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

IN RE THE ESTATE OF ISAAC KAIPAT,
Deceased.

SUPREME COURT NO. CV-06-0018-GA
SUPERIOR COURT NO. 05-0247

Cite as: 2010 MP 17

Decided December 9, 2010

Danilo T. Aguilar, Saipan, Commonwealth of the Northern Mariana Islands, for Appellants
Viola Alepuyo, Saipan, Commonwealth of the Northern Mariana Islands, for Appellee
BEFORE: MIGUEL S. DEMAPAN, Chief Justice; JOHN A. MANGLONA, Associate Justice; ANITA A. SUKOLA, Justice Pro Tem

MANGLONA, J.:

¶ 1 The Estate of Dolores K. Pelisamen, and its heirs, appeal a probate court order denying their claim as heirs to the Estate of Isaac Kaipat. After Dolores' father Isaac died, Dolores was adopted under the Carolinian custom of mwei mwei by Isaac's sister, Rita. This appeal involves Appellants' claim to be recognized as heirs to Isaac's estate. After finding no applicable Carolinan custom, the probate court denied the claim based on principles of equity. Appellants argue that in the absence of customary law the probate court should have examined the common law, which they argue permits an adopted child to inherit from both natural and adoptive parents. We agree with the probate court that Carolinian custom cannot resolve this case. However, we find that Trust Territory precedent establishes that Dolores' right to inherit from Isaac's estate vested upon his death in 1944, and that under the common law Dolores' subsequent adoption did not divest her or her estate of this right. The Estate of Dolores K. Pelisamen and its heirs are thus entitled to be recognized as heirs to Isaac Kaipat's estate. We therefore REVERSE the probate court order denying the heirship claim.

I

¶ 2 Vicenta M. Kaipat, a woman of Carolinian descent, had three children: Isaac Kaipat, Benigno Kaipat, and Rita Kaipat. Upon Vicenta's death, her estate included a parcel of land identified as Lot 1772. The NMI government condemned a portion of Lot 1772 for a roadway and in exchange Vicenta's estate received land compensation proceeds. When Isaac, Benigno, and Rita each died, the land compensation proceeds were the primary asset of their respective estates.[1]

¶ 3 Isaac died intestate in 1944, leaving behind a biological daughter, Dolores K. Pelisamen. Dolores was then adopted under the Carolinian custom of mwei mwei by Isaac's sister, Rita. After Rita died Dolores was declared one of her heirs, entitling her to a share of Rita's estate. When Dolores died in 1999, Dolores' estate and its heirs (collectively, "Appellants") claimed that Dolores was also an heir of her natural father Isaac, and should receive a share of his estate. In short, Appellants claimed that Dolores, as Isaac's biological daughter and Rita's adoptive daughter, was an heir to both estates and should therefore inherit from each estate. However, the administratrix for the Estate of Isaac Kaipat ("Appellee") denied Appellants' claim.

¶ 4 In March 2006, the probate court held an evidentiary hearing regarding Appellants' claim. The court ruled that while Carolinian custom permits a child to inherit from both natural and adoptive parents, such custom was inapplicable in this case. The court then held that in the absence of applicable custom, property must be equitably distributed between Vicenta's heirs, and that it would be unfair for Appellants

[1] The estates of Vicenta and her children, Rita, Benigno, and Isaac, have only recently been probated.

to inherit twice from the Lot 1772 sale proceeds. Appellants' claim to be recognized as heirs to the Estate of Isaac Kaipat was denied and this appealed followed. We have jurisdiction pursuant to 1 CMC § 3102.

II

¶ 5 The question facing this Court is whether a child who is adopted by a blood-relative after her natural parent has died can inherit intestate from both her adoptive and natural parents.[2] Heirship determinations are reviewed de novo. *In re Estate of Cabrera*, 2 NMI 195, 202-03 (1991).

¶ 6 Probate matters, including heirship determinations, are generally governed by the Northern Mariana Islands Probate Law, 8 CMC §§ 2101-2927. However, 8 CMC § 2102 carves out an exception to this rule, establishing that "property of persons who die before February 15, 1984, shall pass according to Title 13 of the Trust Territory Code and other applicable law." Since Isaac Kaipat died in 1944, distribution of his estate is governed by Title 13 of the Trust Territory Code. *In re Estate of Rangamar*, 4 NMI 72, 75 (1993); *see In re Estate of Barcinas*, 4 NMI 149, 152 (1994) ("Because [decedent] died before 1984, our probate code does not apply to the probate of his estate."). Unfortunately, Title 13 does not provide any procedural or substantive law governing intestate succession.[3] *See In re Estate of Barcinas*, 4 NMI at 152; *see also, In re Estate of Cabrera*, 2 NMI at 203-04.

