

immaterial. See generally, *Stanley v. Illinois*, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972).

It is also true that if all other considerations as to the ability of either parent to care for the child are deemed to be equal, courts frequently resort to a preference in favor of awarding custody of the child to the mother. *Porter v. Porter*, 518 P.2d 1017, 21 Ariz. App. 300 (1974); *Prescott v. Prescott*, 542 P.2d 1176, 97 Idaho 257 (1975); *Libra v. Libra*, 484 P.2d 748, 157 Mont. 252 (1971); *Earnst v. Earnst*, 418 P.2d 351 (Okl. 1966).

On the basis of the trial record, I cannot say with any degree of assurance, or certainty, what would be in the best interest of the subject child in this case. I would, therefore, VACATE and REMAND this case for further proceedings to determine the factual basis for awarding custody of the child to either parent in terms of who would be better able to serve the child's best interest.

FAUSTINA OSOMAI LITULUMAR, Appellant

v.

DOLORES SOMORANG TEREGEYO, Appellee

Civil Appeal No. 229

Appellate Division of the High Court

Mariana Islands District

March 31, 1983

Appeal from trial court determination of ownership in land dispute. The Appellate Division of the High Court, per curiam, held that since courts of Trust Territory are not precluded from making determinations as to the rightful recipients of Claim Commission awards, trial court erred in not considering the effect of an Amended Determination of Ownership issued by Land Title Officer, and therefore case was remanded to trial court.

1. Appeal and Error—Findings and Conclusions—Clearly Erroneous

Decision of trial court in a land ownership dispute will not be set aside on appeal unless there is clear and manifest error.

2. Administrative Law—Land Title Determination—Appeal

In light of *Ngikleb v. Ngirakelbid*, 8 T.T.R. 11 (App. Div. 1979), holding that courts of Trust Territory are not precluded from making determinations as to the rightful recipients of Claim Commission awards, trial court erred in not considering the effect of an Amended Determination of Ownership issued by Land Title Officer, in determining the rightful recipient of a Land Commission award.

3. Appeal and Error—Findings and Conclusions—Determination

Argument that trial court in land ownership dispute failed to make any finding as to ownership of the land was without merit, where the court in its judgment denied to plaintiff the relief sought in the prayer, which was sufficient to determine any and all issues concerning the relief sought in the complaint.

Counsel for Appellant:

MICHAEL A. WHITE, ESQ., P.O.
Box 222 CHRB, Saipan, CM
96950

Counsel for Appellee:

ARRIOLA & CUSHNIE, P.O. Box
949, Saipan, CM 96950

Before BURNETT, *Chief Justice*, NAKAMURA, *Associate Justice*, and GIANOTTI, *Associate Justice*

PER CURIAM

This appeal arose from a question of ownership of certain real property located on the island of Saipan, more particularly described as Lot 1836, I Liyan. Other portions of real property are discussed in the trial court's decision; however, of primary interest in this appeal is the parcel known as Lot 1836.

The property was determined on October 1, 1952, by the Saipan Land Title Officer to be the property of one Felicidad Sarapao. On or about November 23, 1959, the Saipan Land Title Officer issued an Amended Determination of Ownership (No. 385-A), declaring Lot 1836 to be the property of "the heirs of Felicidad Sarapao and Joseph Ogomuro Osomai, both deceased." In 1975, the Micronesian

Claims Commission made an award to "the heirs of Felicidad Sarapao" for damages to Lot 1836 and other property.

The trial court found that defendant-appellee herein was the only heir of Felicidad Sarapao and was in fact an adopted daughter. The trial court found particularly that plaintiff-appellant was not entitled to take anything by the complaint.

The appeal raises three points as follows :

1. Whether the evidence in this case supported the trial court's finding that the appellee was adopted by Felicidad Sarapao pursuant to Carolinian custom.

2. Whether the trial court should have considered Amended Determination of Ownership No. 385-A in determining the distribution of the War Claims award here at issue.

3. Whether the trial court erred in failing to make any findings as to the ownership of Lot No. 388, Lot No. 1619, and the remainder of Lot No. 1836.

