IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE THE ESTATE OF PILAR DE CASTRO,
Deceased.

SUPREME COURT NO. 2007-SCC-0027-CIV
SUPERIOR COURT NO. 93-1091

Cite as: 2009 MP 3

Decided April 29, 2009

Brien Sers Nicholas, Esq., Saipan, Northern Mariana Islands, for Appellant
James S. Sirok, Esq., and Antonio M. Atalig, Esq., Saipan, Northern Mariana Islands, for Appellees
BEFORE: JOHN A. MANGLONA, Associate Justice; JESUS C. BORJA, Justice Pro Tem; TIMOTHY H. BELLAS, Justice Pro Tem

MANGLONA, J.:

¶ 1 Angela R. Cabrera ("Cabrera")[1] seeks review of a trial court order denying her claim of sole ownership of a parcel of land, arguing her biological father purchased the land for her benefit. In the alternative, Cabrera asserts sole ownership under the doctrine of adverse possession. Although the trial court did not issue a separate entry of judgment in conjunction with its order, we hold that we have jurisdiction over this petition because the parties waived the separate document rule. We further hold that the trial court did not err in denying Cabrera's claim of sole ownership. Accordingly, the trial court's decision is AFFIRMED.

I

¶ 2 Pilar De Castro died in 1951 leaving behind a parcel of real property as the sole asset of her estate. Years later, De Castro's daughter, Cabrera, claimed she was the sole owner of the property. However, two of De Castro's other heirs, Herman M. Roberto and William M. Roberto (collectively, "the Robertos"), alleged the property belongs to all the heirs of the De Castro estate. The parties' claims stem from a lengthy procedural history.

¶ 3 De Castro was married twice during her lifetime. She first married Jose Roberto, and the two had at least three children together, including Rita R. Quitano, Antonio C. Roberto, and Jose C. Roberto. Additionally, it was generally assumed that Cabrera was the fourth child of De Castro and Jose Roberto. Following her first husband's death, De Castro married Ignacio Aguon. De Castro and Aguon had three children together, including Esperanza C. Aguon, Remedio A. Guerrero, and Sophia A. Santos. On April 25, 1951, shortly before De Castro's death, the Trust Territory of the Pacific Islands ("TTPI") issued a determination of ownership that recognized De Castro as the owner of a parcel of real property, identified as Lot No. 555 ("lot 555").

¶ 4 Following De Castro's death, Cabrera began acting as the representative of both De Castro and De Castro's heirs. In 1955, Cabrera, acting as De Castro's land trustee, executed an agreement to exchange lot 555 for a parcel of land identified as Lot No. 851 ("lot 851"), which the TTPI owned. The agreement was finalized in 1958 when Cabrera executed a quitclaim deed transferring lot 555 to the TTPI. In return, the TTPI granted lot 851 to De Castro. The exchange agreement listed De Castro as the exchanging party, and noted that she was represented by Cabrera as her "land trustee." Appellants Excerpts of Record ("ER") at 21, 23.

¶ 5 In 1981, Cabrera submitted an application to the Mariana Island District Land Commission ("land commission") to register lot 851.[2] Cabrera's application did not indicate

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[1] Cabrera died on July 29, 1997. Therefore, her claim is represented by her son, Luis R. Cabrera.

[2] Cabrera's son, Dionicio R. Cabrera, submitted the application indicating that he was acting as his mother's representative.

whether she was acting in her individual capacity or in her capacity as the representative of De Castro's heirs. However, the documents she submitted in support of her application all indicated she was representing her deceased mother, De Castro. Additionally, all of the documents the land commission reviewed indicated that she was acting as a representative of either De Castro or De Castro's heirs.[3] The land commission held a hearing regarding Cabrera's application on May 27, 1982, which Cabrera attended. At the hearing, the land commission determined that De Castro's heirs owned lot 851. After reviewing the land registration team's findings,[4] the land commission issued a determination of ownership on March 7, 1984, recognizing De Castro's heirs as the owners of lot 851.[5]

¶ 6 Cabrera challenged the land commission's determination of ownership in 1988, claiming she was the sole owner of lot 851. Cabrera filed a lawsuit seeking to quiet title on the property in her name. However, De Castro's other heirs, including Herman M. Roberto and William M. Roberto, claimed the property belonged to all of De Castro's heirs and not just Cabrera. Before the lawsuit was fully-litigated,[6] Cabrera died. Her son, Luis R. Cabrera, was appointed Cabrera's representative, and he continued to pursue his mother's claim of ownership by initiating this probate action.[7]

¶ 7 On May 21, 2007, the trial court held an evidentiary hearing to determine the rightful owner of lot 851. Prior to the hearing, Cabrera's sole theory of ownership was based on an

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[3] In addition to Cabrera's application, the land commission reviewed four documents in determining who owned lot 851. These documents include: (1) the "Determination of Ownership," which the TTPI issued on April 25, 1951 recognizing De Castro as the owner of lot 555; (2) the exchange agreement Cabrera executed with the TTPI on February 12, 1958 to exchange lot 555 for lot 851; (3) the quitclaim deed Cabrera provided the TTPI in transferring lot 555 to the TTPI on February 12, 1958; and (4) a "Notice of Revocation of Power of Attorney," which was dated October 12, 1977 and on file with the land commission. No witness testimony was taken and no adverse claims were presented.

