

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FILED

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SUPREME COURT
OF THE
REPUBLIC OF PALAU

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FELIX MAIDESIL,

Appellant,

v.

ANNA MAIDESIL, GREGORY UEKI,
MOTIL LIEB, and CECILIA YAMADA,

Appellees.
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CIVIL APPEAL NO. 11-015
(Civil Action No. 10-005)

OPINION

Decided: July 4, 2012

Counsel for Appellant: Salvador Remoket
Counsel for Appellees: Moses Uludong

BEFORE: KATHLEEN M. SALII, Associate Justice; ALEXANDRA F. FOSTER,
Associate Justice; and ROSE MARY SKEBONG, Associate Justice Pro Tem.

Appeal from the Trial Division, the Honorable LOURDES F. MATERNE, Associate
Justice, presiding.

PER CURIAM:

Appellant Felix Maidesil appeals the Trial Division's May 16, 2011, order that states (1) he was not allowed to eject his biological daughter, Appellee Annalee Rose Maidesil,¹ from the family home in which they were both residing; (2) the home belongs to Anna, Dudiu, and Arlee Maidesil; and (3) the owner of the land, Appellee Motil Lieb,

¹ Appellee Maidesil's name is spelled differently throughout the briefing; we refer to her here as "Anna Maidesil," which is the name that appears on the brief filed by her attorney.

never promised to transfer ownership of the land to Appellant. We are not persuaded by Appellant's arguments and, accordingly, affirm the Trial Division's decision.

I. BACKGROUND

This dispute centers on ownership of a two-story family home located on land known as *Remiang* in Melekeok State. The land is currently registered to Lieb, the adoptive mother of Anna Maidesil. Lieb is the biological grandmother of Anna Maidesil. She is also Appellant's mother-in-law. Appellee Cecilia Yamada is the sister of Appellant's wife, Corona. Corona is Anna Maidesil's biological mother. In other words, Lieb adopted her biological granddaughter.

Sometime before 2000, Appellant and his wife decided to build their family home. Appellee Lieb said they should build it on *Remiang*. Appellant then built the two-story home on the property, and it is this home that is the subject of litigation. In 2005, Corona passed away and an *cheldech duch* was held. Appellant was finishing a criminal sentence at the Koror State Jail, but he was released so he could attend the funeral and *cheldech duch*. During the *cheldech duch*, Appellant explained that his wife's relatives asked him for his "thoughts on the house," and he replied that "the house will be the house of my children and I live with them to the end." He testified that when he said the house would be the house of "his children," he only meant his sons.

Since that time, Anna Maidesil and her husband, Appellee Gregory Ueki, have been living on the first floor of the family house, and Appellant has been living on the

second floor. However, the relationship between father and daughter had become strained, including several incidents regarding noise, access to power lines, and more.

On January 11, 2010, Appellant filed a complaint seeking ejectment, declaratory relief, and injunctive relief against Appellees. Appellant sought a declaration that he and his sons, Arlee and Dudiu, are owners of the family house as well as a portion of *Remiang*. He also stated that if he were to be required to leave, he wanted Lieb and Yamada to pay him the full appraisal value of the house (\$389,000), and he wished to enjoin Lieb, Yamada, and Ueki from coming near the house. Appellees filed an answer and counterclaim to remove Appellant from the second story of the house because he brought his girlfriend to stay in the family home.

Appellant moved for summary judgment, but the court found the motion was not timely filed and instead proceeded with a two-day trial. The outcome of the summary judgment motion was included in the May 16, 2011, decision on the merits of the trial.² In its decision, the Trial Division addressed whether Appellant Maidesil could be ejected, as well as who owned the family home and land.

As to ejectment, the Trial Division found that Appellant had not been ousted or deprived of possession and therefore he could not prevail in an ejectment action. The Trial Division found that there were genuine issues of material fact concerning the ownership of the house because Appellees submitted an affidavit that, at the

² In its Order, the Trial Division explained that the motion for summary judgment was not timely filed, and it was then “agreed that the Court include its ruling of the motion in its Decision after the trial.”

cheldecheduch, one of Corona's uncles had said the house would be given only to the couple's children. The Trial Division held that Appellant "failed to provide proof of why the house belongs to him and his two sons only." As to who should move out of the home, the Trial Division found that "[i]t was established by two of the three customary experts . . . that under custom a widow[er] should not bring another woman into the marital home" and that "a man should move out once he meets another woman."

In summary, the Trial Division held that the home in *Remiang* was the property of Dudiu, Arlee, and Anna Maidesil, and that they owned the two-story concrete home (as determined during the cheldecheduch); that Lieb did not promise to transfer ownership of the property to Appellant and his wife; that Appellant can live in the family home through his children; that under Palauan custom, a man should move out of the family home once he meets another woman; and that because the Appellant is in a relationship with another woman, he must move out of the family home. On May 25, 2011, Appellant filed his notice of appeal.

II. STANDARD OF REVIEW

A lower court's conclusions of law are reviewed *de novo*. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001); *see also ROP v. S.S. Enters., Inc.* 9 ROP 48, 50 (2002). Factual findings of the lower court are reviewed using the clearly erroneous standard. *Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.*, 9 ROP 162, 164 (2002). Specifically, "an appellate court's role is not to determine issues of fact or

custom as though hearing them for the first time. The trial court is in the best position to hear the evidence and make credibility determinations” *Imeong v. Yobech*, 17 ROP 210, 215 (2010) (citation omitted). “Treating custom as a factual matter also limits the depth of appellate review. If the trial court’s findings as to custom are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, they will not be disturbed on appeal unless the Court is left with a definite and firm conviction that a mistake has been committed.” *Dokdok v. Rechelluul*, 14 ROP 116, 119 (2007) (citation omitted); *see also Koror State Pub. Lands Auth. v. Ngirmang*, 14 ROP 29, 34 (2006).