¶ 7 It is firmly established that in such situations we turn to customary law for guidance. *Estate of Aldan*, 1997 MP 3 ¶ 8 (citing 1 TTC § 102) ("since Title 13 does not provide for distribution of the estate of a person of Chamorro descent who died intestate, we resort to Chamorro custom for guidance."); *see In re Estate of Rangamar*, 4 NMI at 75. Trust Territory Code § 102 establishes that the "customs of the inhabitants of the Trust Territory not in conflict with the laws of the Trust Territory shall be preserved. The recognized customary law of the various parts of the Trust Territory shall have the full force and effect of law . . . ." 1 TTC § 102. We must therefore determine whether there is an applicable Carolinian custom.

A. *Determining Applicable Law: In the Absence of Carolinian Custom we Examine the Common Law*

¶ 8 The probate court examined Carolinian custom to determine whether Dolores, as Isaac's natural daughter and Rita's adopted daughter, could inherit from both estates. At the hearing, three experts testified concerning Carolinian custom, which they all agreed permits children to inherit from both their

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[2] As detailed below, this issue is distinct from cases where a child's natural parent is alive at the time of adoption, natural parents express whether they intend their child to inherit from their estates, or where the decedent passed away after February 15, 1984, thereby making the Northern Mariana Islands Probate Law applicable.

[3] Chapter 1 of Title 13 of the Trust Territory Code governs creation and execution of wills, 13 TTC §§ 1-9 (1980), and chapter 2 addresses "Settlement of Estate of Limited Value," 13 TTC §§ 51-55 (1980). Neither chapter is relevant in this case.

natural and adoptive parents if the natural parent expresses an intent that the child inherit from that parent's estate.[4] The court found no record of whether Isaac intended Dolores to inherit from him, and so it examined "the custom used to determine heirship in the absence of parental input." Order Denying Heirship Claim at 6. The experts disagreed on this issue. Appellee's experts testified that under Carolinan custom when the natural parent dies without expressing his or her intent, the oldest female heir decides whether the child inherits. Appellants' expert testified that while the oldest female acts as a trustee for the family property, the oldest son of the oldest female acts as the family decision maker (known as the telap, or chief). Under both theories, however, consent from other heirs is required. The court held that the parties disagreed on how to distribute the Estate, and that "Carolinian customary law provides no mechanism for determining heirship when the decision-makers of a family disagree." Order Denying Heirship Claim at 6. In other words, the court could not resolve this case based on Carolinian custom because there was no applicable custom. While Appellee understandably argues on appeal that the theory presented by its experts is the correct one, we have no basis in the record for overruling the probate court's finding that there is no applicable Carolinian custom. Faced with this absence of customary law, we must look elsewhere to resolve this matter.[5]

¶ 9 Appellee argues that since the legislature's intent in enacting the current probate law was to protect local culture and customs, including effectuating and respecting a decedent's intent, equity demands we deny Appellants' claim because there is no evidence that Isaac intended Dolores to inherit

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[4] *In re the Estate of Isaac Kaipat*, Civ. No. 05-0247D (NMI Super. Ct. April 11, 2006) (Order Following Evidentiary Hearing and Denying Heirship Claim on Behalf of the Estate of Dolores K. Pelisamen) ("Order Denying Heirship Claim") at 3-4.

[5] In refusing to apply custom, the probate court stated that Appellants had "not convinced the Court that the family has actually practiced the custom under which it claims inheritance, or that there even exists a Carolinian method for resolving the family dispute." Order Denying Heirship Claim at 8. We rest our conclusion that customary law cannot be applied solely on the probate court's finding that there is no applicable custom.