[4] The land commission held a hearing on July 15, 1983 and determined that lot 851 belonged to the heirs of De Castro. On August 1, 1983, the land commission reviewed the adjudication and found it satisfactory for making a determination of ownership.

[5] The determination of ownership was personally served on Cabrera through her administrator, Luis R. Cabrera, on October 1, 1985.

[6] The trial court initially granted summary judgment in favor of De Castro's heirs, however, this Court reversed and remanded the case back to the trial court. *Cabrera v. Heirs of De Castro*, 1 NMI 172, 178 (1990). In reversing the case, we stated that the trial court erred in holding that Cabrera failed to raise a genuine issue of fact as to a partida of lot 851. *Id*. at 177-78. We therefore remanded the case so that Cabrera would have the opportunity to prove at trial that a partida was made. *Id*.

[7] On December 6, 2006, the trial court stayed Cabrera's quiet title action and ordered the parties to resolve the ownership dispute regarding lot 851, which is the subject of this probate action.

alleged partida.[8] However, at the evidentiary hearing, Cabrera advanced a new theory of ownership. Cabrera claimed that although she was raised by De Castro and Jose Roberto and that she carried the Roberto name throughout her life, she was not the fourth child of De Castro and Jose Roberto. Rather, she claimed she was the product of a non-marital relationship between De Castro and Juan Sablan. Cabrera argued that Sablan, her alleged biological father, was the original owner of lot 555. Prior to his death, she claimed Sablan transferred ownership of lot 555 to De Castro to hold for Cabrera's benefit. Consequently, Cabrera maintained that because lot 555 was exchanged for lot 851, lot 851 belongs solely to her and not to De Castro's heirs.

¶ 8 At the evidentiary hearing, Cabrera produced several witnesses supporting her claim to varying degrees. Cabrera's son, Luis R. Cabrera, testified that a community member told his wife that Sablan was Cabrera's father. Connie Togawa also testified that she had heard a similar statement from community members. Additionally, Cabrera's niece, Justa Q. Camacho,[9] testified that Sablan was Cabrera's father and that Sablan purchased lot 555 for Cabrera, who later exchanged it for lot 851. Cabrera also advanced an alternate theory of ownership based on adverse possession. She argued that even if she didn't gain ownership of the property through Juan Sablan, she gained sole ownership of lot 851 through adverse possession.

¶ 9 At the conclusion of the hearing, the trial court upheld the land commission's March 7, 1984 determination of ownership. In so doing, the trial court rejected Cabrera's claim for sole ownership of lot 851, and determined it is jointly owned by all of De Castro's heirs.

II

¶ 10 On appeal, Cabrera argues that the trial court erred in upholding the land commission's determination of ownership, claiming there is ample evidence supporting her claim that Juan Sablan is her biological father and that he purchased lot 555 for her benefit. In the alternative, Cabrera argues that even if the property was not purchased for her benefit, she subsequently gained sole ownership of lot 851 through adverse possession. Two of De Castro's heirs, Herman M. Roberto and William M. Roberto, dispute Cabrera's claims, and also argue that this Court lacks jurisdiction to hear Cabrera's appeal.

Jurisdiction

¶ 11 We first must determine whether this Court has jurisdiction over the appeal. On August 17, 2007, the trial court denied Cabrera's claim for sole ownership of lot 851. In so doing, the

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[8] Generally, a partida is a Chamorro custom whereby "the father calls the entire family together and outlines the division of the property among his children." *Sullivan v. Tarope*, 2006 MP 11 ¶ 13 n.2 (quoting *In re Estate of Deleon Castro*, 4 NMI 102, 110 (1994)).

[9] Justa Q. Camacho is the daughter of Rita R. Quitano, who is the oldest child of De Castro and Jose Roberto.

trial court issued a written order, which set forth the factual background in the case along with its findings of fact and conclusions of law. However, the Robertos argue that because the trial court's order denying Cabrera sole ownership of lot 851 was not accompanied with a separate entry of judgment, Cabrera is not appealing a final order. Therefore, the Robertos maintain that this Court lacks jurisdiction.

¶ 12 This Court has appellate jurisdiction over "judgments and orders which are final, except as otherwise provided by law." *Matsunaga v. Matsunaga*, 2001 MP 11 ¶ 13 (citing *Commonwealth v. Hasinto*, 1 NMI 377, 384-385 n.6 (1990)). Generally, a decision is not final unless it "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Matsunaga*, 2001 MP 11 ¶ 13 (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)). Under both Commonwealth and federal law, however, the finality requirement typically is not met until the trial court issues both a decision and a separate entry of judgment. *See Commonwealth v. Kumagai*, 2006 MP 20 ¶ 22; *Bankers Trust Co. v. Mallis*, 435 U.S. 381, 387-388 (1978).

