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OF COURT

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN THE MATTER OF THE
ESTATE OF
MANUEL FAUSTO ALDAN,
Deceased.

) Civil Action No. 90-490
) **MEMORANDUM DECISION**
) **AND ORDER**
)

This matter originally came before the Court on January 31, 1995, on the petition of Administratrix Josepha Fields for final distribution of the estate of Decedent Manuel Fausto Aldan. Decedent's two children out of wedlock, Domitilia C. Govendo and Thomas J. Camacho, oppose the proposed distribution. At the hearing, both parties agreed that the Court must resolve a fundamental issue of law prior to the final distribution of this estate: whether Decedent's estate passed directly to his heirs upon his death, or whether part or all of the estate passed to his surviving spouse Cecelia C. Aldan. On May 25, 1995, the Court issued an initial determination that the entire estate passed to the surviving spouse and sought supplemental briefing from the parties as to whether either applicable Chamorro custom or the equal protection provisions of the U.S. and Commonwealth Constitutions nevertheless mandated the inclusion of the children out of wedlock as heirs of the estate. See *Memorandum Decision and Order for Supplemental Briefing* (May 25, 1995) ("May 25 Decision"). The parties submitted their supplemental briefs on June 21, 1995, and the Administratrix filed a Reply

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1 Memorandum on June 28, 1995. Having considered these additional arguments and authorities
2 provided by counsel, the Court now renders its final decision.

4 I. FACTS

5 The May 25 Decision recited the following facts, repeated here for the convenience of the
6 reader. Decedent and Cecelia were married in 1927. *Exh. A to Declaration of Gayle M. Berger*
7 (*"Berger Decl."*). During the course of the marriage, Decedent acquired five parcels of land on
8 Saipan, bearing the following designations: E.A. 133, E.A. 837, A.H 248, 015 H 26 and 005 H 28.
9 *Berger Decl.* Based on the evidence provided to the Court, these properties constituted marital
10 property.¹

11 Also during the marriage, Decedent and Cecelia had four children. *Estate of Aldan*, 2 N.M.I.
12 288 (1991). In addition, Decedent fathered two children outside the marriage. *Id.* Decedent died
13 in 1971. His wife died eight months later, in 1972. On May 22, 1990, Decedent's daughter Josepha
14 Fields received letters of administration to administer his estate.

16 II. ISSUE

17 The remaining issues before the Court are:

- 18 1. What effect the passage of all of Decedent's estate to his surviving spouse, pursuant
19 to Chamorro custom, has on the inheritance rights of Decedent's two children born out of wedlock;
- 20 2. Whether the Administratrix is entitled to **tax** her attorneys' fees against the estate.

23 ¹ In their Supplemental Brief, the objecting heirs again requested an evidentiary hearing to
24 dispute the Court's finding that these properties were marital in character. At the hearing on this
25 petition, Counsel for the Administratrix made clear that he would be relying on the evidence contained
26 in the Berger Declaration to show that these properties were marital. Counsel for the objecting heirs,
27 while making essentially the same arguments contained in his Supplemental Brief that the Berger
28 Declaration should be subject to cross-examination, nevertheless stipulated to submitting the matter
on the record, without holding an evidentiary hearing, thus waiving his right to such cross-
examination. *See* May 25 Decision at 2, n. 1. In view of such waiver, Counsel's belated request to
take the testimony he could have taken earlier is denied.

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III. ANALYSIS

A. GOVERNING LAW

Decedent died in 1971, prior to the enactment of the Probate Code. See 8 CMC § 2102. Therefore, the Code does not apply to these proceedings. Moreover, the Commonwealth Supreme Court has stated categorically that “the Probate Code is inapplicable and cannot be viewed as evidence of custom in matters where the decedent died prior to February 1984.” *Willbanks v. Stein*, Appeal No. 93-036, slip op. at 2 (N.M.I. Dec. 6, 1994) (order denying rehearing). In the absence of the statute, the Court looks to customary law to resolve the issue. Here the parties by oral stipulation elected to submit the matter for decision without presenting testimony or other evidence of applicable Chamorro custom. Rather, they relied on court precedents and other written sources in support of their respective contentions.² The Court will therefore base its decision on these same sources.