Ample Commonwealth precedent supports that we will not apply local custom when a party has clearly departed from custom. *See In re Estate of Lairopi*, 2002 MP 10 ¶ 12 ("Where the original owner is Carolinian, the court will distribute the probated estate in accordance with Carolinian custom unless the original owner clearly decides to depart from Carolinian customary law.") (citations omitted); *see also*, *Rangamar*, 4 NMI at 77 ("[W]here the land is not family land or the females consented to treatment inconsistent with Carolinian land custom, the court may allow the division of the property among individual male and female heirs."); *Estate of Igitol*, 3 CR 906, 912 (1989) ("[E]ven though the Igitol family land was originally governed by the traditional Carolinian custom, the history of the land and the activities of the heirs in relation thereto has been so inconsistent with custom that it would be unfair, unjust and inequitable to deny Petitioner's petition to partition the land."); *Bina v. Lajoun*, 5 TTR 366, 372 (1971) ("When, as here, the people concerned desire, for any reason, to reject custom, the court should not prevent it.").

The probate court ruled that customary law was inapplicable in part because the parties had departed from custom by "resort[ing] to a non-customary form of division—litigation." Order Denying Heirship Claim at 8. Because we base our conclusion on the court's finding that there is no applicable custom, we need not address whether resorting to litigation constitutes a departure from local custom and makes existing customary law inapplicable.

from him. In other words, Appellee argues that permitting Dolores to inherit from Isaac would be contrary to Isaac's intent and local custom.

¶ 10 We reject Appellee's argument because it misconstrues the probate court's findings and attempts to apply local custom where none exists. Appellee states, "[t]he court below found that '. . . there was no record of Isaac's intention to have Dolores inherit from his estate . . . .' As such, since Isaac never intended for Dolores and ultimately the Pelisamens to receive a share of his estate, they should not now be allowed to do so." Appellee's Response at 15 (quoting Order Denying Heirship Claim at 2). This position reveals a fundamental misconception. It interprets the probate court's finding that there was "no record of Isaac's intention" as equivalent to Isaac expressing intent that Dolores not inherit from him. We find this position contrary to the probate court order and therefore untenable. The probate court stated that "[b]ecause there is no record of Isaac's intent to bestow property on Dolores, the Court has examined the custom used to determine heirship in the *absence of parental input.*" Order Denying Heirship Claim at 6 (emphasis added). This statement unambiguously conveys that Isaac's intent was unknown. Indeed, this deficiency led the probate court to seek expert testimony and ultimately conclude that Carolinian custom could not resolve this matter. If, as Appellee argues, Dolores could not inherit from Isaac absent his express grant,[6] expert testimony about inheritance customs in the absence of parental input would have been unnecessary because evidence that Isaac's intent was unknown would have been sufficient to justify denying Appellants' claim.

¶ 11 Appellee also argues that affirming the probate court's decision respects Carolinian custom. *See* Appellee's Response at 16 ("Clearly, based on the Refaluwasch[7] custom, since Isaac never intended for Dolores or the Pelisamens to inherit from his estate, the Court should uphold the trial court's denial of the Pelisamen's claim on Isaac's estate."). Appellee agrees with the probate court that custom is inapplicable,[8] and believes Appellants' claim should be denied on principles of equity. However, in the alternative, Appellee argues we should apply local custom—as embodied in the current probate code—because this would respect legislative intent.

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[6] The probate court stated in its Findings of Fact that according to one expert witness, "if an adopted child is already in a position to inherit from the adopting parent, the natural parent must declare that the child should also take from the natural parent's estate." Order Denying Heirship Claim at 4. Appellee interprets this statement as "holding that children would not have any share in estate absent decedent's express grant." Appellee's Response at 15. While this may be true when the adoption occurs while the natural parent is alive—an issue not before us—the probate court order supports that this "express grant" theory is inapplicable when the natural parent dies before the adoption occurs.

[7] We have previously used the word "Refaluwasch" when referring to persons of Carolinian descent who settled in the Northern Mariana Islands. *See In re Estate of Amires*, 1997 MP 8 ¶ 2 n.1 (citation omitted).

[8] For example, Appellee states that "the trial court was correct in refusing to apply custom to determine if the Pelisamens should inherit an equal share in Isaac's estate." Appellee's Response Br. at 13.

