Ernesto C. **Arriola**, Administrator of
the Estate of Justino T. Arriola,
Plaintiff/Appellee,
v.
Maximo T. **Arriola**,
Defendant/Appellant.
Appeals Nos. 97-049 and 97-050 (consol.)
Civil Action No. 94-0851
April 28, 1999

Argued and Submitted December 9, 1998

Counsel for Appellant: Brien Sers Nicholas, Saipan.

Counsel for Appellee: Bruce Berline, Saipan.

BEFORE: DEMAPAN, Associate Justice, BELLAS and TAYLOR, Justices *Pro Tem*.

DEMAPAN, Associate Justice:

¶1 **[1]** Maximo T. Arriola ("Maximo") appeals the trial court's order of June 21, 1996 that set aside a Certificate of Title and ruled that Ernesto C. Arriola ("Ernesto"), Administrator of the Estate of Justino T. Arriola was the owner of Lot No. 009 H 20 ("the lot"). We have jurisdiction pursuant to Article IV, Section 3 of the Commonwealth Constitution. N.M.I. Const. art. IV, §3. We reverse and remand for further proceedings consistent with this opinion.

¶2 **[2]** The issues in *Arriola v. Arriola*, Appeal No. 97-050 and *Arriola v. Arriola*, Appeal No. 97-049 concern the same interests, making consolidation of these two appeals practical. Under Com. R. Civ. P. 3(b), appeals may be consolidated by order of this court. Accordingly, we **ORDER** the consolidation of Appeals Nos. 97-049 and 97-050 and issue one opinion.

ISSUES PRESENTED AND STANDARDS OF REVIEW

¶3 **[3,4]** Maximo presents two issues for our review:

I. Whether the trial court erred in ruling that the Estate was the owner of the southern portion of the lot. This issue involves a question of fact and is therefore subject to the clearly erroneous standard of review. *Repeki v. MAC Homes (Saipan) Co., Ltd.,* 2 N.M.I. 33 (1991).

II. Whether the trial court erred in setting aside the March 6, 1984 Certificate of Title that declared Maximo the owner of the entire lot. This issue concerns principles

of administrative res judicata, which is an issue of law reviewed *de novo*. *In re Estate of Dela Cruz*, 2 N.M.I. 1, 8 (1991).

FACTUAL AND PROCEDURAL BACKGROUND

¶4 As administrator of the Estate of Justino T. Arriola, Ernesto brought this action in 1994 against Maximo contending that the southern portion of the lot was sold by Ana to Justino.

¶5 Ana T. Arriola (a.k.a. Ana S. Tudela) had four children: Magdalena, Francisca, Justino (the decedent) and Maximo.[1] The administrator of Decedent Justino's Estate is his son, Ernesto. Maximo is Ernesto's uncle. They are all Chamorro.

¶6 In the 1950's, the Arriolas exchanged their real property in Garapan for four separate village lots. Three of the lots were located in Chalan Kanoa and one in Garapan.

¶7 Prior to Ana's death on December 18, 1986, she divided her property amongst her four surviving children. As testified by Ana's daughter, Ana treated all her children equally. Trial Transcript at 79. Ana orally transferred two of the Chalan Kanoa village lots to her daughters Magdalena and Francisca.[2] The Garapan village lot was given to Justino. The fourth lot is the one in dispute, Lot 009 H 20 containing 751 square meters, situated in Chalan Kanoa.

¶8 The lot is where Ana resided in the family house. Maximo and his family resided in the northern half and Ana in the southern half. The land records reveal that a Deed of Gift was signed by Ana on May 2, 1969, which conveyed her interest of the northern portion of the lot to Maximo. The Deed of Gift did not include the southern portion of the lot, which was occupied by Ana. After Ana moved out of the southern half of the house, it was occupied at different times by Justino and his sons, Ernesto and Manuel. The northern half of the house was still occupied by Maximo, who built a concrete house on his half of the lot.