¶ 13 Rule 58 of the Federal Rules of Civil Procedure states that "[e]very judgment shall be set forth on a separate document. A judgment is effective only when so set forth." However, Rule 58 of the Commonwealth Rules of Civil Procedure does not mirror its federal counterpart. Rather, Rule 58 is a reiteration of Rule 14 of the Commonwealth Rules of Practice. *Compare* NMI R. Prac. 14(e)-(f) *with* NMI R. Civ. P. 58. Nonetheless, in *Commonwealth v. Kumagai*, we noted that "[w]hile our rules do not explicitly state the obvious, we find that an entry of judgment or order issued as a separate document is a necessary adjunct that must be filed with the Superior Court clerk." 2006 MP 20 ¶ 22 (footnote omitted). We based our holding in *Kumagai* on an evaluation and collective reading of the Commonwealth Rules of Appellate Procedure, Rules of Civil Procedure, and Rules of Practice, which, read together, indicate that "without such an entry of judgment or order, this Court has no jurisdiction." *Id.* In order to comply with the rule, we noted that the separate entry of judgment must be distinct from the trial court's opinion or order, in that it "shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings." *Id*. at ¶ 19 (quoting NMI R. Civ. P. 54(a)). In so holding, we stated that we "will require *strict compliance* with the separate document rule." *Id*. (emphasis added). Our strict compliance standard is similar to the standard set forth by the United States Supreme Court, which holds that the separate document rule must be "mechanically applied." *United States v. Indrelunas*, 411 U.S. 216, 222 (1973).

¶ 14 In the years since *Kumagai*, we have neither diminished the importance of the separate document rule nor undermined its applicability. Rather, in *Commonwealth Ports Auth. v. Tinian*

Shipping, Inc., we stated that "a separate document is *necessary* for entry of judgment," and that without it, we lack jurisdiction. 2007 MP 22 ¶ 13 (emphasis added). Similarly, in *Commonwealth v. Superior Court*, we reiterated the vitality of our *Kumagai* holding. 2008 MP 11 ¶ 20. Unlike the federal courts, this Court has consistently maintained that the separate document rule is jurisdictional, in that we cannot consider an appeal until a separate entry of judgment is filed. *Compare Kumagai*, 2006 MP 20 ¶ 22, 24 (stating that without a separate entry of judgment, "this Court has no jurisdiction to hear most cases, as our jurisdiction, with certain exceptions, is limited to judgments which are final"), *with Vernon v. Heckler*, 811 F.2d 1274, 1276 (9th Cir. 1987) ("Although a timely notice of appeal is jurisdictional, the existence of a properly entered separate judgment is not a necessary prerequisite to appellate jurisdiction . . . .").

¶ 15 Notwithstanding the *Kumagai* line of cases, the present case is distinguishable in that Cabrera appeals a probate order under 8 CMC § 2206.[10] Although the trial court order determined that De Castro's heirs own lot 851, the order did not conclude the probate case as a whole, as there are a variety of issues yet to be resolved. Thus, the trial court's order does not satisfy the finality requirement as set forth in *Matsunaga*, as the order did not end "the litigation on the merits" and leave "nothing for the court to do but execute the judgment." 2001 MP 11 ¶ 13 (quoting *Catlin*, 324 U.S. at 233). However, in *Matsunaga* we tempered the finality requirement, stating that we can only entertain appeals "from judgments and orders which are final, *except as provided by law*." 2001 MP 11 ¶ 13 (emphasis added). Section 2206 states that "[a]n appeal may be taken from an order determining heirship or the person to whom distribution should be made or trust property should pass . . . ." Cabrera contests a trial court order determining the ownership of lot 851 based on an heirship claim. The language of Section 2206 clearly indicates that this issue is appealable. However, it is unclear how the separate document rule interacts with this Court's appellate jurisdiction over probate cases, particularly contested

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[10] Section 2206, Title 8 of the Commonwealth Code states as follows:

> An appeal may be taken from an order granting or revoking letters testamentary or of administration; admitting a will to probate or revoking the probate of a will; setting aside an estate claimed not to exceed $1,500 in value; setting apart property as a homestead or claimed to be exempt from execution; confirming a report of an appraiser or appraisers in setting apart a homestead; granting or modifying a family allowance; directing or authorizing the sale or conveyance or confirming the sale of property; settling an account of an executor or administrator or trustee, or instructing or appointing a trustee; directing or allowing the payment of a debt, claim, legacy, or attorney's fee; determining heirship or the persons to whom distribution should be made or trust property should pass; distributing property; refusing to make any order mentioned in this section; or fixing an inheritance tax or determining that none is due.

claims under 8 CMC § 2206. We therefore must determine whether an order appealed under Section 2206 requires a separate entry of judgment.