¶ 12 Commonwealth probate law reflects the legislature's intent to protect local culture,[9] and we agree with this priority. The probate court attempted to honor this intent by holding a hearing to determine Isaac's intent and applicable Carolinian custom. This case is unusual because the hearing revealed that Carolinan custom does not address how an estate should be distributed when the natural parents' intent is unknown and the remaining heirs disagree.[10] Appellee's argument that denying inheritance would honor Isaac's intent and therefore preserve local custom ignores the probate court's conclusion that "Carolinian customary law provides no mechanism for determining heirship when the decision-makers of a family disagree." Order Denying Heirship Claim at 6. While preserving local customs is vital, there is simply no applicable Carolinan custom in this case. Recognizing this fact and looking to other jurisdictions for guidance does not undermine local custom, but respects it by refusing to bend custom to achieve ends for which it was not intended. While custom requires that we respect a decedent's intent when ascertainable, it does not endorse denying the inheritance rights of natural children when a parent's intent is unknown.

¶ 13 In the absence of applicable customary law or Trust Territory precedent, we must look to the common law pursuant to 1 TTC § 103.[11] *See In re Estate of Juaro*, 7 TTR 113, 115 (1974) (stating that in

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[9] This intent is codified in 8 CMC § 2104, which establishes the purposes underlying the Northern Mariana Islands Probate Law, and states:

> (a) This law shall be liberally construed and applied to promote its underlying purposes and policies.
> (b) The underlying purposes and policies of this law are:
> (1) To simplify and clarify the law and custom concerning the affairs of decedents and missing persons;
> (2) To discover and make effective the intent of a decedent in distribution of his property;
> (3) To promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors; and
> (4) To realize the compelling interest of the Northern Mariana Islands in preserving the historic traditions and culture of its citizens of Northern Marianas descent.

[10] In the vast majority of probate cases involving 8 CMC § 2102, we have found on-point local customs. *See In re Estate of Cabrera*, 2 NMI 195, 205 (1991) ("We find that many aspects of Chamorro custom are relevant for our consideration."); *see also, In re Estate of Rios*, 2008 MP 5 ¶ 21 (stating Chamorro custom concerning family land holdings); *In re Estate of Aldan*, 1997 MP 3; *Willbanks v. Stein*, 4 NMI 195 (1994); *In re Estate of Deleon Guerrero*, 1 NMI 301 (1990). While we have elected to not *apply* custom when the parties have departed from local custom, only once in cases involving 8 CMC § 2102 have we found no on-point custom whatsoever. *See In re Estate of Barcinas*, 4 NMI 149, 153 (1994) ("We are not aware of any such custom because the doctrine of advancements is not known in Chamorro tradition. The concept of advancements is unique to the common law.").

[11] This provision reads:

> The rules of the common law, as expressed in the restatements of the law approved by the American Law Institute, and to the extent not so expressed, as generally understood and applied in the United States, shall be the rules of decision in the courts of the Trust Territory in cases to which they apply, in the absence of written law applicable under Section 101 of this Chapter or local customary law applicable under Section 102 of this Chapter to the contrary and except as otherwise provided in Section 105 of this Chapter; PROVIDED, that no person shall be subject to criminal prosecution except under the written law of the Trust Territory or recognized local customary law not inconsistent therewith.

"the absence of both custom and legislative enactments, the code requires application of the common law. 1 TTC 103."); *cf. In re Estate of Guerrero*, 1 NMI 301, 305 (1990) (stating trial court ruling that "since there was Chamorro customary law applicable to the proceeding and the facts of the case, U.S. common law did not apply. 1 TTC § 103."). That we must look to the common law to resolve this matter has been enunciated in the probate context. *See In re Estate of Barcinas*, 4 NMI at 153 ("Since there is no applicable customary law, we shall apply the common law.").[12]

B. *The Probate Court Misapplied Per Stirpes Inheritance Principles*

¶ 14 The probate court devotes almost its entire Order to discussing Carolinian custom, which allows a child to inherit from both natural and adoptive parents when there is evidence of the natural parent's intent or an agreement among family members. After declaring custom inapplicable, the court denied Appellants' claim as follows:

> Dolores' heirs are already entitled to a one-fifth share of Rita's estate. The property being distributed to the heirs of Isaac and to the heirs of Rita stems from the same source. It would be unfair to allow an heir of Vicenta's estate to take twice from the same property. As such, Claimant's motion to be recognized as an heir to the Estate of Isaac Kaipat is hereby DENIED.