¶9 The alleged sale of the southern lot from Ana to Justino took place between 1960 and 1986, when Ana would visit Justino and Maximo who were living in Guam. Allegedly Justino purchased the southern

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[1] Maximo contends that he was the *kiridu* of the family. The *kiridu* is the favorite child, the one who does not suffer hardship. ALEXANDER SPOEHR, SAIPAN, THE ETHNOLOGY OF A WAR-DEVASTATED ISLAND, 262 (1954) p. 262. Although mentioned by witnesses, reference to this custom was not supported in the trial court by expert testimony nor documentary proof as to this particular custom. The trial court's interpretation of customary law is not at issue.

[2] Oral conveyances of real property were permissible in the CNMI until October 28, 1983. *Guerrero v. Guerrero*, 2 N.M.I. 61, 70-71 (1991).

portion of the lot for $300 by depositing the purchase money at the Bank of America in Ana's name. The only evidence of the purchase was Francisca's testimony that Ana showed her the Bank of America passbook after Ana returned from one of her trips to Guam.

¶10 On August 29, 1970, Ana went to the Mariana Islands District Land Commission ("MDLC") and completed an Application for Registration of Land Parcel, registering the entire lot in her name and Maximo's. In April 1979, Maximo's wife went to MDLC and completed an application for only part of the lot and referenced the May 2, 1969, Deed of Gift.

¶11 On April 11, 1983, MDLC issued a Determination of Ownership on Lot 009 H 20 declaring that Ana is the fee simple owner "Subject to the Deed of Gift dated May 2, 1969, in favor of Maximo". It was around this time when Maximo tore down the northern portion of the family house and extended his concrete house.

¶12 On March 6, 1984, MDLC issued a Certificate of Title declaring Maximo to be the fee simple owner of both the northern and southern portions of the lot.

¶13 Ana T. Arriola died on December 18, 1986.

¶14 In 1992, Maximo started the construction of a three-story apartment building on the southern portion of the lot. Ernesto knew that his father, Justino, had purchased the disputed property, yet when he saw the construction, out of alleged respect for his uncle Maximo, he did not approach Maximo to object. Between 1992 and 1993 no one attempted to stop the construction of the apartment building. The construction took a year at a cost of approximately $500,000.

¶15 The lawsuit was filed on August 25, 1994. The two day bench trial took place in November of 1995. The evidence presented at trial was the testimony of Ernesto, Justino's wife and Maximo's siblings. The decision by the trial court on June 21, 1996, contains the court's findings of fact and conclusions of law on the substantive issues, excluding damages. The trial court held: (1) defendant's Certificate of Title is not supported by evidence and therefore void; (2) the Estate is the rightful owner of the southern half of Lot 009 H 20; (3) the Estate is to pay restitution to Maximo for the building he constructed on Decedent's land. *Arriola v. Arriola*, No. 94-859 (June 21, 1996) (Decision and Order). The Estate was ordered to pay restitution to Maximo in the amount of $500,000. Both decisions were timely appealed.[3]

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[3]In cases like this, we strongly encourage the parties to seek the assistance of the trial court in conducting settlement conferences under Com. R. Civ. P. 16, to try to prevent the worsening of the family feud. In this manner, the trial court

ANALYSIS

A. The Trial Court Incorrectly Found That the Estate is the True Owner of the Southern Portion of the Lot

¶16 **[5]** The issue of whether the trial court's findings of a sale and ownership were supported by evidence involves questions of fact. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. Com. R. Civ. P. 52(a).[4]

¶17 **[6]** Maximo contends the evidence does not support the trial court's findings that Justino purchased the property from Ana. The evidence that was presented in this case revolved around the oral testimony of relatives and documentary evidence of whether the land was sold to Justino or given to Maximo.[5] "To be adequate, factual findings need only be explicit enough to give this court a clear understanding of the basis of the district court's decision and to enable us to determine the grounds on which the district court reached its decision." *Toombs v. Leone*, 777 F.2d 465, 469 (9th Cir. 1985); *see also Clady v. County of Los Angeles*, 770 F.2d 1421, 1433 (9th Cir. 1985)(findings adequate if they are sufficiently comprehensive to provide a basis of decision and are supported by the record). In that regard, the trial court's findings are inadequate and not supported by the record.