¶ 16 We have had few opportunities to interpret the meaning and applicability of Section 2206. In *In re Estate of Tudela*, we were faced with the question of whether 8 CMC § 2206 requires an appeal to be made within thirty days after the issuance of an appealable order, or whether a party may wait until the final determination of the probate case to appeal. 3 NMI 316, 319 (1992). We interpreted Section 2206 to be permissive rather than mandatory. *Id*. at 320. Consequently, we held that we have appellate jurisdiction over Section 2206 orders regardless of whether an appellant contests an appealable order within thirty days of the issuance of the order, or within thirty days after the conclusion of the probate case. *Id*. In so holding, we did not address whether the separate document rule implicates our appellate jurisdiction under 8 CMC § 2206. In fact, this Court did not adopt the separate document rule until thirteen years after *Tudela*.

¶ 17 However, in adopting the separate document rule in *Kumagai*, and in subsequently upholding it in *Tinian Shipping* and *Superior Court*, we did not condition its applicability. *See, e.g.*, *Kumagai*, 2006 MP 20 ¶ 24 (stating "in future appeals we will require a separate document which formally directs entry of judgment or order in a case before appellate jurisdiction is ripe"). Rather, we have only discussed its applicability in broad terms, describing it as a "bright line requirement." *Id*. ¶ 22. These broad statements of applicability evince a desire to apply the separate document rule to all judgments and orders, including those filed under 8 CMC § 2206.

¶ 18 Additionally, this Court has, on at least one occasion, described Section 2206 appeals as "interlocutory." *Malite v. Tudela*, 2007 MP 3 ¶ 21 (describing a Section 2206 appeal of a probate order denying heirs a motion for a temporary restraining order to disgorge attorney fees and vacate attorney fees award as "interlocutory"). If Section 2206 appeals are indeed interlocutory, we see no reason for disregarding the separate document rule solely on that basis, particularly when federal circuit courts of appeal hold that the separate document rule "applies equally to final and interlocutory decisions." *Theriot v. ASC Well Serv., Inc.*, 951 F.2d 84, 88 (5th Cir. 1992); *see also Cooper v. Town of East Hampton*, 83 F.3d 31, 35 (2d Cir. 1996) (stating that separate document rule applies to all judgments including partial judgments certified for interlocutory appeal).

¶ 19 Furthermore, the purpose behind the separate document rule is three-fold. First, it provides parties with "conclusive notification that the case has ended and an appeal may be taken." *Kumagai*, 2006 MP 20 ¶ 22. Second, it "ensures that a decision addressed on appeal is really the trial court's final resolution of the matter." *Id*. Third, it "protects litigants from

uncertainty as to when a notice of appeal must be filed within the time permitted." *Id*. Applying the separate document rule to Section 2206 appeals furthers these objectives.

¶ 20 In light of these considerations, we find that the separate document rule applies to 8 CMC § 2206 appeals. For purposes of the separate document rule, we find little, if any, reason to distinguish appeals brought under Section 2206. Litigants may appeal Section 2206 orders within thirty days or they may appeal at the conclusion of the probate case. In either case, the trial court must issue a separate entry of judgment before this Court has jurisdiction over the appeal.[11] And, like other jurisdictions that require all judgments be set forth in a separate document, the period for filing an appeal in the Commonwealth does not begin to run until the trial court enters a separate entry of judgment.[12] *Schneider v. Pay'N Save Corp.*, 723 P.2d 619, 622-23 (Alaska 1986).

¶ 21 Notwithstanding the jurisdictional nature of the Commonwealth's iteration of the separate document rule, we adopt a waiver exception. The United States Supreme Court stated that the separate document rule may be waived if a litigant requests that an appellate court set aside an appealable order, and the opposing party agrees to waive the requirement. *Bankers Trust Co. v. Mallis*, 435 U.S. 381, 387-88 (1978). Waiver, or consent to the appeal without the filing of a separate entry of judgment, is generally established where the non-appealing party does not contest the appeal on the basis of the separate document rule. *Id*.; *see, e.g., In re Time Warner Inc.*, 9 F.3d 259, 263 n.1 (2d Cir. 1993); *Whitaker v. City of Houston*, 963 F.2d 831, 833 (5th Cir. 1992).

¶ 22 In the present case, both waiver requirements are met. First, Cabrera requests that this Court set aside an appealable order. Cabrera contests a trial court order determining the ownership of lot 851, which is appealable under 8 CMC § 2206. Second, the Robertos, through their counsel, specifically stated at oral argument that they prefer we address the merits of the case rather than remanding it on account of the trial court's failure to issue to separate entry of

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[11] In so holding, we note that the separate document rule is neither "onerous nor burdensome" to the trial court or the parties. *Id*. If a trial court issues a decision subject to a Section 2206 appeal, but does not issue a separate entry of judgment, a party wishing to appeal may request that it do so. If the trial court denies such a request, the moving party may file an appropriate writ with this Court. Finally, the moving party may always appeal at the conclusion of the case.

