



By Order of the Court, Judge Joseph N. Camacho

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FOR PUBLICATION

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**CNMI SUPERIOR COURT**  
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**IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**ESTATE OF ) CIVIL ACTION NO. 15-0080**  
**ELPIDIA DELA CRUZ NAUTA )**  
**) ORDER GRANTING MOTION TO**  
**) RECONSIDER PURSUANT TO CNMI**  
**) CONSTITUTION, ARTICLE XII, § 2**  
**) THAT PROHIBITS NON-NORTHERN**  
**) MARIANAS DESCENT SURVIVING**  
**) SPOUSES FROM INHERITING LAND**  
**) WHEN DECEDENT HAS NORTHERN**  
**) MARIANAS DESCENT CHILDREN WHO**  
**) CAN OWN LAND (KOBLERVILLE AND**  
**) CHALAN PIAO PROPERTIES)**  
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**I. INTRODUCTION**

This matter came before the Court on March 1, 2018 in Courtroom 220A on heir Kenneth DLC Nauta’s Motion for Reconsideration. Heir Kenneth DLC Nauta (“Kenneth”) was represented by Attorney Brien Sers Nicholas. Administratrix Bernadita Dela Cruz appeared with her counsel, Attorney Rene. C. Holmes. Surviving spouse and heir William A. Nauta Sr. (“William Sr.”) also appeared pro se.

There are three motions currently before the Court: 1. Heir Kenneth DLC Nauta’s Motion for Reconsideration, filed on December 15, 2017; 2. Administratrix’s Motion for Relief from Order, filed on January 3, 2017; Surviving spouse and heir William A. Nauta Sr.’s Petition to Transfer Decedent’s Chalan Piao Estate to Surviving Spouse filed on January 2, 2018. The Court will

1 address each of these motions in separate orders. This order will address Kenneth’s Motion for  
2 Reconsideration.

3 Based on a review of the filings, oral arguments, and applicable law, the Court makes the  
4 following decisions.

5 **II. BACKGROUND**

6 Decedent Elpidia Dela Cruz Nauta (“Decedent”) was a person of Northern Marianas  
7 Descent (“NMD”).<sup>1</sup> Decedent’s surviving spouse, William Sr., is a person of non-Northern  
8 Marianas Descent (“non-NMD”). Decedent was survived by her three sons, William Jr., Kenneth,  
9 and John, who are NMD like their mother.

10 Kenneth’s Motion for Reconsideration asks that the Court reconsider two prior orders  
11 relating to property in the Decedent’s estate. The first order is the Court’s order regarding  
12 Decedent’s property in Koblerville, Saipan. *Estate of Nauta*, Civ. No. 15-0080 (NMI Super. Ct.  
13 Dec. 1, 2017) (Order Granting Administratrix’s Petition for Final Distribution of Non-Ancestor’s  
14 Land as a One-Half Interest with a 55-Year Limit to the Non-Northern Marianas Descent Surviving  
15 Spouse Pursuant to 8 CMC § 2903 and a One-Half Interest in Equal and Undivided Shares to the  
16 Northern Marianas Descent Children in Fee Simple Absolute (Koblerville Property)) (“Koblerville  
17 Order.”) The second order is the Court’s order regarding Decedent’s properties in Chalan Piao,  
18 Saipan. *Estate of Nauta*, Civ. No. 15-0080 (NMI Super. Ct. Dec. 1, 2017) (Order Finding Ground  
19 Lease Agreement Remains Unsigned as the Special Power of Attorney Limited Agent to  
20 Negotiating But Not Accepting on the Behalf of Decedent’s Heirs (Chalan Piao Properties))  
21 (“Chalan Piao Order”).

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<sup>1</sup> A person of Northern Marianas Descent is a person who “is a citizen of the United States and has at least some degree of Northern Marianas Chamorro or Northern Marianas Carolinian blood or a combination thereof.” NMI Const. art. XII § 4. Only persons of Northern Marianas Descent may own real property in the Commonwealth. NMI Const. art. XII § 1.