> If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Where there are two permissible views of the evidence, the fact-finder's choice between them cannot be clearly erroneous.

Anderson v. City of Bessemer City, North Carolina, 470 U.S. 564,105 S. Ct. 1504, 1511, 84 L. Ed. 2d 518 (1985).

¶18 **[7,8]** Under 1 CMC § 3101 this Court may not re-weigh evidence presented to the trial court. The appellate court accords particular weight to a trial judge's assessment of conflicting and ambiguous

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could help the parties to settle their disputes amicably, resulting ideally in the satisfaction of all parties and the restoration of family relationships. *Lifoifoi v. Lifoifoi-Aldan*, 1996 MP 14, 5 N.M.I. 1.

[4]Com. R. Civ. P. 52(a) is identical to the Federal Rules of Civil Procedure Rule 52(a).

[5]Maximo argues that "the only evidence regarding this purported sale were hearsay testimonies" Appellant's Brief at 3. One exception to the rule precluding admission of hearsay evidence permits admission of hearsay testimony regarding personal or family history that goes to proof of title of land in probate cases. The reasoning behind this exception is that in the N.M.I. there is often no other available evidence to prove the wishes of a decedent concerning the distribution of estate property. Com. R. Evid. 803(19); *In re Estate of Seman*, 4 N.M.I. 129 (1994).

evidence. *Manglona v. Kaipat*, 3 N.M.I. 322, 336 (1992); *Aldan v. Kaipat* 2 CR 190 (D.N.M.I. App. Div. 1985), *aff'd* 794 F.2d 1371 (9th Cir. 1986). The assessment of evidence is a trial function. *Manglona, supra* at 336. Unless the appellate court is firmly convinced that a mistake was clearly committed below, it will not disturb the trial court's assessment. *Id.*

¶19 The evidence does not sufficiently support the trial court's findings. After reviewing the entire record there is simply not "two permissible views of the evidence" for us to choose between, but one. The record supports that Maximo is the true owner of the entire lot.[6]

¶20 **[9]** A finding of fact is clearly erroneous when, even though some evidence supports it, the entire record produces the definite and firm conviction that the court below made a mistake. *In re Estate of Rofag*, 2 N.M.I.18, 31 (1991). Here, the trial court made a clearly erroneous mistake in finding that the sale took place.

¶21 **[10]** The evidence supporting Maximo's contention that there was not a sale includes: (1) Ernesto was never told by his father Justino the sale took place; (2) no one knew when the sale to Justino took place, only that Justino showed Ernesto the land markers designating his share of the property; and (3) Helen Arriola (Ernesto's mother) also did not know when the sale took place but was also shown the land markers by her late husband, Justino.

¶22 There is not sufficient evidence cited by the trial court that convinces us that Justino in fact purchased the land and that Maximo knew he did not have a rightful claim to the land.[7]

¶23 When viewed against the evidence presented by Maximo, the reasons set forth by the Estate are not plausible to support the trial court's finding that a sale took place. Ana's registering the land in her

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[6]The record on appeal contains the transcript of trial which contains testimonial evidence and appellant's excerpts of record which contain documents submitted at trial showing what the trial court relied on in making its factual determination.