[12] Although we do not dictate a specific period in which a judgment must be entered, in the future, "we are not averse to enunciating a specific time frame to file a separate document, as in the Federal Rules of Civil Procedure." *Superior Court*, 2008 MP 11 ¶ 20 (footnote omitted).

judgment.[13] Therefore, under the circumstances of this case, we waive the separate document rule and address Cabrera's claims.

Land commission's determination of ownership

¶ 23 On March 7, 1984, the land commission issued a determination of ownership recognizing De Castro's heirs as the owners of lot 851. In 2007, the trial court reviewed the land commission's determination of ownership and upheld its decision. Cabrera contends that the trial court erred in upholding the land commission's determination of ownership. Before addressing the trial court's decision, we must first determine whether the land commission's decision became conclusive under res judicata principles. This is a question of law and is reviewed de novo. *In re Estate of Dela Cruz*, 2 NMI 1, 8 (1991).

¶ 24 Administrative ownership determinations enjoy a presumption of regularity. *Estate of Muna v. Commonwealth*, 6 NMI 71, 74 (2000). A party challenging an administrative ownership determination bears the burden of rebutting the presumption. *Id*. Additionally, administrative ownership determinations are quasi-judicial in nature. *In re Estate of Dela Cruz*, 2 NMI 10-11. When an administrative ownership determination is not appealed within the statutorily-required time frame, the determination becomes a final administrative decision and acquires res judicata effect. *Arriola v. Arriola*, 6 NMI 1, 4 (1999). Administrative res judicata "bars an action that has already been the subject of a final administrative decision." *Estate of Muna*, 6 NMI at 73 (citing *In re Estate of Ogumoro*, 4 NMI 124, 127 (1994)). In *In re Estate of Dela Cruz*, we stated that once an administrative decision enjoys res judicata effect, it may only be set aside if one of following criteria satisfied: (1) the administrative decision was "void when issued;" (2) the "record supporting the agency's decision is patently inadequate;" (3) according the decision res judicata effect would "contravene an overriding public policy;" or (4) according the decision res judicata effect would "result in manifest injustice." 2 NMI at 11; *Ogumoro*, 4 NMI at 127.

¶ 25 Cabrera submitted an application to register lot 851 in 1981. The land commission issued a determination of ownership on March 8, 1984 recognizing De Castro's heirs as the owners of lot 851. Cabrera did not appeal the land commission's determination of ownership within the statutorily-required time frame. Thus, at first glance, it appears that the land commission's determination of ownership obtained res judicata effect consistent with our holding in *Arriola*. *See Arriola*, 6 NMI at 4. However, the trial court decided that the land commission's

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[13] The Robertos initially raised the trial court's failure to comply with the separate document rule in their appellate brief. *See* Appellee's Response Br. at 3, 10-12. At oral argument, they stated that they did so out of obligation and respect for this Court's previous holdings. However, they noted that they preferred that this Court address the merits of the appeal without remanding it to the trial court.

determination of ownership should not be accorded res judicata effect. The trial court noted that because Cabrera was within the class of persons recognized as De Castro's heirs, she did not need to petition the court to set aside the land commission's March 7, 1984 determination under the four narrow exceptions set forth in *In re Estate of Dela Cruz*. Rather, the trial court held its own evidentiary hearing to resolve the ownership dispute and subsequently determined that lot 851 belonged to all of De Castro's heirs, and not just Cabrera.

¶ 26 The trial court did not err in refusing to give the land commission's ownership determination res judicata effect. Rather, its decision properly followed the precedent set in *In re Estate of Dela Cruz*. In *In re Estate of Dela Cruz*, we reviewed an administrative ownership determination establishing that a parcel of property belonged to the heirs of Joaquin Dela Cruz. 2 NMI at 12-15. We held that the administrative ownership determination merely established that the property was not owned by the government or other private individuals, and that the owners were within the class of people known as the heirs of Dela Cruz. *Id*. at 14. Furthermore, we stated that the ownership determination did not carry administrative res judicata effect as to which individuals within the class of persons at issue were the owners of the property. *Id*. Rather, we found that a determination as to which individual within the relevant class of persons was the actual owner of the property was a determination that was properly within the province of the courts. *Id*.

¶ 27 Like *In re Estate of Dela Cruz*, we find that in determining lot 851 belongs to De Castro's heirs, the land commission merely established that the property did not belong to the government or other private individuals, and that the owners are within the class of people recognized as De Castro's heirs. Consequently, the land commission's March 7, 1984 determination of ownership does not carry res judicata effect as to Cabrera, and the trial court properly held an evidentiary hearing to resolve the ownership dispute among De Castro's heirs regarding lot 851.

