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6 **IN THE SUPERIOR COURT**
7 **OF THE**
8 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**
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11
12 IN RE ESTATE OF)
13 ANDRES G. MACARANAS,)
14 Deceased.)
15)

Civil Action No. 01-0136D

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

16
17 **I. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

18 ANDRES G. MACARANAS, (hereinafter ANDRES) died intestate on January 15, 1998.
19 Four grandchildren [hereinafter GRANDCHILDREN] of ANDRES now claim that they are entitled to
20 a portion of the estate as "children" of ANDRES, based upon the Chamorro custom of poksai.¹ This
21 court finds that the GRANDCHILDREN are not entitled to share in the estate because the
22 GRANDCHILDREN have not established that the custom of poksai is the legal equivalent of an
23 adoption.
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26 **FOR PUBLICATION**
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¹ The Chamorro custom of poksai is defined as the raising of a child by a non-biological parent as though the child was a natural and legitimate child. *In re Estate of Cabrera*, 2 N.M.I. 195, 198 n.1 (1991).

1
2 **II. FINDINGS OF FACT**

3 The court, having read and considered all the papers filed in connection with this matter, having
4 considered the arguments advanced by the parties at hearing,² and being fully informed, makes the
5 following findings of fact:

- 6
7 1. Irene Macaranas Tupas [hereinafter TUPAS] is the biological mother of the following
8 children: (1) Catherine, born August 29, 1969, (2) Emily, born November 26, 1971,
9 (3) Walter, born December 14, 1972, and (4) Andrew, born January 11, 1975.
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11 2. TUPAS was not married when the above children were born.
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13 3. TUPAS and her children lived with TUPAS' parents- ANDRES and PETRA
14 Macaranas.
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16 4. ANDRES and PETRA provided care and support for the GRANDCHILDREN while
17 the GRANDCHILDREN were growing-up.
18
19 5. ANDRES and PETRA also provided care and support for two other grandchildren,
20 their son Richard's children- Anthony and Claudia Macaranas.
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22 6. The GRANDCHILDREN were never legally adopted pursuant to statute.³
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24 7. Anthony and Claudia were legally adopted.
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26 8. PETRA died February 21, 1996.
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28 9. The proposed distribution of PETRA's estate was contested.
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11 10. TUPAS did not list the GRANDCHILDREN as heirs of PETRA in an affidavit that
12 was created in an effort to settle the estate. (Evidentiary Hr'g Ex. 1)
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14 11. PETRAS' estate was settled and a consent judgment was issued and approved by the
15 court. (Evidentiary Hr'g Ex. 2)
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17 12. The judgment did not list the GRANDCHILDREN as "heirs" of PETRA. (Evidentiary
18 Hr'g Ex. 2 at 1)
19
20 13. ANDRES died intestate on January 15, 1998.

25 ² An evidentiary hearing was held on December 21, 2001. Robert T. Torres, Esq., represented the estate
26 Administrator. Jose Attao Bermudes, Esq., represented heir claimants - GRANDCHILDREN.

27 ³ The statutory requirements that must be met in order to effectuate a court sanctioned, legal adoption are
28 set forth at 8 CMC §§ 1401-1420.

1 14. Catherine Macaranas [hereinafter CATHERINE] received two insurance claim checks
2 in the amounts of \$933 and \$1,400 after the death of ANDRES. ANDRES listed
3 CATHERINE as a beneficiary and as his "daughter" on the insurance policy.
(Evidentiary Hr'g Exs. A & B)

4 15. The GRANDCHILDREN received benefit checks from ANDRES' Social Security.
5 The GRANDCHILDREN were individually listed as either "sons" or "daughters."
(Evidentiary Hr'g R. at 2467- 3340)

6 III. CONCLUSIONS OF LAW

7 1. The court has jurisdiction over this matter pursuant to 8 CMC § 2202, which provides:

8 (a) To the full extent permitted by the Northern Mariana Islands
9 Constitution and the Schedule on Transitional Matters, the
10 Commonwealth Trial Court shall have jurisdiction over all
11 subject matter relating to estates of decedents, including construction
12 of wills and determination of heirs and successors of decedents.

