

Therefore, the original judgment appealed from can only be sustained for the amount of witness fees allowable under Sections 259 and 260 of the Trust Territory Code as they stood at the time. Making every reasonable allowance in favor of the appellee, these figure out \$2.55.

JUDGMENT

The decision of the Truk District Court in its Civil Action No. 51 and the judgment of the Community Court of Fefan which was therein affirmed, are hereby modified by reducing the amount of the judgment to \$2.55, and as so modified they are affirmed.

DUYANG ORAK, Appellant

v.

HAMBRET NGIRAUKLOI, Appellee

Civil Action No. 129

Trial Division of the High Court

Palau District

July 31, 1958

Action brought by wife divorced under Palau customary law against former husband for support of child born before marriage and for child soon to be born. The Palau District Court held that husband was not liable for support of either child. On appeal, the Trial Division of the High Court, Chief Justice E. P. Furber, held that under Palau customary law, there is no liability on a father to support his children who do not live with him after divorce, absent special circumstances.

Affirmed.

1. Palau Custom—Family Obligations—Child Support

Under Palau custom, child's basic protection is his right to support by his matrilineal lineage which is often more certain than any liability which might be imposed on child's father.

2. Palau Custom—Marriage

Whether there should be any sudden change in Palau custom as to responsibilities of marriage and parenthood and, if so, what this change should be, are matters for determination by those having legislative authority.

3. Palau Custom—Divorce—Support

For those living in Palau Islands under Palauan system of society, there is no liability on a father to support his children who do not live with him or his "side" after divorce, in absence of special circumstances.

4. Palau Custom—Divorce—Support

Under Palau custom, there may be liability on father to support his children after divorce where father so agrees, particularly where after many years of marriage and birth of several children father desires divorce to marry someone else.

Assessor:

JUDGE PABLO RINGANG

Interpreter:

ANTHONY H. POLLOI

Counsel for Appellant:

WILLIAM O. WALLY

Counsel for Appellee:

BAULES

FURBER, *Chief Justice*

This is an appeal from a judgment holding that the appellee, who is the former husband of the appellant, is not liable for the support of the appellant's child, born before their marriage, or for the child she expects to bear soon. Both parties are residents of the Palau Islands proper and were admittedly divorced under Palauan custom.

Counsel for the appellant claims essentially that the living conditions in Palau have so changed in recent years that the usual American doctrine that a father is responsible for the support of his children should apply. He cites 17 Am. Jur., Divorce and Separation, § 868, note 9, and three decisions of the Palau District Court in each of which a Palauan father has been ordered to make some provision or payments which are alleged to have been for support of his children.

Counsel for the appellee calls attention to evidence throwing doubt on whether the appellee is the natural father of either child and claims that under Palauan custom it is not the responsibility of a father to support his children who stay with their mother after a divorce.

The record and admissions of counsel clearly showed that the marriage in question lasted only about a year, during which time the couple lived with the wife's family or "within the lineage" as it is sometimes called, that the "*olmesumoch*" (i.e., the separation money or alimony to confirm the divorce under Palauan custom) had been agreed upon and accepted by the wife's father without any claim for anything for the child or children, and that in connection with arrangements for this payment the husband's father and sister had offered to have the husband's sister take the child, but the wife refused and has no intention of giving custody of the present unborn child to the appellee's "side."

OPINION

[1] 1. The whole concept of the responsibilities surrounding marriage under the Palauan system of society are so different from those usual in the United States and involve so many relatives on both sides that it is extremely difficult to say how these responsibilities will or should be affected by the growing tendency toward greater reliance on a money economy and the American or European way of living. Those not familiar with the Palauan system can get some idea of how different and how complicated it is by reading Chapter V on "Birth, Marriage, and Death" in "Palauan Society" by H. G. Barnett, published as one of the University of Oregon Publications in 1949. Traditionally a Palauan child's basic protection is his right to support by his matrilineal lineage, which may often be more certain than any liability that might be imposed on the father.

[2-4] 2. Certainly there is at the present time no generally accepted custom as to the extent of change, if any, from the traditional responsibilities in connection with marriage and parenthood under the Palauan system.

Whether there should be any sudden change and if so what this change should be, are matters for determination by those having legislative authority. The court holds, therefore, that for those in the Palau Islands living in good faith under the Palauan system of society, there is no liability on a father to support his children who do not live with him or his "side" after a divorce, in the absence of special circumstances. The commonest of these special circumstances is express agreement of the father in connection with the divorce—particularly where after many years of married life and the birth of several children, the father desires the divorce in order to marry someone else when there has been no fault on the part of the wife. In such a situation, the father must often agree to very onerous payments, some of which may be referred to as being for the children, in order to either secure approval for the divorce under Palauan custom or meet the liability for damages in such a situation under Palauan custom. No such circumstances have been shown in the present case.

3. In view of the above it is unnecessary to consider whether the evidence was sufficient to show that the appellee is the natural father of either of the children involved.

JUDGMENT

The judgment of the District Court for the Palau District in its Civil Action No. 379 is affirmed without costs.