¶ 28 Having found that the land commission's determination of ownership does not carry res judicata effect, we still must address whether the trial court properly rejected Cabrera's claim of sole ownership to lot 851. A trial court's determination of land ownership is a mixed question of law and fact. Mixed questions of law and fact are typically reviewed de novo. *Sattler v. Mathis*, 2006 MP 6 ¶ 7 (quoting *Reyes v. Reyes*, 2004 MP 13 ¶ 3). However, this Court adopts a "deferential review" of mixed questions of law and fact when "it appears that the [trial] court is 'better positioned' than the appellate court to decide the issue in question or that probing scrutiny will not contribute to the clarity of legal doctrine." *Id*. ¶ 9 (quoting *Salve Regina College v. Russell*, 499 U.S. 225, 233 (1991)). Consequently, in reviewing mixed questions of law and fact, we review legal issues de novo, while the "trial court's findings of fact are reviewed under the

clearly erroneous standard." *Id*. ¶ 7 (quoting *Reyes*, 2004 MP 13 ¶ 3). Under the clearly erroneous standard, we will not reverse a trial court's findings "unless we are left with a firm and definite conviction that clear error has been made." *Id*.

¶ 29 The Commonwealth Code provides that the "property of persons who die before February 15, 1984, shall pass according to title 13 of the Trust Territory Code . . . ." 8 CMC § 2102. However, the Trust Territory Code has no provision on intestate succession. *In re Estate of Barcinas*, 4 NMI 149, 152 (1994) (citing *In re Estate of Cabrera*, 2 NMI 195, 203-04 (1991)). Where a person dies intestate, by necessary implication, "no form of customary testamentary distribution applies." *Id*. Thus, by default, a decedent's property passes to the heirs in equal shares. *In re Estate of Cabrera*, 2 NMI at 203.

¶ 30 In the present case, De Castro died intestate. Thus, by default, her property passed to all her heirs in equal shares, and Cabrera carried the initial burden of establishing sole ownership of lot 851 by a preponderance of the evidence. Cabrera claims she met her burden and established sole ownership at the evidentiary hearing. To support her claim, she points out that she produced three witnesses claiming she is the non-marital child of De Castro and Juan Sablan. Cabrera's son testified that a community member told his wife that Sablan is Cabrera's father. Connie Togawa testified that she heard similar statements from community members when she was a teenager. Additionally, Cabrera's niece, Justa Q. Camacho, testified that Sablan is Cabrera's father, and that Sablan purchased lot 555 for Cabrera, who later exchanged it for lot 851.

¶ 31 We acknowledge that Cabrera produced witnesses supporting her claim. However, in assessing witness credibility, we give the trial court "due regard," as it is in a much better position to assess witness testimony than this Court. 1 CMC § 3103. As such, the trial court has wide latitude in deciding which witnesses to believe and disbelieve. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 109. We therefore "will not second-guess the trial court's evaluation of a witness' credibility," or "reweigh evidence presented to the trial court." *Fitial v. Kim*, 2001 MP 9 ¶ 18. Under these standards, we are not left with a firm and definite conviction that the trial court erred in disbelieving the witnesses' testimony. Cabrera's assertion that Juan Sablan is her biological father was substantiated solely by the hearsay testimony of three witnesses, at least one of whom is an interested party. Additionally, none of the witnesses were able to verify Cabrera's claim that Sablan purchased lot 555 for her benefit. In fact, Connie Togawa testified that she was unable to locate any document indicting who owned lot 555 prior to De Castro.

¶ 32 Additionally, the documentary evidence does not support Cabrera's claims. Cabrera failed to introduce a single document indicating Juan Sablan ever owned, used, or visited lot 555. Likewise, there is no documentary evidence indicating that Juan Sablan transferred lot 555 to De

Castro for Cabrera's benefit, or that he had any kind of relationship with either De Castro or Cabrera. Similarly, there is no documentary evidence indicating that De Castro transferred sole ownership of lot 555 or lot 851 to Cabrera.

¶ 33 Furthermore, Cabrera's tepid assertion of sole ownership undermines her claim. On April 25, 1951, the TTPI issued a determination of ownership recognizing De Castro as the owner of lot 555. Following De Castro's death in 1955, Cabrera executed an agreement exchanging lot 555 for lot 851. Cabrera signed the agreement as "Angela R. Cabrera, representing Pilar de Castro, incompetent, as Land Trustee." ER at 21. In 1958, the TTPI finalized the exchange and granted lot 851 to "Pilar de Castro, incompetent, represented by Angela R. Cabrera as Land Trustee." ER at 25-26. As a result of these events, Cabrera knew, or should have known, that her deceased mother owned lot 851, which, in turn, meant it belonged to all of her heirs equally. Despite the fact that Cabrera knew – perhaps as early as 1951, but certainly no later than 1955 – that lot 851 was registered in her mother's name, she did not definitively assert her claim of sole ownership until 1988.