13 (b) The Commonwealth Trial Court shall have full power to make
14 orders, judgments, and decrees and take all other action necessary
15 and proper to administer justice in the matters which come before it.

16 *See also In re Estate of Dela Cruz*, 2 N.M.I. 1 (1991); *In re Estate of Rofag*, 2 N.M.I. 18
17 (1991); *In re Estate of Deleon Guerrero*, 3 N.M.I. 253 (1992); *In re Estate of Tudela*, 4
18 N.M.I. 1 (1993).

19 2. The Chamorro custom of poksai is defined as the raising of a child by a non-biological parent
20 as though the child was a natural and legitimate child. *In re Estate of Cabrera*, 2 N.M.I. 195,
21 198 n.1 (1991).

22 3. In the present case, substantial evidence exists to support the assertion that ANDRES and
23 PETRA raised the GRANDCHILDREN under the custom of poksai. The
24 GRANDCHILDREN lived with ANDRES and PETRA, almost from birth. Even now,
25 the GRANDCHILDREN, with the exception of Walter, continue to reside in the
26 grandparent's house where they were raised. This fact alone gives rise to the conclusion
27 that ANDRES and PETRA raised the GRANDCHILDREN as though they were "natural
28 and legitimate" children. This conclusion is further supported by the fact that ANDRES listed
CATHERINE as his "daughter" on his life insurance and by the fact that the
GRANDCHILDREN were listed as "children" for purposes of social security.

4. In addition, TUBAS testified that she had found birth and baptismal certificates in her

1 parents home that had been altered to indicate that the GRANDCHILDREN were the
2 "children" of ANDRES and PETRA. However, the documents themselves cannot be
3 considered because the documents were never authenticated nor were they admitted into
4 evidence.

- 5 5. Authentication is a "condition precedent to admissibility," and this condition is satisfied by
6 "evidence sufficient to support a finding that the matter in question is what its proponent claims."
7 Commonwealth Rules of Evidence 901(a). Unauthenticated documents cannot be considered
8 because the documents cannot be admitted into evidence. *See Cristobal v. Siegel*, 26 F.3d
9 1488, 1494 (9th Cir. 1994); *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896
10 F.2d 1542, 1550-51 (9th Cir. 1990); *Canada v. Blain's Helicopters, Inc.*, 831 F.2d 920,
11 925 (9th Cir. 1987); *Hamilton v. Keystone Tankship Corp.*, 539 F.2d 684, 686 (9th Cir.
12 1976).
- 13 6. In view of the conclusion that the GRANDCHILDREN were raised through poksai, they may
14 be now considered pineksai under Chamorro custom. *See Cabrera*, 2 N.M.I. at 208-09; *In re*
15 *Estate of Deleon Castro*, 4 N.M.I. 102, 106-07 (1994). Pineksai and biological children
16 often inherit property through the use of a partida.
- 17 7. A partida (partido) describes the act by which the male head of a family meets with his
18 biological children and his pineksai and distributes his land prior to his death. The formal partida
19 (partido) prior to the father's death is a traditionally sanctioned act preliminary to the inheritance
20 of land by the heirs. *Cabrera*, 2 N.M.I. at 205 (*citing* A. SPOEHR, SAIPAN: THE ETHNOLOGY
21 OF A WAR-DEVASTATED ISLAND, 136 (Chicago Natural History Museum, 1954)). The
22 Commonwealth Code recognizes the use of the partida.⁴

23
24 ⁴ Section 2302(a) of Title 8 of the Commonwealth Code provides:

25 *Validity of Customary Wills and Partidas.* Nothing in this chapter shall prevent
26 the making of a will or partida in accordance with the historical traditions and
27 customs of the Northern Mariana Islands, be it Chamorro or Carolinian custom,
28 nor shall anything in this chapter affect the validity of a will or partida made in
accordance with such customary law.

