FOR PUBLICATION

Appeal No. 01-041-GA

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

IN THE MATTER OF THE ESTATE OF:

JOSEPH RUFO ROBERTO
a.k.a. JOSEPH RUFU ROBERTO

Deceased,

MATILDE DLG. FEJERAN,
TERESA F. SAUCEDO,
ANNA F. RACOMORA

Claimants/Appellants,

v.

JOSEPH L. ROBERTO

Executor/Appellee.

DENIAL OF PETITION FOR REHEARING

Cite as: *In re Estate of Roberto,* 2004 MP 7

Civil Case No. 98-0983

Petition submitted on December 12, 2003
Decided May 12, 2004

For Matilde DLG. Fejeran,
Teresa F. Saucedo and
Anna F. Racomora
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Executor-Appellee:

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BEFORE: Alexandro C. CASTRO, Associate Justice, Juan T. LIZAMA, Justice *Pro Tempore* and Virginia S. ONERHEIM, Justice *Pro Tempore*

LIZAMA, Justice *Pro Tempore*:

¶1 Appellee in the underlying case, Joseph L Roberto, acting as Executor of the estate of Joseph Rufo Roberto, petitions this Court for rehearing of the Court's Opinion of November 14, 2003, *In re Estate of Roberto*, 2003 MP 16. We deny this petition for the reasons stated below.

CHALLENGE TO THE COURT'S RULING ON LAND ISSUES

¶2 Petitioner raises a number of challenges to our decision applying the Commonwealth's statute of limitations on Article XII claims to the instant matter. We will address each of these briefly, though only one has any merit.

¶3 Petitioner first argues that we have violated our own precedent, set forth in *Manglona v. Kaipat*, 3 N.M.I. 322 (1992), in which this Court held that an interest in land taken in violation of Article XII of the Commonwealth Constitution reverted to the grantor. Petitioner calls this case "dispositive." This description ignores two important facts. First, that we are bound to follow previous decisions only by the doctrine of stare decisis, which is not mandatory. Where facts or circumstances change, the opinion of a court may also change. If it were otherwise, our U.S. Supreme Court could never have reversed its "separate but equal" policy of *Plessy v.*

Ferguson, 163 U.S. 537, 17 S. Ct. 1138, 41 L. Ed. 256 (1896) and struck down school segregation in *Brown v. Board of Education*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954).

¶4 Second and more importantly, the Petitioner ignores the significance of the Commonwealth's statute of limitations on Article XII claims. This law, codified at 2 CMC § 4991, did not effect cases brought before Oct 29, 1993, as the *Manglona* case clearly was. Therefore, our opinion in the instant matter is our first that concerns the application of the statute of limitations. Any language in the *Manglona* case that conflicts with our ruling in the instant matter is simply no longer good law, just as *Plessy* is no longer good law. [1]

¶5 Petitioner also complains about the lack of precedent and case law cited by the Court. Leaving aside the question of whether the Supreme Court of a jurisdiction is required to cite precedent in deciding the meaning of the laws of that jurisdiction, we simply note that there are few other U.S. jurisdictions that have land ownership laws similar to our own. As with many questions relating to law largely unique to the Commonwealth, we are left to our own devices. Indeed, we note that the Petitioner has presented no relevant case law suggesting that our decision in the instant matter is inappropriate.

¶6 Petitioner does cite one case, beside *Manglona*, in support of his petition. This case is *Hodel v. Irving*, 481 U.S. 704, 107 S. Ct. 2076, 95 L. Ed. 2d 668 (1987), in which the U.S. Supreme Court struck down a section of the Indian Land Consolidation Act, 96 Stat. 2519 (1983), as an unconstitutional taking of land. This case is apparently cited by Petitioner in support of his claim that our order represented a "taking" of his interest in the property in violation of Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, Section 5 of the Commonwealth Constitution. However, this argument is clearly misplaced.

[1] This is not to imply that there was anything deficient in the *Manglona* opinion, as there clearly was in *Plessy*. The *Manglona* decision was perfectly sensible, it just did not address the change in the law because it predated that change.

¶7 A taking occurs when the government either takes property through eminent domain without just compensation or enacts a law or regulation that so limits the value or usefulness of property that the owner should be compensated for its loss. In either case, the land is taken for some public purpose. In this case, we simply decided how the law should apply to a dispute between private parties over property. If this is a taking, then every civil trial and appellate court in the United States "takes" someone's property almost every business day of the year. In fact, courts lack the power of eminent domain and lack the power to pass laws or promulgate regulations. Therefore, the Court is simply incapable of "taking" property as that term is defined in constitutional law. To suggest otherwise is to fundamentally misunderstand what the term means.

¶8 Petitioner does raise one valid argument. In our opinion in this case, we held that the Petitioner lacked standing to challenge the Appellant's claim to the disputed real property because Petitioner had admitted that the Estate could not take an ownership interest in it. Petitioner points out that the Estate would have a cause of action against the revertors after the reversion occurs. We acknowledge that this might be true under certain circumstances, but it does not change the outcome of this case. We properly concluded that transfer of title to the property in question from decedent to the Roberto Trust was sufficient to pass fee simple title to the trust, subject to the grantors' right of reversion. That right to seek reversion has long since expired and the grantors are now barred by the statute of limitations from seeking reversion.[2] Therefore, as between the original grantors and the trust, the trust must prevail. In addition, no individual challenged the validity of the transfer of Roberto Trust land from decedent's ownership to the trust within the statutory period. The only party who might have

[2] Absent some allegation of fraudulent concealment, which has not been alleged here.

done so, the estate, sought only to void the initial sales. We properly concluded that Ms. Fejeran had a better claim to the property than either the estate or the original grantors. The fact that the Petitioner might have benefited if we had ruled otherwise is of no account.

CHALLENGE TO THE COURT'S RULING ON PERSONAL PROPERTY

¶9 Our opinion in this case also reversed some of the trial court's factual findings. In seeking rehearing on these issues, Petitioner points out the high standard that must be met to reverse a trial court's factual findings. We were entirely aware of this standard in issuing our decision. We simply concluded that the vast weight of the evidence was in favor of the Appellant. Petitioner has given us no reason to revisit that decision.

CONCLUSION

¶10 For the reasons stated above, the petition for rehearing is DENIED.

SO ORDERED THIS 12TH DAY OF MAY 2004.

/s/_____
JUAN T. LIZAMA, JUSTICE *PRO TEMPORE*

/s/_____
ALEXANDRO C. CASTRO, ASSOCIATE JUSTICE

/s/_____
VIRGINIA S. ONERHEIM, JUSTICE *PRO TEMPORE*