¶ 34 Cabrera alleges that she claimed sole ownership in 1981 when she submitted an application to register lot 851 in her name. Even if this were true, Cabrera still waited twenty-six years after De Castro's death to claim sole ownership. However, the record indicates that Cabrera made no such claim in 1981, but waited until 1988. The application Cabrera submitted to the land commission to register lot 851 in her name did not indicate whether Cabrera was acting in her individual capacity or as a representative of De Castro's heirs. However, all of the supporting documents Cabrera submitted to the land commission clearly indicate that she was acting as a representative of either De Castro or De Castro's heirs. Additionally, the land commission held a hearing regarding Cabrera's application in 1982, and determined that De Castro's heirs owned lot 851. Although Cabrera personally attended the hearing, she did not dispute this finding. Consequently, the land commission issued a determination of ownership on March 7, 1984, which recognized De Castro's heirs as the owners of lot 851.

¶ 35 After the land commission issued a determination of ownership, Cabrera did not immediately assert her claim of sole ownership. In fact, after the land commission determined that De Castro's heirs own lot 851, Cabrera took no action for another four years before filing a quiet title action. Thus, after De Castro's death in 1955, Cabrera waited thirty-three years to assert her claim of sole ownership over lot 851, and even then she did so under a theory of partida, as opposed to her current theory of ownership. While Cabrera's inaction does not preclude her claim of ownership, it does severely undermine its credibility.

¶ 36 In light of the scarcity of factual and legal support underlying Cabrera's claim, we find that the trial court did not err in upholding the land commission's March 7, 1984 determination of ownership. The trial court properly determined there is insufficient evidence to prove Cabrera's theory that Juan Sablan is her biological father and that he purchased lot 555 for her benefit.

Adverse possession

¶ 37 As a final matter, we must determine whether the trial court erred in holding that Cabrera failed to establish sole ownership of lot 851 through adverse possession. Whether a party acquired title to land by adverse possession is a mixed question of law and fact, which we review de novo. *Apatang v. Mundo*, 4 NMI 90, 92 (1994).

¶ 38 In the Commonwealth, adverse possession may only be established under the common law because there is no statutory provision defining its elements. *Apatang*, 4 NMI at 93. However, the statutorily-prescribed time for establishing a claim for adverse possession is twenty years. 7 CMC § 2502(a)(2); *Apatang*, 4 NMI at 93. The passing of the statutory time period effectively creates a new title in the adverse possessor. *Teregeyo v. Fejeran*, 2004 MP 18 ¶ 9 (citing *Devins v. Borough of Bogota*, 592 A.2d 199, 201 (N.J. 1991)). The party asserting title by adverse possession bears the burden of proof. *Apatang*, 4 NMI at 92.

¶ 39 To establish adverse possession, the possession must be "(1) exclusive, (2) actual and uninterrupted, (3) open and notorious and (4) hostile under a claim of right." *Teregeyo*, 2004 MP 18 ¶ 10 (citing *Chaplin v. Sanders*, 676 P.2d 431, 434 (Wash. 1984)). Additionally, this Court applies an "intensified" burden on a party attempting to establish adverse possession where "the parties are related by blood." *Id*. (quoting *Apatang*, 4 NMI at 93).

¶ 40 The trial court properly determined that De Castro's heirs own lot 851, which, in turn means Cabrera and De Castro's other heirs share the property as cotenants. *See Apatang*, 4 NMI at 92. As a result, Cabrera had the burden of establishing ownership by adverse possession. Furthermore, because Cabrera and De Castro's other heirs are related by blood, Cabrera had an intensified burden of establishing adverse possession. Specifically, this intensified burden must be applied to the element of hostile possession under a claim of right, which is the primary element in dispute between Cabrera and the Robertos.

¶ 41 In accordance with the intensified burden set forth in *Teregeyo*, the hostile possession element is not easily established, as we must "presume permissiveness when the occupied land belongs to a blood-relative of the occupier . . . ." 2004 MP 18 ¶ 16 (quoting *Pioneer Mill Co. v. Dow*, 978 P.2d 727, 738 (Haw. 1999)). In order to satisfy this burden, Cabrera must prove that she occupied lot 851 under a claim of right that was hostile to the interests of De Castro's heirs, as well as prove that De Castro's heirs had "actual knowledge" of this hostile occupation. *See id*.

¶ 42 Cabrera fails to overcome her intensified burden. As previously stated, Cabrera did not claim sole ownership of lot 851 until 1988. It was not until 1988 that she first asserted a claim of right over the property that was hostile to the interests of De Castro's heirs. Therefore, at the time the trial court held its evidentiary hearing on the matter in 2007, Cabrera could not have established adverse possession for the statutorily-mandated twenty years. Additionally, there is no evidence that De Castro's heirs had actual knowledge that Cabrera possessed lot 851 under a claim of right hostile to their interests in the property. Rather, Cabrera simply claims that "it can be inferred that [De Castro's heirs] knew the property belonged to [her]" because they did not occupy it. Appellant's Opening Br. at 11. Absent additional evidence of actual knowledge of adverse possession, we cannot make such an inference. Thus, Cabrera fails to meet her burden of establishing ownership by adverse possession.