- 1 8. The present facts do not indicate that ANDRES ever made a partida. Accordingly, the
2 GRANDCHILDREN cannot inherit based upon being classified as pineksai. The
3 GRANDCHILDREN must look toward the Northern Mariana Islands Probate Law, 8 CMC
4 §§ 2101-2927 [hereinafter Probate Code] for relief.
- 5 9. Any property of the estate of a decedent not effectively disposed by the decedent's will passes
6 to his heirs as prescribed in the Probate Code. 8 CMC § 2901.
- 7 10. Pursuant to 8 CMC § 2902, Chamorro ancestors' land passes in intestacy in the following
8 manner: "(a) [t]he surviving spouse obtains a life estate, with the issue obtaining a vested
9 remainder in fee simple by representation. (b) [i]f there is no surviving spouse, the surviving
10 issue of the decedent obtain all of the properties by representation."
- 11 11. ANDRES died after his wife PETRA. ANDRES died without a will. Accordingly, the
12 disposition of his assets must follow the procedures as set forth in 8 CMC § 2902. Further,
13 since PETRA pre-deceased ANDRES, ANDRES does not have a surviving spouse.
14 Therefore, the surviving issue of ANDRE will inherit by representation. 8 CMC § 2902 (b).
- 15 12. The "issue" of a person means all his / her lineal descendants of all generations, with the
16 relationship of parent and child at each generation being determined by the definitions of child
17 and parent contained in the Probate Code. 8 CMC § 2107 (q).
- 18 13. The term "child" includes any individual entitled to take as a child under this law by intestate
19 succession from the parent whose relationship is involved. It **includes adopted children** and
20 children born out of wedlock, and **excludes** any person who is only a stepchild, a foster child,
21 a **grandchild** or any more remote descendant. 8 CMC § 2107 (c) (emphasis added).
- 22 14. Sections 1104 and 1105 of Title 8 of the Commonwealth Code contain the following significant
23 provisions concerning customary adoptions:
- 24 1. No restriction or limitation may be imposed upon the granting
25 of an adoption in accordance with local custom.
 - 26 2. When the validity of a customary adoption is questioned or
27 disputed, causing serious embarrassment or affecting property
28 rights, any party "may" petition the trial court for a decree
confirming the adoption. The filing of such petition is
permissive rather than mandatory.

1 3. After notice to all living parties and a hearing, the trial
2 court shall issue a decree confirming the customary adoption,
if it is satisfied that the adoption is valid.

3 8 CMC §§ 1104, 1105.

4 15. Section 1105 does not "expressly or impliedly" provide that it constitutes the only means by
5 which a trial court can determine the validity of a proposed customary adoption. The general
6 purpose of the relevant provisions is to "acknowledge and affirm the existence of customary
7 adoption in the CNMI." *In re Estate of Rofag*, 2 N.M.I. 18, 26-27 (1991).

8 16. Customary adoption must be proven by a preponderance of the evidence. *Id.* at 29-30.

9 17. If an adoption can be shown, then pursuant to statute: "[a]n adopted person (including an
10 ***adoption pursuant to custom***) is the child of an adopting parent and not of the natural parents
11 . . . [Otherwise], a person born out of wedlock is a child of the mother." 8 CMC § 2918(a)
12 and (b) (emphasis added).

13 18. The CNMI Supreme Court, in *Rofag*, affirmed the trial court's holding that the establishment of
14 a customary adoption would enable an adopted child to inherit, as if the child were a natural
15 and biological heir of the decedent. Rofag was a Carolinian man who lived in a Carolinian
16 community in Saipan during the German and Japanese occupations. *Rofag*, 2 N.M.I. at 21.
17 Rofag did not have any natural children of his own. Since Rofag had no children, he took his
18 niece into his home and raised her. Rofag's niece continued to live with him even after she
19 married. Rofag's niece lived with, and took care of, him until he died intestate. *Id.* at 21.