[7] The list of reasons set forth by the Estate as to why the trial court was correct is as follows:

> (1) defendant himself testified that he never occupied the southern half of the lot; (2) Decedent's purchase of the southern half of the lot from his mother for $300.00 is evidenced by defendant's sister testifying that she and Maximo knew of the sale; (3) on May 2, 1969 the mother executed a Deed of Gift to defendant which conveyed only the northern half of the lot to defendant, but made no mention of the southern half of the lot; (4) when Maximo's spouse went to the Mariana's District Land Commission office to register Maximo's parcel of land, she claimed only "Part of Lot 009 H 20" and referenced the May 2, 1969 Deed of Gift; (5) on April 11, 1983, MDLC issued a determination of Ownership on the Lot declaring the mother fee simple owner of the Lot "subject to the deed of Gift dated May 2, 1969 in favor of [defendant] Maximo."

Br. of Appellant, Appeal No. 97-050 at 9.

name and Maximo's and Maximo's wife registering the northern half, instead support the finding that Ana registered the land for Maximo but reserved the southern portion for herself. Similarly there is sufficient evidence to support Maximo's contentions that he is the true owner of the land. Maximo presents the following as evidence of ownership:

1. As early as 1963, Maximo knew that the property was his except the Southern portion of the house because his mother told him so.

2. On August 29, 1970 Ana registered the land in Maximo's name with Ana as his representative and noted that no other person had an interest in the land.

3. On April 11, 1983 the Land Commission issued a "Determination of Ownership" which was not appealed.

4. In 1982, Maximo demolished the family house on the property without any objection by anyone, including any member of decedent's family.

5. In 1992, Maximo started making improvements on the property again without any objection.

6. Ana owned four properties for which she distributed amongst her children as all were treated equally.

7. According to the Estate's own witnesses, the sale supposedly took place before the Deed of Gift was executed some time in 1962, 63, or 65. *Trial Transcript* at 70, 94.

¶24 **[11]** "[T]here must be findings, stated either in the court's opinion or separately, which are sufficient to indicate the factual basis for the ultimate conclusion." *Kelley v. Everglades Drainage Dist.*, 319 U.S. 415, 422, 635 S. Ct 1141, 87 L. Ed. 1485 (1943). Here, the findings supporting the trial court's ruling that the Estate was the owner of the lot fall short of the requirement. On the other hand, there is sufficient evidence to support Maximo's contentions. There are no facts that show why MDLC would issue a Certificate of Title to anyone other than Maximo. There was no proof offered as to why MDLC's decision to issue a Certificate of Title to Maximo was wrong or why the certificate is bogus.

¶25 The documentary proof of land records and actions by Ana in registering the land, do not logically follow the alleged sale claimed by the Estate. It is incongruous that Ana would take the time to register the land in her name and in Maximos, but not make any note or reference to the sale to Justino. If the sale took place as testified by the witnesses between 1962 and 1965, there was no official record made to register

the land to Justino in the twenty plus years before Ana's death. However, Ana repeatedly went to the MDLC to include Maximo's name in registering the land without ever making any references to Justino's alleged purchase.

B. The Trial Court Erred in its Conclusion that the Estate Met the Burden to Set Aside the Certificate of Title Issued to Maximo on March 6, 1984

¶26 **[12]** The trial court's ruling that Maximo's Certificate of Title is invalid was primarily a factual finding based on testimonial evidence and a factual record. A trial court's findings of fact, based either on oral or documentary evidence may be clearly erroneous only if "after reviewing all the evidence, [the Supreme Court] is left with a firm and definite conviction that a mistake has been made". *Camacho v. L&T Int'l Corp.*, 4 N.M.I. 323, 325 (1996).

¶27 **[13,14]** Generally, the doctrine of administrative res judicata bars an action which has been the subject of a final administrative decision. *In re Estate of Ogumoro*, 4 N.M.I. 124 (1994). In the case of *In re Estate of Dela Cruz*, this Court carved out a narrow exception to the general rule that the doctrine of res judicata bars an action which has been the subject of a final administrative decision. The rule states that title determinations should ordinarily be accorded res judicata effect and may be set aside only if "it was (1) void when issued, or (2) the record is patently inadequate to support the agency's decision, or if according to the rules the res judicata effect would, (3) contravene an overriding public policy, or (4) result in a manifest injustice." *In re Estate of Dela Cruz*, 2 N.M.I. 1,11 (1991).

