

Huberto A. TAISACAN
vs.
Herman A. MANGLONA, and the
Heirs of Herman A. Manglona,
Martin A. Manglona, and Rosa
Manglona Pangelinan

Appellate No. 79-212
Civil Action No. 82-9004
District Court NMI

Decided November 10, 1983

1. Family Law - Divorce - Decree

In the absence of specific statutory authority, a court granting a divorce has no authority to establish a trust upon the property of one of the parties to secure payments of alimony or amounts decreed for child support.

2. Family Law - Divorce - Decree

Where a statute exists empowering the court to establish a trust upon the property of one of the parties to a divorce, the trial court is accorded a large measure of discretion in determining whether the trust is necessary or proper.

3. Family Law - Divorce - Decree

A court is without authority to give the property of the husband to the children in granting a divorce and is limited to making provision for the children's support and education during their minority.

4. Family Law - Divorce - Decree

Portion of divorce decree that purported to transfer the legal ownership of husband's property, where the purpose was not for the support and education of his children during their minority, was beyond the jurisdiction of the court and therefore without any force or effect. 39 T.T.C. §103 [8 C.M.C. §1311]

FILED
Clerk
District Court

NOV 10 1983

For The Northern Mariana Islands
By [Signature]
(Deputy Clerk)

IN THE DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

APPELLATE DIVISION

6	HUBERTO A. TAISACAN,)	APPEAL NO. 82-9004
7	Plaintiff-Appellee,)	CTC CIVIL NO. 79-212
8	vs.)	
9	HERMAN A. MANGLONA, and the)	<u>OPINION</u>
10	HEIRS OF HERMAN A. MANGLONA,)	
11	MARTIN A. MANGLONA, and ROSA)	
12	MANGLONA PANGELINAN,)	
	Defendants-Appellants.)	

Before: LAURETA and GILLIAM, District Judges, and SOLL*,
Associate Judge

Soll, Associate Judge:

This is an appeal from a judgment quieting title in certain real property to plaintiff-appellee Taisacan.

This case was initiated in 1979 by Taisacan to quiet title in certain real property purchased by him from Herman Manglona in 1972. Herman Manglona is not a party to this action as he is presumably beyond the reach of service. The action proceeds against the children of Herman Manglona, defendants-appellants herein. The facts of the case relevant to this appeal are undisputed.

*Hon. Herbert D. soll, Commonwealth Trial Court Associate Judge, sitting by designation pursuant to 48 U.S.C. 6 1694(b).

1 On June 27, 1967 Herman Manglona was divorced from
2 Margarita A. Manglona in Civil Action No. 198, Trial Division of
3 the High Court of the Trust Territory of the Pacific Islands.
4 Paragraph 3 of the Decree of Divorce issued by the court ordered
5 that Herman Manglona promptly take any and all actions reasonably
6 necessary for him to obtain legal title to certain homestead
7 property. Upon acquiring legal title, he was ordered to hold the
8 property in trust for the benefit of, among others, his father
9 and his children; upon his father's inability to further work the
10 land, to transfer legal ownership of the property, free of any
11 trust, to his children, appellants herein.

12 On May 23, 1969 the Government of the Trust Territory
13 of the Pacific Islands issued a Quitclaim Deed to Herman Manglona
14 for the homestead property.

15 Herman Manglona did not transfer the property to his
16 children in accordance with the Decree of Divorce. Instead, he
17 sold the property, for value, to the appellee in 1972. Appellee
18 had no actual notice of the 1967 Divorce Decree, nor the terms
19 thereof.

20 The trial court found that appellee was a bona fide
21 purchaser for value, and that at the time of the purchase he had
22 not been put on notice of any claim by appellants.

23 Appellants contend that the Decree of Divorce affecting
24 title to the land provides constructive notice to subsequent
25 purchasers when filed in the same district in which the land is
26 situated, and therefore appellee could not have been a bona fide

1 purchaser for value.

2 , Appellee maintains that the judgment could not provide
3 constructive notice to a subsequent purchaser as the judgment was
4 rendered in 1967, grantor (Manglona) did not receive legal title
5 until 1969, and appellee did not purchase the land until 1972.

6 Determination of the issue of constructive notice would
7 first require answering several crucial questions which arise upon
8 a reading of the briefs filed with this Court. These questions
9 are interdependent, and each is difficult, if not impossible, to
10 answer from the record herein.