Order Denying Heirship Claim at 8. No law is cited in support of this conclusion. Instead, the court states that because custom is inapplicable, it would "follow the precedent of the Supreme Court and divide the property equitably (*per stirpes*) among Vicenta's heirs." *Id.* In reviewing this conclusion, we find Trust Territory case law and opinions issued by the District Court of the Northern Mariana Islands instructive to the extent that they interpreted Trust Territory inheritance law in cases involving persons dying before February 15, 1984. *See Sablan v. Iginoif*, 3 CR 860, 874 (1989) ("Since [decedent] had no will, the court must look to the intestate succession law, such as it existed in 1968. *Palacios v. Coleman*, 1 CR 34 (DC NMI 1980) provides guidance in this regard.").

¶ 15 Since Trust Territory times, a decedent's property has passed *per stirpes*—to the heirs in equal shares. *In re Estate of Taitano*, 8 TTR 325, 327 (1983) (affirming Trial Court order awarding shares in the estate of the deceased *per stirpes*); *see, e.g.*, *In re Estate of Pilar De Castro*, 2009 MP 3 ¶ 30 ("In the

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[12] While the *Barcinas* Court cited 7 CMC § 3401 as the statutory basis for examining the common law, we find that the source of this command is 1 TTC § 103—the Trust Territory predecessor to 7 CMC § 3401. Section 103 is the appropriate provision because 8 CMC § 2102 commands us to look to the Trust Territory Code when "dealing with property of persons who die before February 15, 1984."

While both 7 CMC § 3401 and 1 TTC § 103 make the common law applicable, we recognize that only the latter statute references 1 TTC § 105. Under § 105, in cases involving inheritance of land, in some instances we apply laws in effect in the Trust Territory on December 1, 1941, before looking to the common law. Neither party has cited 1 TTC § 105, or presented any authority suggesting that laws in place on December 1, 1941, addressed when the right to property vests or when an heir can inherit from both natural and adoptive parents. Accordingly, we find § 105 does not alter our decision to look to the common law pursuant to 1 TTC § 103 to resolve this case.

present case, De Castro died intestate. Thus, by default, her property passed to all her heirs in equal shares");[13] *Coleman v. Palacios*, 7 TTR 583, 585 (1978) (finding that children receive equal share of inheritance). Under *per stirpes* distribution, "the estate is divided into shares equal to the number of children of the decedent; and where some of the children are already dead but left living grandchildren, those grandchildren receive their parents' intestate shares." *In re Estate of Imamura*, 1997 MP 7 ¶ 27 (Taylor, C.J., dissenting).

¶ 16 The probate court denied Appellants' claim, reasoning that since Vicenta's estate was to be divided "equitably (*per stirpes*)" it would be "unfair to allow an heir of Vicenta's estate to take twice from the same property." Order Denying Heirship Claim at 8. The probate court appears to reason that because Lot 1772 proceeds must be divided *per stirpes*, this provides sufficient legal justification for denying Appellants' claim. However, *per stirpes* inheritance principles alone cannot justify the probate court's conclusion. These principles establish that when Vicenta died, each of her heirs—Isaac, Benigno, and Rita—received an equal share in her estate. When each heir died, that heir's share is then divided among his or her respective heirs. Neither these principles nor our cases applying them provide support for resolving the more complex issue of whether Dolores could inherit from both natural and adoptive parents. The probate court's conclusion therefore cannot stand unless supported by the common law.

C. *Under the Common Law, Adoption Does Not Divest a Child of a Vested Inheritance Right*

¶ 17 Local custom, Trust Territory law, and *per stirpes* inheritance principles do not resolve this appeal, and so we must look to the common law. The record reflects that Rita adopted Dolores after Isaac had already died.[14] "The general rule is that real estate becomes vested on the death of the owner in his heirs and devisees . . . ." *Muna v. Camacho*, 2 CR 10, 12-13 (1984); *see Sablan*, 3 CR at 874 (finding that

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[13] We recognize the need to apply intestate succession law as it existed at the time of Isaac's death. *See* 8 CMC § 2102; *Sablan*, 3 CR at 874; *see also In re Estate of Hagar*, 126 A. 507, 509 (Vt. 1924) ("The rule is well settled that since the right of one person to inherit the property of another vests at the death of the latter, the statute in force at that time rather than the one in force at a prior or subsequent date governs the disposition of the estate."); *In re Estate of Caisson*, 710 S.W.2d 211, 212 (Ark. 1986) ("We do not hesitate to hold that the law in effect at the time of the death of the adopted child is controlling on matters of inheritance. To hold otherwise would create a myriad of problems and confuse the law."). However, to the extent that cited law has remained unchanged until the present day we find citing both long-standing and recent cases appropriate.