¶28 The trial court, in reliance on *In re Estate of Dela Cruz*, set aside the Certificate of Title which was issued by the former Mariana District Land Commission to Maximo on March 6, 1984 on the ground that to uphold the same would clearly result in "manifest injustice." Decision at 8. The Estate argues the trial court had ample evidence proving that Maximo's Certificate of Title was bogus and the court was correct in its ruling because to "accord res judicata effect to MDLC's error would clearly result in manifest injustice." Decision at 5.

¶29 The trial court ruled that "the record was patently inadequate" to support the MDLC's decision to issue the certificate of title making. The court found two of the four *Dela Cruz* factors satisfied to prevent the res judicata effect: that to accord res judicata to MDLC's error would result in manifest injustice and the record is patently inadequate to support MDLC's decision. Decision at 5. In light of the non-existence of any evidence produced by the Estate in meeting the factors originally set forth *In re Dela*

Cruz, this Court will afford administrative res judicata to the Certificate of Title in this case.

¶30 Maximo argues, and the Court agrees, the record in this case contains no evidence of injustice having been produced by the Estate. The injustice that has been presented is toward Maximo. The Estate had never made any efforts to lay claim to the property even with notice of Maximo's presence on the land. In 1982, Maximo demolished the family house on the property without any interference from anyone, including Justino. *Trial Transcript* at 176. For ten years thereafter, Maximo and his family resided on the property. In 1992, Maximo commenced construction of the three story apartment building. Not until the completion of the apartment building did any one object to Maximo's occupation of the land.[8]

¶31 We find the evidence used by the trial court to set aside the Certificate of Title is insufficient. The land records reveal a Deed of Gift was signed by Ana on May 2, 1969, which conveyed her interest in the northern portion of the lot to Maximo. The trial court found it is "patently clear that Ana only conveyed the northern portion of the lot". Decision at 5. However, in 1970 she registered the whole lot No.009 H 20 in Maximo's name with Ana as the representative. Maximo argues the foregoing actions indicate Ana did not sell anything to Justino.

¶32 Maximo contends the trial court's finding of "manifest injustice" rest on the conclusion that a sale took place between Ana and Justino. The Estate at no time sought redress at the administrative level with respect to the Certificate of Title much less appealed the determination to the trial court.[9] The Certificate of Title was correctly issued based on the documents that Ana herself had filed with the land commission.

CONCLUSION

¶33 For the reasons set forth above, the judgment of the trial court is **REVERSED** and is **REMANDED** for entry of judgment consistent with this opinion. Particularly, Maximo's Certificate of Title that was issued by the MDLC shall stand as valid making Maximo the true owner of the northern and southern portion of the lot. Since the subject of Appeal No. 97-050 concerns a restitution award

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[8]The Estate claims that under Chamorro custom, Justino's sons were not required to request that their uncle stop building on the land. No competent evidence was presented to the trial court regarding evidence of the custom. Customs are not readily accepted by the courts unless certain conditions are met. *In re Estate of Rangamar*, 4 N.M.I. 72 (1993).

[9]The same issue, not having appealed the administrative hearing determination, was brought up in *In re Estate of Dela Cruz*, 2 N.M.I. 1 (1991). There the court determined the function of the District Land Title Office was quasi-judicial in nature and since the decision was never appealed, the ownership became final under the principle of administrative res judicata. "After it had become final, a quasi-judicial administrative ruling . . . should ordinarily be given res judicata effect, and may not be set aside unless [one of the four factors listed previously is present]." *Id* at 11.

in regard to the trial court's award of the southern portion of the lot to the Estate, that appeal is now moot since we have declared Maximo as the true owner of the $500,000 improvement.