

the Mariana Islands District, shall recover from the defendant Ambrose Ikeyasang, who lives in Koror in the Palau District, and the defendant Erminia K. Ngiraked, who lives in said Saipan, the sum of one thousand dollars (\$1,000.00) damages and five dollars and twenty cents (\$5.20) costs (to cover the filing fee, sheriff's charges for serving summons, and trial fee) making a total of one thousand five dollars and twenty cents (\$1,005.20).

2. Each defendant is liable for the full amount of this judgment, but the plaintiff may only collect the amount of the judgment *once*, regardless of whether it is collected all from one defendant or partly from one and partly from the other.

3. Time for appeal from this judgment is extended to and including October 21, 1968.

KUMER and MARIA SIBONG, Appellants

v.

MENROS PETER, Appellee

Civil Action No. 413

Trial Division of the High Court

Palau District

August 26, 1968

Petition for appointment of guardian for an infant. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that in the absence of statutory law, the natural mother, if fit, should be appointed as the child's guardian, however, if the mother is unfit then the natural father, or some qualified person nominated by him, should be appointed as guardian.

1. Guardian and Ward-Appointment of Guardian-Law Governing

Where no provision was found in the Trust Territory Code for appointment of guardians the common law must be considered to be applicable in accordance with Section 22 of the Code, unless local customary law is applicable. (T.T.C., Sec. 22)

2. Guardian and Ward-Appointment of Guardian-Custom

Customary law applies to adoption only, not guardianships.

3. Guardian and Ward-Appointment of Guardian-Common Law

Guardianship of a natural father or mother in the case of a child born out of wedlock was recognized in the common law and, normally the mother has the legal right to custody, care and control of the child unless the welfare and permanent good of the child require otherwise.

4. Guardian and Ward-Appointment of Guardian-Natural Mother

Where the natural mother was not a fit and proper person to have custody of her child the best interests of the child require the appointment of another as guardian.

5. Guardian and Ward-Appointment of Guardian-Consent of Mother

The consent of the natural mother, which normally would be required for appointment of a guardian or for an adoption of another, is nullified where the mother has been found not fit to be the guardian of the child.

6. Guardian and Ward-Appointment of Guardian-Consent of Mother

The mother's consent may not be withheld when the best interests of the child, which have been demonstrated to be jeopardized by the mother's own conduct, require transfer of custody and control to another.

7. Guardian and Ward-Appointment of Guardian-Natural Father

The natural father of the child is eligible as alternative appointee as guardian where the natural mother has been unfit.

TURNER, *Associate Justice*

The above-captioned appeal having been set for hearing before D. Kelly Turner, Associate Justice, at Koror, Palau District, on August 26, 1968, and the appellants having failed to appear in person or be represented by counsel, the court has reviewed the District Court proceedings and upon such record issues the following opinion and order of judgment.

OPINION

This action commenced in District Court, Palau District, by appellee filing petition for appointment of herself as guardian of the infant, Kieran Vicente Mackenzie. Appellee and appellant Kumer are paternal and maternal grandmothers, respectively, of the infant. The appellant, Maria Sibong, is the natural mother and Mikel Mackenzie, the natural father of the child.

The District Court, after extensive hearing, entered its order appointing appellee guardian of the infant and further authorized appellee to take the infant with her to her home in Truk District. From this judgment order appellants bring this appeal. Appellants previously filed petition for stay of execution of the guardianship order which the District Court denied on the ground appellee, a resident of Truk District, continued to be subject to the jurisdiction of the High Court.

Appeal was brought on the ground:-

That the District Court erred in granting guardianship without the consent of the natural mother, that such consent was required by law and local custom.

[1-3] Even though appellants failed to appear and press their appeal, this court considers this matter to be of sufficient importance to be reviewed and settled in accordance with law. It is noted no provision is found in the Trust Territory Code for appointment of guardians. The Code only provides for adoptions.

The common law, therefore, must be considered to be applicable in accordance with Section 22, Trust Territory Code, unless local customary law is applicable. Customary law applies to adoptions only, not guardianships. Guardianship of a natural father or mother in the case of a child born out of wedlock was recognized in the common law and, normally, the mother has the legal right to custody, care and control of the child unless the welfare and permanent good of the child require otherwise. 25 Am. Jur., Guardian and Ward, § 8.

[4] The extensive record in the District Court supports the decision there made that the natural mother is not a fit and proper person to have custody of the child in this case and that the best interests of the child require the appointment of another as guardian.

[5,6] Under such circumstances, the consent or refusal to give consent of the natural mother, which normally would be required for appointment of a guardian or for an adoption by another, is nullified. The mother's consent may not be withheld when the best interests of the child, which have been demonstrated to be jeopardized by the mother's own conduct, require transfer of custody and control to another.

[7] The natural father is eligible as alternative appointee as guardian, but in this case requested the court to appoint his mother, the child's paternal grandmother, as guardian. The court found this to be appropriate and it follows the District Court's order must be sustained and the relief requested in the appeal denied. Accordingly, it is,

Ordered, adjudged, and decreed that the order of the Palau District Court in its Case No. 1432, wherein Menros Peter, the appellee was appointed guardian with control and custody over the person and estate of the minor, Kieran Vicente Mackenzie, be and the same is affirmed.

VICTOR L. ROMOLOR, Plaintiff

v.

JOAQUIN S. IGISAIAR, Defendant

Civil Action No. 207

Trial Division of the High Court

Mariana Islands District

August 28, 1968

Action for specific performance. The Trial Division of the High Court, E. P. Furber, Temporary Judge, held that specific performance would not be allowed where contract was illegal, however, public policy and justice would be best served, under the circumstances, by requiring that defendant make restitution to the plaintiff for certain money expended in reliance upon the **contract.**