III

¶ 43 For the foregoing reasons, we hold that the trial court did not err in denying Cabrera's claim of sole ownership over lot 851. Cabrera failed to establish that the trial court erred in finding that that lot 851 belongs to De Castro's heirs. Cabrera also failed to establish that the trial court erred in rejecting her ownership claim based on adverse possession. Therefore, the trial court's order is AFFIRMED.

Concurring:
Borja, J.P.T.

BELLAS, J.P.T., Concurring:

¶ 44 I would concur in the result reached by the majority, but disagree as to some of the reasoning used to reach that result. I would also note that the undersigned did not participate in that portion of the majority decision relating to the issue of adverse possession.

Jurisdiction and the Separate Document Rule

¶ 45 I respectfully disagree with my colleagues of the majority as to this issue. The reason for reaching the conclusion that a separate judgment is not required in this matter, is because unlike an interlocutory appeal which requires the trial court to certify the issue for appeal purposes, in the probate setting the interlocutory appeal is statutorily authorized by 8 CMC § 2206.

¶ 46 The majority, in paragraph 15 of the opinion, states: "[I]n *Matsunaga* we tempered the finality requirement, stating that we can only entertain appeals "from judgments and orders which are final, *except as provided by law*." *Ante* (citation and internal quotation omitted). While I agree that the legislature in enacting 8 CMC § 2206 created an exception to the finality requirement, reintroducing the separate judgment requirement tends to circumvent the statutorily-

created exception. In this regard, it is noteworthy that the statute begins with the language "An appeal may be taken from an *order* . . . ." 8 CMC § 2206 (emphasis added). The language does not state that an appeal may be taken from a partial judgment.

¶ 47 Sometimes the proof is in the application of the concept. My disagreement on this issue is also based on the burden the separate judgment requirement will impose upon the trial court and the parties by its applicability to probate cases. I realize that the majority has considered this issue and reaches the opposite conclusion. *See ante*, n.11. Again, I must respectfully disagree with the conclusion that having to resort to a writ of mandamus process in order to force the trial court to issue a separate judgment on one of the many issues in a probate case, is not burdensome to the parties.

¶ 48 There are pronounced differences between probate cases and other cases that come before the trial court. In probate cases, the court makes various intermediate rulings that affect the parties and the rest of the proceedings. The legislature has taken the trouble to specifically enumerate some of those rulings in the statute. *See ante*, n.10.

¶ 49 First, there is one main distinction, in that a partial judgment in a probate case is usually a partial decree of distribution. However, the trial court must now enter a plethora of partial judgments to accomplish a host of procedural matters in a probate case, such as: admitting a will to probate, affirming the sale of property, settling an account or a judgment, or any of the various other rulings mentioned in 8 CMC § 2206. Under the rationale of the majority, the parties will be required to petition the Court for the entry of the separate document in order to appeal any order that accomplishes anything in a probate case.

¶ 50 Likewise, it is disputable that requiring a separate judgment accomplishes some of the benefits that the majority extols. Three benefits or reasons why this process is necessary in the probate area are enumerated as justification for the separate document requirement. First, the separate judgment rule provides the parties with conclusive notification that the case has ended and an appeal may be taken. *See ante* ¶ 19 (citation and quotation omitted). Second, it ensures that a decision addressed on appeal is really the trial court's final resolution of the matter. *Id*. Third, it protects litigants from uncertainty as to when a notice of appeal must be filed within the time permitted. *Id*.

¶ 51 Clearly, the first benefit does not exist under the circumstances of a probate case. The case has not ended since this is an interlocutory appeal of an issue which will guide the trial court in deciding the rest of the case. As for the second, there is no guarantee that the trial court has made a final decision on that issue just because the separate document is issued. The Court could be asked to reconsider the decision prior to the conclusion of the case. Only after the appeal has

been resolved will the trial court no longer have the ability change its ruling. It is not clear how a separate document makes the time to file an appeal more certain. In the normal scheme of things it would seem that the thirty days would run from the date that the order to be appealed from was entered. How does titling it a partial judgment make the time more certain?

¶ 52 Because we are operating under the statutorily-created exception to the rule requiring finality of the judgment prior to filing an appeal, and because, as the majority correctly points out, under prior holdings of this court "[w]e interpreted Section 2206 to be permissive rather than mandatory," *In re Estate of Tudela*, 3 NMI 316, 320 (1992), the parties have the option to file an appeal of any interlocutory issue at the end of the case. Thus, issuing a separate partial decree or judgment in order to eliminate uncertainty of when to file the appeal would be of *de minimus* value in the probate setting.

¶ 53 In conclusion, I am in agreement with the holding that his court has jurisdiction, not because the parties have waived the separate document requirement, but because jurisdiction is expressly authorized by law (8 CMC § 2206), and no separate partial judgment should be required in a probate case.[14]

¶ 54 For all of these reasons I concur in the decision to affirm the order of the Superior Court in this matter.

[14] Furthermore, the procedural value of the separate document rule is minimal if the parties can waive it, as in this case.