1 In the Koblerville Order, the Court held that William Sr., as the surviving non-NMD spouse,  
2 may inherit a portion of Lot 31 L 03 (“Koblerville Property”). Koblerville Order at 6. The Court  
3 then ordered that the Koblerville Property shall be distributed:

4 **To [WILLIAM SR.], as the non-Northern Marianas descent surviving spouse, an**  
5 **UNDIVIDED ONE-HALF SHARE**, for his life, but in no event longer than fifty  
6 five years, and the vested remainder in fee simple to **WILLIAM C. NAUTA,**  
7 **KENNETH DLC. NAUTA, and JOHN C. NAUTA**, in equal and undivided shares,  
8 and

9 **To WILLIAM C. NAUTA, KENNETH DLC. NAUTA, and JOHN C. NAUTA,**  
10 in fee simple in equal and undivided shares an **UNDIVIDED ONE-HALF SHARE**  
11 in

12 **ii. UNDIVIDED ONE-EIGHTH INTEREST in [the Koblerville Property]**

13 . . . .

14 Koblerville Order at 6.

15 In the Chalan Piao Order, the Court, referencing the analysis in the Koblerville Order, found  
16 that William Sr. could inherit an interest in Lots 572 and 573 “C” (“Chalan Piao Properties”).  
17 Chalan Piao Order at 6, 15. Despite this, the Court found that the ground lease as to the Chalan Piao  
18 Properties was unsigned, so the Court did not make any order as to how the Chalan Piao Properties  
19 should actually be distributed. *Id.*

20 Kenneth’s Motion for Reconsideration asks that the Court reconsider whether William Sr.,  
21 as a non-NMD surviving spouse, may inherit an interest in property in Saipan. In particular,  
22 whether William Sr. may inherit when Decedent is survived by issue<sup>2</sup> who are able to hold land in  
23 the Commonwealth.

### 24 **III. LEGAL STANDARD**

A court may reconsider its earlier ruling when there is “an intervening change of controlling  
law, availability of new evidence, or the need to correct a clear error or prevent manifest injustice.”

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<sup>2</sup> Issue is a term of art meaning “lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent.” 8 CMC § 2107(q).

1 *Commonwealth v. Eguia*, 2008 MP 17 ¶ 7 (citing *Camacho v. J.C. Tenorio Enterprises, Inc.*, 2 NMI  
2 408, 414 (1992)). This standard applies in both civil and criminal cases. *Id.* Reconsideration may  
3 not be used “to repeat old arguments previously considered and rejected, or to raise new legal  
4 theories that should have been raised earlier.” *National Metal Finishing Com. v.*  
5 *BarclaysAmerican/Commercial, Inc.*, 899 F.2d 119, 123 (1st Cir. 1990). Commonwealth law favors  
6 the finality of court decisions, to “maintain consistency and avoid reconsideration of matters once  
7 decided during the course of a single continuing lawsuit.” *Cushnie v. Arriola*, 2000 MP 7 ¶ 14.  
8 Motions for reconsideration brought under Rule 59(e) must be “served no later than 10 days after  
9 entry of the judgment.” NMI R. Civ. P. 59(e).

10 Manifest injustice is determined through a “case-by-case decision based on equitable  
11 considerations.” *Jones v. Stephens*, 998 F.Supp. 2d 529, 536 (N.D. Tex. 2014). Reconsideration  
12 based upon manifest injustice requires that “the record presented must be so patently unfair and  
13 tainted that the error is manifestly clear to all who view it.” *In re Titus*, 479 B.R. 362, 368 (Bankr.  
14 W.D. PA. 2012) (quoting *In re Roemmele*, 466 B.R. 706, 712 (Bankr. E.D. Pa. 2012)).

#### 15 IV. DISCUSSION

16 Kenneth asks that the Court reconsider both the Koblerville Order and the Chalan Piao  
17 Order. Since both orders concern whether William Sr., as the non-NMD surviving spouse, may  
18 inherit property in the CNMI, the Court will address these orders together.<sup>3</sup> In his Motion for  
19 Reconsideration, Kenneth argues that allowing William Sr. to take any property interest in the  
20 Koblerville and Chalan Piao Properties is both a clear error and a manifest injustice.

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24 <sup>3</sup> In particular, the Court notes that the Chalan Piao Order cites to the Koblerville Order’s analysis regarding whether William Sr. could inherit property in Saipan.