III. ANALYSIS

Appellant argues that the Trial Division erred in requiring Appellant to move out of the family home and in “ignoring” his contention regarding damages. We address each argument in turn.

A. Eviction

Appellees alleged in their counterclaim that Appellant was living in the family home with a woman who was not currently his wife. On appeal, Appellant argues that the Trial Division erred when it ordered him to leave his home because he brought this woman to live with him in violation of Palauan custom. He maintains that such a position ignores the fact that Lieb was unjustly enriched, and he explains that the *cheldech duch* “should not divest and did not divest Felix Maidesil of his right to his

house.” He also states that he cannot “find authority on this point, except to say the result of Appellees['] actions and the court judgment brings in unjust enrichment on the part of Appellees.”

We review the Trial Division’s conclusions about customary law for clear error. *Dokdok*, 14 ROP at 119. The Trial Division considered the testimony of three experts, two of whom testified that when a man is in a relationship with another woman (not his wife), he must leave the family home in accordance with Palauan custom. First, Sariang Timulch, who is a member of the board of the Society of Historians and bears the title Dirrengechel, testified that if a house is built on the land belonging to the maternal side of the family and the wife passes away, the husband can stay. However, if he “do[es] something bad,” he will “get out.” Second, Antonio Bells, who bears the title of Misech in Ngiwal and Esebei ra Ibedechang in Elab, explained that it is “taboo” in Palau to bring another woman to stay in the house that a husband built with his wife for their children. He also testified that if property is built on the wife’s land or on properties of the wife’s relatives, the husband “need[s] to know one thing. You just build it and you don’t have any objection to it nor do you have any say over it when there is any disputes that arise[] from it; you just keep your mouth shut because you have built your house in other people’s house.” In addition, he explained that the children are in charge of property that is “on the land for their maternal uncles.” Finally, Appellant’s witness on rebuttal, Wataru Elbelau, who holds the title of Uchelrutechei, testified that it is not Palauan

custom to bring another woman to stay with the widower or to marry another woman and bring her to the family home.

These experts agreed that a husband cannot bring a new woman to the family home; if he does, he must leave. The Trial Division's findings that a man should move out once he meets another woman "are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion," and we have no "definite and firm conviction that a mistake has been committed". *Dokdok*, 114 ROP at 119. Accordingly, we affirm the Trial Division's decision that Appellant may live in the house with his children for the rest of his life, but that he violates customary law—and must move out—if he enters into a relationship with another woman while living in the family home.

B. Restitution

Appellant argues that the Trial Division did not address the issue of whether he is owed restitution for either the appraised value of the house (\$389,000) or for the cost of constructing the house (\$200,000). This reading ignores the Trial Division's conclusion that Appellant "is on the land as a guest of his children and does not have any claim over this land or the house." We review this legal conclusion *de novo*. *Roman Tmetchl Family Trust*, 8 ROP Intrm. at 318.

"A person who is unjustly enriched at the expense of another is subject to liability in restitution." 1 *Restatement (Third) of Restitution* § 1 (2011). However, "[t]here is no

liability in restitution for an unrequested benefit voluntarily conferred, unless the circumstances of the transaction justify the claimant's intervention in the absence of contract."³ *Id.* at § 2. The *Restatement* explains that this limitation "is traditionally expressed by denying restitution to a claimant." *Id.* at cmt. d. Further, "[b]ecause contract is strongly preferred over restitution as a basis for private obligations, restitution is not usually available to a claimant who has neglected a suitable opportunity to make a contract beforehand." *Id.* Finally, restitution is not a remedy if someone makes a gift to another. *Id.* at cmt. b.

Here, there is no evidence in the record below that Appellees were obligated to pay Appellant for the house he built. The testimony from Appellant himself indicates that he wanted the house to be for his children and that he would live with them in the house. If he wished for a different arrangement, that his children pay him for the value of the home once it was completed, for example, he had the opportunity to make a contract beforehand. He did not. Instead, he built a house as a gift.

Such action is consistent with custom. It is the "responsibility of the man" to build a house for his children either on his own land or the land of the relatives of his wife. Timulch explained that the husband builds the house because "if he die[s] and there's an

³ The *Restatement* identifies such circumstances as emergency intervention (protecting life, health, property, or another's duty); performance rendered to a third person (generally in the context of insurance or loans); or self-interested intervention (protection of claimant's property, claimant's expectation of ownership, unmarried cohabitants). See *Restatement (Third) of Restitution* §§ 20-25 (2011). None of these circumstances correspond to the facts here, where Appellant conferred a gift on his relatives and then sought restitution for his expenses in making that gift.

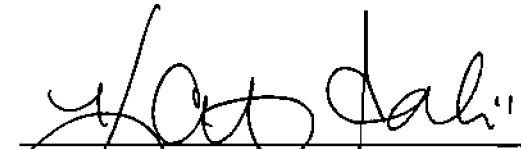
[ch]eldech duch they will give money to their children and prepare them, but they are prepared already with their house and their land.” There is no contrary evidence of a relationship between Appellant and his children such that restitution is a remedy for Appellant’s perceived wrong.


In sum, Appellant built the house as a gift for his children, and he may reside there as a guest, but he does not own the house. Appellant received the benefit of living in the home after his wife passed away, but he is not owed any money from his children for this benefit.


IV. CONCLUSION

For the foregoing reasons, the Trial Division's decision is **AFFIRMED**.

SO ORDERED, this 4th day of July, 2012.


KATHLEEN M. SALII
Associate Justice


ALEXANDRA F. FOSTER
Associate Justice


ROSE MARY SKEBONG
Associate Justice Pro Tem