FOR PUBLICATION

APPEAL NO. 00-040

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

IN THE MATTER OF THE ESTATE OF FRANCISCA LAIROPI, Deceased.

OPINION

Cite as: ***In re Estate of Lairopi*, 2002 MP 10**

Civil Action No. 97-1234B

Argued and Submitted June 6, 2001
Decided May 16, 2002

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BEFORE: MIGUEL S. DEMAPAN, Chief Justice, ALEXANDRO C. CASTRO, Associate Justice, DAVID A. WISEMAN, Justice *Pro Tem*

DEMAPAN, Chief Justice:

INTRODUCTION

¶1 Appellants, the direct lineal descendants of Carmen Faibar Rebuenog [hereinafter REBUENOGS], appeal the inclusion of three lots of land in the inventory of Francisca Lairopi's estate.

¶2 We have jurisdiction over this appeal pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands and 1 CMC § 3102(a). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶3 This case arises out of the distribution of the estate of Francisca Lairopi [hereinafter FRANCISCA], a Carolinian woman who died before World War II. In 1953, the Title Officer for the Saipan District issued title determinations to lots of land owned by FRANCISCA. The title determinations concluded that the "heirs" of FRANCISCA'S daughters owned the lots of land; various land trustees were designated as representatives of the heirs.

¶4 In 1975, the Micronesian Claims Commission issued a decision relating to a claim against the Trust Territory Government filed by two granddaughters of FRANCISCA, Antonia Mettao Iguel [hereinafter ANTONIA] and Carmen Faibar Rebuenog [hereinafter CARMEN]. The Claims Commission found that, as a result of losses directly relating to World War II, ANTONIA and CARMEN, as "the [r]epresentatives of the [h]eirs of Francisca Lairopi" were entitled to compensation for losses, including loss of use of the land and other damages to the

claimants who were representing the title holders of lots 1822, 1852, and 363.

¶5 FRANCISCA'S estate was subject to probate in the late 1990's. The inventory in FRANCISCA'S estate included the lots 1822, 1852, and 363. On May 24, 1999, the REBUENOGS filed an objection to the inclusion of these three parcels of land in the estate.

¶6 On November 9, 2000, the Superior Court found that these lots of land were properly included in FRANCISCA'S estate. REBUENOGS filed a notice of appeal with the Supreme Court on December 11, 2000. Oral arguments were heard on June 7, 2001.

ISSUES PRESENTED AND STANDARDS OF REVIEW

¶7 REBUEONGS presents two issues on appeal:

1. Whether the Superior Court imposed a new and erroneous procedure, by requiring the objectors to rebut a presumption that the land in question was Carolinian land?
2. Whether the Superior Court erroneously determined that the properties should be distributed in accordance with Carolinian law?

¶8 The first issue is a legal issue involving the ownership of land and is reviewed *de novo*. *In re Estate of Mueilemar*, 1 N.M.I. 441, 444 (1990).

¶9 The second issue raises a mixed question of fact and law and is reviewed *de novo*. *Camacho v. L & T Int'l Corp.*, 4 N.M.I. 323, 326 (1996).

ANALYSIS

1. The Superior Court Applied the Proper Standard in Determining Whether the Land in Question Is Carolinian Land.

¶10 REBUENOGS argue that the Superior Court imposed a new presumption in finding that land, owned originally by a Carolinian is, absent evidence to the contrary, Carolinian land. Particularly, REBUENOGS object to the court's determination that once it established that "the

land in question is owned by the head of the lineage, i.e., the mother of the title holder, . . .[a] presumption that the property is Carolinian family land arises, notwithstanding that the land is held solely in the title holder's name." Appellants' Open Brief [hereinafter O.B.] at 6.

¶11 REBUENOGS argue that "[the court] erroneously created a presumption that the property was Carolinian family land because it had been owned by FRANCISCA, the head of the lineage. Once it was determined to be Carolinian family land, the lower Court (sic) required the heirs to prove that the individuals named in the title determinations had inherited the property from FRANCISCA. The case law relied upon by the lower Court (sic) does not impose this burden." O.B. at 4-5.