1           **1. Clear Error**

2           The Court will first turn to whether allowing William Sr. to take any property interest in the  
3 Koblerville and Chalan Piao Properties is clear error. Kenneth argues that Article XII, Section 2 of  
4 the Commonwealth Constitution prohibits non-NMD surviving spouses from taking an interest in  
5 property in the Commonwealth where the decedent is survived by issue who are NMD. Mot. to  
6 Reconsider at 3-4.

7           Pursuant to the Commonwealth Constitution, “[t]he acquisition of permanent and long-term  
8 interests in real property in the Commonwealth shall be restricted to persons of Northern Marianas  
9 descent.” NMI Const. art. XII § 1. Acquisition “includes sale, lease, gift, *inheritance* or other  
10 means.” NMI Const. art. XII § 2. “A transfer to a *spouse by inheritance* is not an acquisition under  
11 this section if the owner dies *without issue* or *with issue not eligible to own land in the Northern*  
12 *Mariana Islands.*” *Id.* (emphasis added).

13           In determining the intestate succession of land pursuant to Chamorro custom,<sup>4</sup> the Probate  
14 Code<sup>5</sup> looks at whether the property is classified as ancestors’ land or as other properties. 8 CMC  
15 §§ 2902-2903. For ancestors’ lands, the surviving spouse<sup>6</sup> “obtains a life estate, with the issue  
16 obtaining a vested remainder in fee simple by representation.” 8 CMC § 2902(a). For all other  
17 properties, the Probate Code provides:

- 18           (a) *The surviving spouse obtains one-half of all properties, other than those listed in*  
              *8 CMC § 2902.*  
19           (b) *The issue of the decedent obtain one-half of all properties, other than those listed*  
              *in 8 CMC § 2902, by representation.*

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21 <sup>4</sup> 8 CMC §§ 2902-2903 addresses Carolinian family land and all other lands.

22 <sup>5</sup> The Court notes that a statute can fill in the gaps and add details to implement the Constitution; however, a CNMI  
statute cannot contradict the CNMI Constitution. When the CNMI Constitution prohibits an action, a CNMI Statute  
cannot grant the right to that action.

23 <sup>6</sup> 8 CMC 2902(a) the surviving spouse is an NMD and therefore is able to own land per life estate, see also Article XII,  
Section 2. The focus is decedent’s ancestors’ land (sometimes referred to as family land) will eventually revert to the  
24 decedent’s family or descendants. This inheritance scheme is analogous to what the Supreme Court referred to in  
*Estate of Tudela* that eventually the ancestors’ land (family land) will revert back to decedent’s family or descendants  
or can only be conveyed to another NMD. *See Tudela*, 2009 MP 19 ¶ 21.

- 1 (c) If there is no surviving spouse, the surviving issue obtain all properties by  
representation.  
2 (d) If there is no surviving spouse and no issue, the parents of the decedent take all  
3 properties, other than those listed in 8 CMC § 2902, and if there are no surviving  
parents, then to the siblings of the decedent by representation.

4 8 CMC § 2903 (emphasis added).<sup>7</sup>

5 The Court notes that 8 CMC § 2902 and 8 CMC § 2903 must be read in harmony with the  
6 CNMI Constitution, Article XII, Section 2. The CNMI Constitution controls and is supreme above  
7 the probate code. Therefore, 8 CMC § 2902 and 8 CMC § 2903 of the Probate Code cannot create  
8 an exception to Article XII. It is incorrect to claim that the Probate Code, in particular 8 CMC §  
9 2902 and 8 CMC § 2903 now makes it possible for non-NMD surviving spouses to own land when  
10 decedent has issues that are NMDs. In *Estate of Tudela*, the Commonwealth Supreme Court  
11 considered whether a non-NMD surviving spouse could inherit property interests pursuant to 8  
12 CMC §§ 2601 and 2903<sup>8</sup>. 2009 MP 9 ¶ 19. The Court in *Tudela* looked to Article XII, Section 2 in  
13 determining whether a non-NMD surviving spouse could inherit property, holding that “[b]ased on  
14 Section 2’s express exclusion from the definition of ‘acquisition’ surviving spouses taking through  
15 intestacy when there are no issue who may own land, Mrs. Tudela is able to take in fee simple.  
16 Indeed, any other reading would not be possible.” *Id.*

17 In holding that the non-NMD spouse in *Tudela* could inherit property in fee simple, the  
18 Commonwealth Supreme Court noted that “allowing a non-NMD spouse to own land in the  
19 Commonwealth does not defeat the strong interest in keeping land within the local population . . .

