1997 or early 1998

did the Palau National Code Commission separate the will provision from the intestate inheritance section into different chapters of the Palau National Code.[4] Although now codified in separate chapters, the substance of the provisions has not ⊥152 changed, demonstrating that the function of the statutes remains the same. Specifically, in neither the 1975 amendment which added the "bona fide purchaser for value" qualification to §§ 801(c) and (d), the codification of the statute at § 102, or the recodification in the late nineties, did the legislature add a requirement to the provision on wills that an owner of land could devise land only if he had purchased it. I decline, therefore, to add that qualification and conclude that the statute permits a landowner to devise land, even if it was not purchased for value.

The Chief Justice and I are in agreement that the wording of the inheritance statute does not "effectuate the obvious intention of the legislature." Nonetheless, I respectfully disagree with his suggestion to change the word "or" to "and" because, as I note below, to do so leaves a significant gap in the coverage of the statute. It is my view, rather, that the legislature chose the right words, but simply put them in the wrong place. The legislature could have effected the change I believe it intended, without calling into question the applicability of the will provision and without creating any gap, by adding the new language – "or if such lands . . ." – immediately after the words "without issue". The opening clause of subsection (d) would then have read: "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 . . . ."

The Chief Justice asks what law should be applied if the will is found to be invalid. My answer is simple: if there is no valid will and subsection (b) does not apply, then in the circumstances presented here – the decedent did have children but apparently was not a bona fide purchaser for value – the court must look to subsection (d), now codified at 25 PNC § 301(b). By contrast, on the Chief Justice's interpretation, section § 301(b) would only apply where a decedent had no children. In my view, it is not consistent with legislative intent to interpret what was a comprehensive statute so as to leave a gap – in the event there is no valid will – in this and the numerous cases where a decedent dies with children but was not a bona fide purchaser of land. Accordingly, although I agree with the Chief Justice that the will should be considered and, if valid, enforced, I do so for the different reasons set forth above.

[4] 39 PNC § 102(b) (formerly PDC § 801(b)) now appears at 39 PNC § 403(b), and 39 PNC §§ 102(c) and (d) (formerly PDC §§ 801(c) and (d)) now appear at 25 PNC §§ 301(a) and (b).