B. LAW OF THE CASE³ -- SURVIVING SPOUSE'S SHARE

Under pre-Probate Code Chamorro custom, where a husband survives his wife, all property acquired during their marriage passes to the surviving husband, leaving no marital assets left to be probated in the wife's estate. *Estate of Deleon Guerrero*, 1 N.M.I. 301, 306 (1990), reh. den., 1 N.M.I. 325 (1990). See also Emerick, *Land Tenure in the Marianas*, at 223 (“[The] husband [...] makes decisions as to the use of the land unless [the wife] dies first at which time he assumes ownership of the land”). In *Estate of Deleon Guerrero*, the Supreme Court took pains to treat

² Counsel for the objecting heirs criticizes the Court's use of Alexander Spoehr's *Saipan: the Ethnology of a War-Devastated Island* (41 FIELDIANA: ANTHROPOLOGY (1954)) as a source of applicable customary law, but offers no concrete alternative. While the Court may agree with some of his criticisms of the shortcomings of Spoehr, it must proceed with the resources at hand until better ones become available.

³ For the convenience of the reader, the Court here summarizes the holding of its May 25 Decision, which is the law of the case. The objecting heirs' "request" that the Court reconsider this holding is procedurally improper (see *Sablan v. Tenorio*, Civil Action No 94-500 (N.M.I. Super. Ct. Aug. 22, 1995) and substantively without merit. Counsel is urged in future cases to treat a request for supplemental briefing as an opportunity to assist the Court with novel arguments and renewed research, rather than a mere occasion to vent spleen at an unfavorable decision.

1 property acquired during the marriage differently from other property such as iyon *manaina*, or
2 "ancestors' land." *Deleon* Guerrero, supra, 1 N.M.I. at 306 n. 4.

3 Spoehr, in turn, states that “[i]n case a *partido* is not made before the death of the father, the
4 [surviving] wife will often take the land.” Spoehr, supra, at 140. Moreover, *Deleon* Guerrero must
5 be read in the light of the prohibition against sex discrimination embodied in Article I, § 6 of the
6 Commonwealth Constitution and *Ada v. Sablan*, 1 N.M.I. 415 (1990). As the Court wrote in *Ada*,
7 "any discrimination based [on sex] is suspect and must withstand strict judicial scrutiny. Unless it
8 is justified by a compelling state interest, it is invalid." 1 N.M.I. at 427. Here, the Court can see
9 no compelling state interest in adopting different rules for intestate succession by surviving widows
10 from those governing surviving widowers. Were there strong evidence of a vital Chamorro custom
11 at stake, the question might be somewhat closer; but in the absence of such evidence, the
12 Constitutional mandate is clear. The principle of *Deleon* Guerrero must therefore be given reciprocal
13 application. At Decedent's death, his entire estate passed to his surviving spouse Cecelia.

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15 **C. INHERITANCE BY OBJECTING HEIRS**

16 The question now is whether the passage of the entire estate to Decedent's surviving wife must
17 disinherit his children out of wedlock. The Court begins its analysis with *Ada v. Sablan*. In *Ada*,
18 the Commonwealth Supreme Court was faced with a dearth of applicable local statutory or customary
19 law, a Mainland common law tradition which had been almost universally superseded by statute, and
20 a constitutional commandment against discrimination. In response, the Court combined such
21 customary evidence as existed with the statutory precedents of the Mainland to fashion a "common
22 law" of marital property which could satisfy the requirements of the Fourteenth Amendment and Art.
23 I, § 6 of the Commonwealth Constitution. 1 N.M.I. at 428-429. A similar mix is presented here.

1 spouse, the community property is divided equally among the heirs of both spouses. See *In re*
2 *Rattray's Estate*, 91 P.2d 1042, 1046-1049 (Cal. 1939) (citing former Cal. Prob. Code § 228 (now
3 § 6402.5)); *Harlan v. Sparks*, 125 F.2d 502, 504 (10th Cir. 1942) (citing 1927 N.M. Laws, § 68-
4 410); *Matter of Estate of Frantz*, 625 P.2d 1276, 1278 (Okla. App. Ct. 1981) (citing 84 Okla. Stat.
5 1971, § 213 (Second)). Even if the community property was held by the spouses in a joint tenancy
6 with right of survivorship, which would mandate the transfer to the surviving spouse at the first
7 spouse's death, the property is divided among the heirs of both spouses at the death of the survivor.
8 *Estate of Rightmier*, 317 P.2d 54, 56 (Cal. App. Ct. 1957) (court looks to community origin of
9 property, rather than form of ownership at spouses' deaths, to determine distribution). Moreover,
10 by the operation of these statutes, the separate heirs of the predeceased spouse have no interest in the
11 property until the death of the survivor spouse. *Harlan*, 125 F.2d at 504.