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21 <sup>7</sup> 8 CMC 2903(a) the surviving spouse is an NMD and therefore is able to own land, see also Article XII, Section 2.

22 <sup>8</sup> Though the issue is not before the Court because heir William Sr.’s primary residence is outside of the CNMI, the  
23 Court notes that the Probate Code also provides a number of exemptions, where property is set aside for the surviving  
24 spouse. 8 CMC §§ 2601 *et seq.* “The surviving spouse of the decedent who was domiciled in the Northern Mariana  
Islands is entitled to the primary family home and lot,” and the surviving spouse’s “[r]ights to exempt property shall  
have priority over all claims against the estate.” 8 § 2601. The Probate Code also provides a homestead allowance for a  
surviving spouse, which also has priority over all other claims on the estate. 8 CMC § 2602. These Probate Code  
exemptions are statutory and must still comply with CNMI Constitution, Article XII, Section 2.

1 because [the non-NMD spouse] can only convey her fee simple interest to an NMD.” *Tudela*, 2009  
2 MP 9 ¶ 21.

3 This Court, in addressing whether William Sr. could inherit an interest in the Koblerville  
4 and Chalan Piao properties, looked to *Tudela* for guidance. Koblerville Order at 4-5. Under *Tudela*,  
5 in a “typical situation, when a decedent leaves a spouse, he will also leave issue, and each will take  
6 half.” 2009 MP ¶ 15. The Court then found that William Sr., as the non-NMD surviving spouse,  
7 took half of the property, with the Decedent’s NMD issue taking the remaining half. Koblerville  
8 Order at 5. The Court, however, limited William Sr.’s inheritance to a term of 55 years, pursuant to  
9 Article XII of the Commonwealth Constitution. *Id.*

10 This ruling was in clear error. Although *Tudela* provides for a non-NMD surviving spouse  
11 to inherit property in the Commonwealth, the decedent in *Tudela* did not have issue who could  
12 inherit land in the Commonwealth. 2009 MP ¶ 19. This case is different from *Tudela*, because the  
13 decedent has children who are NMD and can inherit land. The Court’s reliance upon *Tudela* under  
14 these circumstances was misplaced. The Commonwealth Constitution states: “A transfer to a  
15 spouse by inheritance is not an acquisition under this section if the owner dies without issue or with  
16 issue not eligible to own land in the Northern Mariana Islands.” NMI Const. art. XII § 2. Since  
17 Decedent is survived by issue who are NMD and thus able to own land in the Commonwealth,  
18 William Sr. cannot acquire an interest in the Koblerville and Chalan Piao Properties. Therefore,  
19 based upon a finding of clear error, the Court must grant the Motion for Reconsideration.

## 20 **2. Manifest Injustice**

21 Kenneth argues that allowing William Sr. to take any property interest in the Koblerville  
22 and Chalan Piao Properties works a manifest injustice on Kenneth. Mot. to Reconsider at 2. As the  
23 Court has found clear error in the Koblerville Order and Chalan Piao Order, the Court need not  
24 reach the issue of Manifest Injustice.

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**V. CONCLUSION**

The CNMI Constitution, Article XII, Section 2 prohibits a non-NMD surviving spouse from inheriting land when a decedent has NMD issue who can own land.

Accordingly, Heir Kenneth DLC Nauta’s Motion for Reconsideration is **GRANTED**<sup>9</sup>.

**IT IS SO ORDERED** this 5<sup>th</sup> day of October, 2018.

  
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/s/ JOSEPH N. CAMACHO  
Associate Judge

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<sup>9</sup> The Court will issue separate orders regarding Administratrix’s Motion for Relief from Order and surviving spouse and heir William A. Nauta Sr.’s Petition to Transfer Decedent’s Chalan Piao Estate to Surviving Spouse.