[1] Regarding the finding of an adoption of the appellee, this court held in the case of *Muna v. Trust Territory*, 8 T.T.R. 131 (App. Div. 1980) that the burden is on the part of the plaintiff to show the error. Furthermore, the decision of the trial court will not be set aside unless there is clear and manifest error. *Falegorong v. Trust Territory*, 8 T.T.R. 6 (App. Div. 1979).

However, because of a dearth of information, either factual or legal concerning this immediate point, contained in either the brief of the appellant or appellee, the court has found it necessary to examine the transcript. We find no reason to question the trial court judge's discretion or his reasons for finding an adoption under Carolinian custom.

The real question arises as to whether the trial court should have considered the Amended Determination of Ownership of Lot 1836.

The trial court stated :

As indicated in *Dingelius v. Singeo* Civil 78-76 Palau (1976) and *Ngikleb v. Ngirakelbid* Civil 80-76 Palau (1976), now on appeal, Civil Appeal 184, the court cannot and will not go behind the decision of the Micronesian Claims Commission. This is even the case if it is determined that title to the land is in one person but the Micronesian Claims Award is to another person. The MCC may or may not have considered the amended determination of ownership. What is crucial is that the decision of the MCC made the award to the heirs of Felicidad Sarapao.

The trial court then found that the defendant was the only heir of Felicidad Sarapao and issued its judgment accordingly.

Subsequent to the entry of judgment in this case, we decided *Ngikleb v. Ngirakelbid*, 8 T.T.R. 11 (App. Div. 1979). In *Ngikleb*, we interpreted the finality provision of Title II of the Micronesian Claims Act of 1971, 50 U.S.C. § 2020, to preclude appeals from final decisions of the Commission in granting or denying claims and in the amounts awarded. In summary, we held that the courts of the Trust Territory are not precluded by the finality provision of the Micronesian Claims Act from making the determination as to the rightful recipients of the Commission's awards.

In several more recent cases, we have found it necessary to adhere to our ruling in *Ngikleb*. In *Diaz v. Diaz*, 8 T.T.R. 264 (App. Div. 1982), we held that the trial court erred when it refused to go behind the Micronesian Claims Commission's decision to determine the effect of a *partida* that allegedly occurred sometime prior to the Commission's decision. In light of *Ngikleb*, we made similar rulings in *Otiwii v. Ngireklei*, 8 T.T.R. 205 (App. Div. 1981) and *Magofna v. Cabrera*, 8 T.T.R. 203 (App. Div. 1981), wherein the trial court had ruled that the Commission's decisions were final and not reviewable.

[2] We note that we do not give such a broad interpretation to *Ngikleb* as to allow the court to go behind the Micronesian Claims Commission decision in all cases at any time to determine the proper awardees of the claim. We stated as much in *Kapileo v. Olopai*, 8 T.T.R. 259 (App. Div. 1982). However, as in *Ngikleb*, where the appellant does not question the payment or settlement as determined by the Commission but only questions the entitlement to the payment or settlement as between the parties to the lawsuit, the trial court is not prohibited by the finality provision from determining the rightful recipients of the Commission's awards. Therefore, we hold that the trial court should have considered the effect, if any, of Amended Determination of Ownership No. 385-A.

Regarding appellant's third ground of appeal, appellant argues the trial court erred in failing to make any finding as to the ownership of Lots 388, 1619 and 1836. We disagree. The trial court in its findings specifically stated, and we repeat,

It is therefore adjudged the plaintiff take nothing by her complaint and the defendant be awarded her cost of suit.

[3] The statement of the trial court that plaintiff take nothing by her complaint is as clear and emphatic a determination of the request for ownership that the court can make. The prayer for relief in the complaint sought a determination of ownership. The court in its judgment denied to plaintiff the relief sought in the prayer. Such a denial is sufficient to determine any and all issues concerning the relief sought in the complaint.

IT IS ORDERED that this matter be, and is REMANDED to the Trial Division for further proceedings not inconsistent with this Opinion.