

transfer cases. 5 TTC Sec. 403. To accept appellants' argument would mean that this section would also have to be struck down. However, this Court cannot and does not find the sinister legislative intent appellants argue. Both 5 TTC Sec. 54 and 5 TTC Sec. 403 are for the orderly and efficient processing of cases. They are not to arbitrarily decide whether an appellant receives a single judge review or a three-judge appellate panel.

There is no contention here that the appellants did not receive a fair and impartial review by the Trial Division of the High Court and the reasoning as stated in *Whittaker* is persuasive.

Appellants have raised another issue regarding the conditions for the suspended sentence imposed on the appellants. In view of our decision that there is no further appeal from the Trial Division of the High Court, this issue shall not be considered.

The appellants' appeal is hereby dismissed.

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**KEDERIKO OLPER, Defendant-Appellant**

**v.**

**DERESITA DAMARLANE, Plaintiff-Appellee**

**Civil Appeal No. 72**

**Appellate Division of the High Court**

**Ponape District**

**January 24, 1977**

Dispute over ownership of land. Appellate Division of the High Court, Brown, Associate Justice, held that where title to land was taken in wife's name, divorce occurred, husband claimed he had paid for the land and title was taken in wife to keep land from husband's relatives, who might have tried to get land should husband have predeceased wife, and daughter of the two claimed that mother had paid for the land and that she inherited it upon her mother's death, court of appeal would presume that decision of lower court in daughter's favor was correct and note the fact that appellant-husband failed to carry his burden of showing error.

**1. Appeal and Error—Findings and Conclusions—Determination**

It is the function of the trial court, not the appellate court, to make determinations of fact dependent upon conflicting evidence; and the appellate court must make every reasonable presumption in favor of the determinations of the trial court.

**2. Appeal and Error—Evidence—Sufficiency**

Appellate court may not consider the sufficiency of the evidence as it relates to the weight or probative values of conflicting evidence.

**3. Appeal and Error—Burden of Proof**

Appellant has burden of affirmatively showing error.

**4. Appeal and Error—Burden of Proof**

Where title to land was taken in wife's name, divorce occurred, husband claimed he had paid for the land and title was taken in wife to keep land from husband's relatives, who might have tried to get land should husband have predeceased wife, and daughter of the two claimed that mother had paid for the land and that she inherited it upon her mother's death, court of appeal would presume that decision of lower court in daughter's favor was correct and note the fact that appellant-husband failed to carry his burden of showing error.

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Before BURNETT, *Chief Justice*, BROWN, *Associate Justice*

BROWN, *Associate Justice*

Appellant appeals from the Judgment of the trial court which held that, as between the parties hereto and all persons claiming under them, Plaintiff, Deresita Damarlane, succeeded to ownership of some 2.385 hectares of a portion of the land, Ihpate Peidi (also spelled Ipat), reflected in German title document No. 36 and located in Dolonier Section, Nett Municipality, Ponape District, and which property had been transferred by Kulio Olmos to Deresia Olper (also known as Deresia Ariote).

Since no briefs on appeal were filed, it has been necessary for us to scrutinize the Notice of Appeal in order to determine the grounds for appeal and then to study the Transcript of Evidence in order to determine whether or not the Judgment of the court below should be affirmed or reversed.

Essentially, Appellant bases his appeal on three grounds, namely that the evidence was insufficient to sustain the Judgment, that the trial court was in error in holding that Appellant's claim to the land in question necessarily must rest primarily upon proof of a resulting trust, and that there was created a valid inter vivos trust which, upon the death of Deresia Olper, terminated, with the title then passing to Appellant.