20 19. The niece had two children while she was living with Rofag. The children were named Juan and
21 Jose. In a later probate proceeding, Juan and Jose claimed to be the sole heirs of Rofag, based
22 upon their assertion that their mother was Rofag's sole adoptive daughter.⁵ The claim of
23 adoption was based upon the Carolinian customary adoption known as "mwei-mwei".⁶ *Id.* at
24

25 ⁵ Prior to this proceeding, Juan and Jose submitted a war damage claim to the Micronesia War Claims
26 Commission and received \$78,205 for damages caused to Rofag's land.

27 ⁶ The Supreme Court in *Rofag* defined the term as follows:

28 "Mwei-Mwei" is a Carolinian customary method of adopting children. Normally,

1 21.

2 20. In affirming the trial court's finding that a customary adoption was proven by a preponderance
3 of the evidence, the Supreme Court reasoned that "substantial evidence" supported the finding
4 that Rofag had adopted his niece, pursuant to the Carolinian custom of "mwei-mwei". *Id.* at
5 31.

6 21. The "substantial evidence" that the Court was referring to was obtained by reviewing the
7 transcripts of the lower court's exhaustive evidentiary hearing. The hearing lasted several
8 weeks. During the hearing, three expert witnesses testified as to Carolinian customary adoption
9 and several other witnesses testified for or against the alleged adoption of Rofag's niece. The
10 parties submitted both written opening statements and written final arguments. *Id.* at 23.

11 22. Unlike the above hearing, the hearing in the present case lasted less than one full day. No
12 expert witnesses testified as to the Chamorro custom of poksai. Neither documentation nor
13 case law was presented supporting the assertion that the Chamorro custom of poksai is
14 intended to be the equivalent of a legal adoption. In essence, the court was not provided with
15 any evidence to support the GRANDCHILDREN's assertion that the Chamorro custom of
16 poksai is intended to serve as a customary adoption for purposes of inheriting under the
17 Probate Code.

18 23. The preponderance of the evidence standard is described as "evidence which is of greater
19 weight or more convincing than the evidence which is offered in opposition to it; that is,
20 evidence, which as a whole shows that the fact sought to be proved is more probable than not."
21 *In re Estate of Barcinas*, 4 N.M.I. 149, 154 (1994). Here, the fact to be proven is whether
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23 the child to be adopted is a baby, but there is evidence that a child who is nine, ten,
24 or eleven years old could be customarily adopted, depending upon the circumstances.
25 The adoption takes place between relatives, initiated by the woman and normally
26 a married couple, as opposed to a single person, adopt the child. (There is also
evidence that single persons have adopted children by custom.)

27 Customarily, the adopting parents propose to adopt a child and the natural parents
28 must give their consent. Once the child is adopted under this custom, he / she is treated
and considered as a natural child for all purposes. *In re Estate of Rofag*, 2 N.M.I. 18,
23 n.3 (1991).

1 the Chamorro custom of poksai is legally equivalent to the Carolinian custom of mwei-mwei.
2 As stated previously, unlike *Rofag*, no evidence has been offered to prove that it is more
3 probable than not that poksai is intended to serve as a customary adoption. Accordingly, the
4 GRANDCHILDREN have failed to meet the requisite standard.

5 24. In coming to this conclusion, it is important for the Court to explain what this decision does not
6 say. This decision does not state, nor is it the Court's intention to imply that the Chamorro
7 custom of poksai is not equivalent to the Carolinian custom of mwei-mwei. This decision merely
8 states that given the evidence presented, the Court was unable to find, by a preponderance of
9 the evidence, that the Chamorro custom of poksai is intended to serve as a customary adoption
10 as envisioned by the Probate Code.

11 25. In conclusion, this Court holds that the GRANDCHILDREN have failed to satisfy their burden
12 of proof that they were "children" of ANDRES and PETRA, in the legal sense. Accordingly,
13 their status remains that of grandchildren under 8 CMC § 2107 (c) and they will not inherit as
14 "surviving issues" of ANDRES.

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16 So **ORDERED** this 3rd day of April, 2002.

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18 /s/ _____
19 DAVID A. WISEMAN, Associate Judge
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