¶12 It is settled law in the Commonwealth that Carolinian custom guides the distribution of the estate of a Carolinian person who dies intestate. *See In re Estate of Rangamar*, 4 N.M.I. 72, 75 (1993). Where the original owner is Carolinian, the court will distribute the probated estate in accordance with Carolinian custom unless the original owner clearly decides to depart from Carolinian customary law. *In re Estate of Kaipat*, 3 N.M.I. 494, 498 (1993); *In re Estate of Igitol*, 3 CR 906 (N.M.I. Super. Ct. 1989). *See also*, 8 CMC § 2904.

¶13 The Superior Court, therefore, imposed no new presumption in finding that because FRANCISCA was a Carolinian, unless there was a showing that FRANCISCA had clearly intended a departure from Carolinian customary law, her land would be distributed in accordance with Carolinian custom.

2. The Superior Court Correctly Found that the Land Should Pass Pursuant to Carolinian Customary Law.

¶14 REBUENOGS argue that the court's determination that the properties in question should be distributed in accordance with Carolinian customary law was "erroneous because the REBUENOGS provided evidence that they had used the three lots in question, and that other

heirs of FRANCISCA had not claimed an interest in the property." O.B. at 8. We disagree.

¶15 The Superior Court found that in the case of each of the three lots, the preponderance of the evidence showed that the lands had continued to be used in such a way that each lot continued to be Carolinian family land. Excerpts of Record [hereinafter E.R.] at 10-11. Particularly, the Superior Court found, the evidence fell short of establishing REBUENOGS' sole ownership of Lot 1822; "no documentary evidence other than a copy of T.D. 600" supports REBUENOGS' claim to Lot 1985; and REBUENOGS' claim to Lot 363 was supported primarily by a non-dispositive title determination. E.R. at 9-10.

¶16 In order to maintain a claim that the land should not pass according to Carolinian custom, REBUENOGS must show that there has been some significant and discernable departure from Carolinian customs of use. *See, e.g., Kaipat,* 3 N.M.I. at 498-500; *Rangamar*, 4 N.M.I. at 77; *In re Estate of Ogumoro*, 4 N.M.I. 124, 128 (1994). Here, though REBUENOGS have provided evidence that they had used the three lots in question, and perhaps even showed that no one else with a claim to the land acted aggressively in pursuing their claim, as a matter of law, they have not established that the land should not pass according to Carolinian custom.

¶17 REBUENOGS argue, however, they should not have to make such a showing, because "[F]rancisca, prior to her death, or her children, after her death, could have distributed the properties in a manner contrary to Carolinian custom and more in line with the Chamorro concept of 'partida.'" O.B at 8. But this argument does not hold water.

¶18 FRANCISCA might have done a lot of things with her estate, but that she *might* have done with them, has no bearing on this decision. What matters to the Court is what she *actually* did (or did not) do with her property. There is no exception, to the rule that Carolinian land is passed in accordance with Carolinian custom, for hypothetical ways in which FRANCISCA could have distributed the land. *Rangamar*, 4 N.M.I. at 77 (explaining the circumstances under

which the court will distribute Carolinian land in a way not in accordance with Carolinian custom).

¶19 REBUENOGS also argue that the title determinations in favor of the "heirs of the children of FRANCISCA," rather than to FRANCISCA herself, provide further support to their claim that the lands in question should not pass in accordance with Carolinian custom. O.B. at 5. The title determinations, however, were properly "looked behind" by the Superior Court. Because the Superior Court found that the title deternimations were customary titles, the Superior Court was correct, not to read the titles as granting ownership rights in the lands only to those people specifically named on the document. *Kaipat*, 3 N.M.I. at 499.

¶20 The Superior Court found that under both Carolinian and CNMI land law, FRANCISCA was the original owner of the properties. E.R. at 8. Then, examining the history of each of the contested lots, the Superior Court found that the lots' ownership and use histories were in keeping with customary Carolinian land tenure (i.e., title vested matrilineally, though use of the land is shared by the entire clan). E.R. at 11.

¶21 Because the land had been used in a manner consistent with Carolinian custom, the Superior Court correctly found that it was proper to include the three contested lots in FRANCISCA's estate for disposition. E.R. at 12.

CONCLUSION

¶23 We, therefore, **AFFIRM** the judgment of the Superior Court.

SO ORDERED THIS 16th DAY OF MAY, 2002

/s/ ____
MIGUEL S. DEMAPAN, Chief Justice

/s/ ____
ALEXANDRO C. CASTRO, Associate Justice

/s/ ____________________________________
DAVID A. WISEMAN, Justice *Pro Tem*