11 First, there is a question whether the Trust Territory
12 statutes in existence at the time of the judgment provided
13 sufficient direction as to how to properly file and record a
14 judgment affecting an interest in land. Moreover, the record on
15 appeal is devoid of an indication as to whether or not any attempt
16 was ever made by appellants to comply with the procedures which
17 were set forth in the Trust Territory Code at that time. As the
18 appellants were all minors at the time of the divorce decree, the
19 question arises as to whether their interests were adequately
20 protected in the divorce proceeding and whether the judge in that
21 case had a duty to oversee the protection of their interests in the
22 decree, and if so, by what means.

23 All of these questions are critical to the determination
24 of the issue as presented to this Court by the parties, yet none
25 can be answered from the grossly inadequate record before us.

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1 [3] However, while such statutes give the divorce court
2 broad authority to make distribution of the parties' property and
3 provide for the protection and maintenance of the parties' children,
4 it has universally been held that the court is without authority
5 to give the property of the father to the children. Emery v. Emery,
6 104 Kan. 679, 180 P. 451 (1919); Meltan v. Every, 105 Kan. 255,
7 182 P. 543 (1919); Farley v. Farley, 227 Cal.App.2d ____, 38 Cal.
8 Rptr. 357, cert.denied 379 U.S. 945, 13 L.Ed.2d 543, 85 S.Ct. 438.

9 While there is an abundance of case law on this point,
10 the proposition was concisely set forth by the Colorado Supreme
11 Court in Giambrocco v. Giambrocco, 161 Col. 510, 423 P.2d 328 at
12 330 (1967) as follows:

13 A father of children is under no
14 obligation to settle any property
15 upon his children, or to deed them
16 an interest in any asset. On the
17 contrary, he may by will or deed
18 or other voluntary act disinherit
19 a child if he sees fit to do so.

20 The general rule is that in granting
21 a divorce a court has no authority
22 under the [relevant] statute to
23 decree that a part of the property
24 of the husband shall be the sole
25 property of his children.

26 Thus, whatever power the court has to afford protection to children
in a divorce suit is derived from statute, and is limited to
making provision for their support and education during their
minority. Emery v. Emery. supra, 180 P. at 452.

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1 Title 39 Trust Territory Code, Domestic Relations,
2 governs the distribution of property upon divorce. Title 39 TTC
3 section 103 provides that:

4 "... [t]he court may make such
5 orders for custody of minor
6 children for their support, ...,
7 and for the disposition of either
8 or both parties' interest in any
9 property in which both have inte-
10 rests, as it deems justice and
11 the best interests of all con-
12 cerned may require. ..."

13 39 TTC 103 gives the Trial Division of the High Court
14 the broad authority to make a proper distribution of the property
15 before it. The question thus becomes whether the provisions of
16 the 1967 Decree of Divorce, as ordered by the court, reflect a
17 valid exercise of that power.

18 While it may be suggested that the trust was imposed
19 for the support and education of the children during their minority,
20 which would seem within the authority conferred by 39 TTC 103,
21 such a finding would not be consistent with the facts of this
22 case.

23 The trust provided for in paragraph 3 of the Decree of
24 Divorce was not imposed for the sole benefit of the children of
25 Herman Manglona but for the benefit of his father, his father's
26 wife and his father's grandchildren, including the six children
of Herman Manglona.

Secondly, paragraph 5 of the Decree of Divorce specifi-
cally provides for the support of Herman's children by awarding to
the wife one hundred dollars per month "for the support of the
parties' children."

1 It does not appear from these facts that the purpose of
2 the trust was to provide for the children's support and maintenance
3 during their minority. It was merely a preliminary step in an
4 attempt to give them outright a part of their father's property,
5 as such it lies outside the power granted to the court by statute.

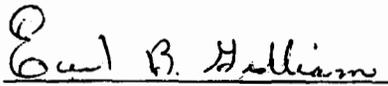
6 [4] It is thus clear that that portion of the Decree of
7 Divorce purporting to order the transfer of legal ownership of
8 the husband's property, free of any trust, to the children was
9 beyond the jurisdiction of the court, and was therefore without
10 any force or effect. Herman Manglona was free to hold the property
11 himself or to transfer it to whom and in whatever manner he saw
12 fit.

13 For this reason, we affirm the Judgment of the Common-
14 wealth Trial Court quieting title to the property to the plaintiff-
15 appellee herein.

16 DATED this 28 day of September 1983.

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ALFRED LAURETA
District Judge


EARL B. GILLIAM
District Judge


HERBERT D. SOLL
Associate Judge