12 The Court is aware that these precedents, being statutory in origin, have no direct applicability
13 via 7 CMC § 3401. Indeed, the Court shares the qualms over substituting statutory law for common
14 law expressed by the Appellate Division in *Matagolai v. Pangelinan*, 3 C.R. 591 (N.M.I. App. Div.
15 1987) and 'this Court in the first remand of *Ada*, slip. op. at 2, n.2 (N.M.I. Super. Ct. May 19,
16 1993). However, the Court is struck by the similarity between the terms of these statutes and the
17 Charnorro customary rule expressed in *Spoehr*. Indeed, some provision of this type would seem to
18 be inherently necessary to the basic fairness of any community property scheme; otherwise, the
19 inheritance rights of family members would turn on mere chance, depending on which spouse
20 happened to die first.

21 3. Equal Protection for Children Out of Wedlock.

22 Lastly, as in *Ada*, the Court must act within the confines of the equal protection doctrine of
23 the Fourteenth Amendment to the U.S. Constitution and Art. I, § 6 of the Commonwealth
24 Constitution: Under either constitution, discrimination against children out of wedlock must withstand
25 heightened judicial scrutiny. *Estate of Aldan*, 2 N.M.I. 288, 298-9 (1991); *Reed v. Campbell*, 106
26 S.Ct. 2234, 2237 (1986); *In re Estate of Refugia*, 1 C.R. 219, 223-4 (Comm. Tr. Ct. 1981). In
27 particular, in order to pass constitutional muster, distinctions based on legitimacy must bear "an
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1 important and substantial relation to the State's interest in the orderly and just distribution of a
2 decedent's property at death." Reed, 106 S.Ct. at **2237**, citing Lalli v. Lalli, 99 S.Ct. 518 (1978).

3 Here, there is simply no state interest at stake in denying children out of wedlock their otherwise
4 valid inheritance rights merely because their parent happened to predecease his spouse. Indeed, the
5 state's interest in orderly and just distribution of estates is directly contrary to such a result.
6 Therefore, a holding of this Court which failed to effect some redistribution of marital property on
7 the death of the surviving spouse would violate equal protection.

8 **4. Legitimation Requirements.**

9 An ancillary issue raised in the parties' supplemental briefs is the constitutionality of certain
10 claimed Chamorro customs relating to legitimation of children out of wedlock. However, that was
11 not among the issues presented to this Court by either the Petition for Final Distribution or the
12 Objection thereto. Furthermore, the Superior Court's decision on remand in *Willbanks v. Stein*, Civil
13 Action No. 91-337 (N.M.I. Super. Ct. June 1995) (unpublished opinion) does not specify what
14 procedures are necessary to legitimize a child out of wedlock. And *Estate of Camacho*, Civil Action
15 No. 43-73 (High Ct. Tr. Div. Nov. 2, 1976) (unpublished opinion), while establishing the availability
16 of church legitimation procedures, does not hold that such procedures are required for legitimation.
17 Here, there is evidence in the record that Decedent recognized the objecting heirs as his children
18 during his lifetime. In the absence of a contrary showing of Chamorro custom in this case, which
19 neither party has made, or a precedent mandating a specific legitimation procedure, this Court has no
20 basis to require any such formal procedure as a prerequisite to inheritance, or to discuss the
21 constitutionality of such a requirement if it were to be imposed.