[1-4] The record reveals that Deresita Damarlane is the adopted daughter of Kederiko Olper and his wife, Deresia, the adoption having taken place when Deresita was eight months old. The land in question was found by the trial court to have been purchased from one Kulio Olmos with title being in the name of Deresia. The marriage between Deresia and Kederiko terminated by way of divorce. Kederiko asserts that he is the owner of the land even though title was in Deresia's name, and he claims that it was he who paid for the land with a pig and an amount of cash. He alleges that Deresia was recorded as its title holder in order to prevent certain of his relatives in Truk from claiming the land which he stated he believed would be the case if title were in his name and if he should predecease Deresia. The Plaintiff, however, claimed that her mother, Deresia, was the person who paid for the land, that she took title to it, owned it, and that Plaintiff inherited it after her mother died. Thus, there was a clear conflict in the evidence, and there was substantial evidence tending to support Plaintiff's claim. The trial court found the Plaintiff's evidence to be more persuasive than that of the Defendant. It is the function of the trial court to make determinations of fact which are dependent upon conflicting evidence; it is not the function of the appellate court to do so. *Fattun v. Trust Territory*, 3 T.T.R. 571 (App. Div.). Likewise, in considering a case on appeal, the appellate court must make every reasonable presumption in favor of

the determinations of the trial court. *Timulch v. Trust Territory*, 3 T.T.R. 208 (Tr. Div.). This we have done. Once again we state that normally an appellate court will not examine the evidence in an attempt to determine whether it more strongly favors one conclusion or another; that is to say that on appeal, the appellate court may not consider the sufficiency of the evidence as it relates to the weight or probative values of conflicting evidence. *Kalo v. Karapaun*, 5 T.T.R. 536 (App. Div.); *Ngircheliu v. Rebechong*, 5 T.T.R. 115 (Tr. Div.). Not only must the appellate court refrain from re-weighing the evidence, its duty is to make every reasonable presumption in favor of the correctness of the decision of the lower court, and it must be kept in mind that the burden is on the appellant to affirmatively show error. *In re Estate of Wisly*, 5 T.T.R. 81 (App. Div.). Following the duty imposed upon us, we presume that the decision of the lower court was correct; and take note of the fact that appellant failed to carry his burden of showing error.

Next we consider appellant's claim that the trial court held that his claim to the land in question necessarily must rest upon the proof of a resulting trust. We disagree. It is, of course, patent that the trial court embarked upon a lengthy dissertation concerning a resulting trust, but as we read with care the decision of the trial court it becomes apparent that the question of whether there was or was not a resulting trust is wholly unnecessary to the decision. Accordingly, we regard that discussion as mere dictum and pure surplusage. Regardless of how we may treat it, we conclude that the decision of this case must turn upon the factual questions we already have considered and have discussed. That is, title was properly vested in Deresia; Kederiko and Deresia divorced; and Deresita, the adoptive daughter of Deresia, took title by inheritance.

Appellant's contention that there was created a valid

inter vivos trust under which title passed to Kederiko upon Deresia's death is without merit. Based upon the record before us, the only way in which such a trust could have come into being would be by the trial court's finding as a fact that Kederiko had used his own assets to pay for the land, but the trial court rejected the evidence tending to show that that had been the case and, instead, found precisely the opposite.

No reversible error is to be found in the record, and therefore the Judgment of the trial court is **AFFIRMED**.

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In the Matter of the Estate of BULELE, Deceased

Civil Appeal No. 40

Appellate Division of the High Court

Marshall Islands District

January 25, 1977

Appeal from distribution of property of a decedent. The Appellate Division of the High Court, Hefner, Associate Justice, affirmed.

**Appeal and Error—Evidence—Weight**

Where notice of appeal and brief merely repeated assertions made below, court would not re-weigh evidence on appeal or set aside findings of fact made below, and, there being nothing to demonstrate that the findings were erroneous, judgment would be affirmed.

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Before BURNETT, *Chief Justice*, HEFNER, *Associate Justice* and WILLIAMS, *Associate Justice*

HEFNER, *Associate Justice*

This appeal emanates from a judgment distributing certain property of the deceased. The notice of appeal and the brief of the appellant is nothing more than a repeat of the assertions made before the trial judge.

This Court will not re-weigh the evidence, and the findings of fact of the trial court shall not be set aside.