22 **5. Conclusion.**

23 Viewing the above authorities as a whole, the Court holds that where spouses own marital
24 property and have intestate heirs which are not common to each other, the marital estate is divided
25 in two equal halves upon the death of the second spouse, one half being distributed to the heirs of
26 each spouse. This rule reconciles the precedents of *Estate of Deleon Guerrero*, 1 N.M.I. at 306, and
27 *Ada*, 1 N.M.I. at 427, with the mandates of the equal protection doctrine as it applies to children out

1 of wedlock. It also achieves the state's interest in fundamental fairness in the distribution of estates.
2 Accordingly, the Court finds here that, at Cecelia's death, the marital estate passed in equal shares
3 to the heirs of Manuel and to the heirs of Cecelia.

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5 **IV. FEES**

6 The Administratrix has claimed entitlement to reimbursement for the attorneys' fees she has
7 expended litigating this contested probate, as well as intervening in Cabrera v. Cabrera, Civil Action
8 No. 85-1413. Title 8 CMC § 2926 provides that an administrator, prior to charging an attorney fee
9 to an estate, shall describe "the benefit to the estate" conferred by the legal service rendered. Here,
10 counsel for the Administratrix asserts that her intervention in the Cabrera matter "preserved 20,000
11 square meters for the estate." This contention was not disputed by the objecting heirs, and the Court
12 has no basis to discount it. Therefore, the fees charged in that intervention are properly charged to
13 the estate.

14 As to the fees incurred litigating the present matter, the Commonwealth Code is silent on
15 whether an administrator may charge to the estate fees incurred in a contest among beneficiaries which
16 has no effect on the overall size of the estate itself. However, the majority rule in the U.S. Mainland
17 is clear: fees for contests among beneficiaries are generally not chargeable to the estate. See In re
18 Estate of *Meyer*, 802 P.2d 148, 153-4 (Wash. App. Ct. 1990); Succession of Bradford, 130 So.2d
19 702,706 (La. App. Ct. 1961) (citing 33 C.J.S. EXECUTORS AND ADMINISTRATORS § 226(d)). While
20 the Administratrix is no doubt entitled to charge the estate for some fees spent in presenting this
21 probate matter to the Court, it is clear that the majority of the fees outlined in the Declaration of
22 counsel were incurred in opposing the claims of the objecting heirs. The Court will not authorize the
23 reimbursement of such sums.

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V. ORDER

For the foregoing reasons, the Court hereby ORDERS:

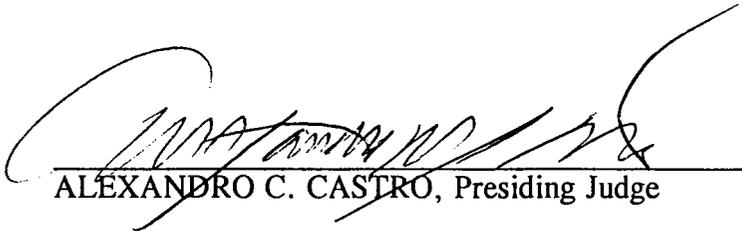
1. The marital estate of Manuel F. Aldan and Cecelia C. Aldan, consisting of five parcels of land on Saipan, bearing the designations E. A. 133, E.A. 837, A.H 248, 015 H 26 and 005 H 28, shall be divided into two equal shares.

2. One half of the marital estate shall be distributed equally among the heirs of Cecelia C. Aldan. The other half of the estate shall be distributed equally among the heirs of Manuel F. Aldan, which shall include the objecting heirs.

3. The fees expended on the intervention of the Administratrix in Cabrera v. Cabrera, Civil Action No. 85-1413, shall be chargeable on a pro rata basis to each heir's share. However, each party shall bear its own legal fees and costs expended litigating this probate matter. The Administratrix shall file an amended declaration of fees and costs incurred in this matter, listing only those items relating to the necessary administration of the estate and omitting all items relating to the contest between the Administratrix and the objecting heirs. The objecting heirs shall file any objection to the amended declaration within ten days of its filing.

4. The parties shall contact the Court to determine a mutually-agreeable date for a status conference, to identify any remaining issues requiring the Court's attention prior to the final closure of the estate. Prior to the status conference, the parties shall meet and confer, making good faith efforts to resolve all such issues, and shall be prepared to explain at the status conference why any remaining issues must be resolved by the Court.

So ORDERED this 8 day of August, 1995.


ALEXANDRO C. CASTRO, Presiding Judge