[14] *In re the Estate of: Isaac Kaipat*, Civ. No. 05-0247D (NMI Super. Ct. March 10, 2006) (Order Governing the Claims of the Heirs of Dolores K. Pelisamen and Jay Sorensen) at 2 ("Dolores was the natural born daughter of Isaac Kaipat. When Isaac died in 1944, Dolores was customarily adopted by Rita Kaipat."); Appellants' Opening Brief at 6 ("The following facts are basically undisputed. Isaac Kaipat died in 1994 [sic], prior to the creation of the Trust Territory. Dolores was later adopted by the Carolinian custom of 'mwei mwei' by Isaac's sister, Rita Kaipat."). It is undisputed that Isaac Kaipat died in 1944, and so it is clear that Appellants' above reference to 1994 is a typographical error and does not alter the substantive importance of this excerpt.

"title had vested on the death of Elias in the eight children in equal shares.").[15] Thus, Dolores' right to inherit from Isaac vested upon Isaac's death, and so our inquiry is whether Dolores' subsequent adoption altered this vested right. The timing of Isaac's death and Dolores' adoption distinguishes this case from those in which a child is adopted while his or her natural parent is still alive.

¶ 18 Common law principles establish that absent a statute to the contrary, Dolores' vested right to inherit from Isaac's estate is unaffected by her subsequent adoption. In *Estate of Garey*, 29 Cal. Rptr. 98, 99 (Cal. Ct. App. 1963), petitioner's mother divorced her natural father in 1931, the natural father died in 1933, and petitioner was adopted in 1939. When petitioner's natural grandmother later died, petitioner brought suit claiming she was an heir to her natural grandmother's estate. The court stated that the interest "of the adopted child vests upon the death of the natural parent when that occurs before adoption and any statute which would attempt to divest it as an incident to the subsequent adoption by another would be not only highly inequitable but also subject to serious charge of unconstitutionality." *Id.* at 101. The *Garey* court cited with approval *Pillsbury v. Title Insurance and Trust Co.*, 166 P. 11, 14 (Cal. 1917), wherein the court stated that "[u]nquestionably, since [the adoption] followed the death of their father, it did not affect their status as his heirs. Whatever rights as heirs had descended to them upon the death of their ancestor they still retained."

¶ 19 More recently, courts have similarly ruled that subsequent adoption does not divest a child of the right to inherit from a deceased parent. *See In re Estate of Carlson*, 457 N.W.2d 789, 792 (Minn. Ct. App. 1990) (holding that brothers' rights "to inherit from their parents vested at the time of their parents' death, and the subsequent adoptions . . . did not affect those rights."); *Cf. Alberino v. Long Island Jewish-Hillside Med. Ctr.*, 87 A.D.2d 217, 218-19 (N.Y. App. Div. 1982) (holding that where the decedent's infant child was adopted after the decedent's death, child's vested property right in the benefits of a cause of action for his natural parent's wrongful death was not affected by subsequent adoption because the termination of inheritance rights following adoption "cannot operate to deprive the infant of a property right already accrued and vested.").

¶ 20 Relying on the above principles, we find that Dolores' interest in Isaac Kaipat's estate vested upon Isaac's death in 1944. Dolores' subsequent adoption by Rita Kaipat could not divest Dolores (and

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[15] Jurisdictions throughout the United States have upheld this view for over a century. *See, e.g., In re McDonnell's Estate*, 179 P.2d 238, 241 (Ariz. 1947) ("[I]t is fundamental that immediately upon death title to real property vests in the heirs who may then convey their interests subject, of course, to the ordinary processes of administration and the rights of creditors.") (citations omitted); *Hughes v. Yates*, 144 N.E. 862, 863 (Ind. 1924) ("The title to the real estate vested at once, upon the death of the decedent, in those entitled to it."); *Barnum v. Barnum*, 24 S.W. 780, 780 (Mo. 1893) ("The estate plaintiffs inherited from their uncle vested in them on his death . . . ."); *Muldrow v. Caldwell*, 175 S.E. 501, 504 (S.C. 1934) ("By the common law, and under the statutes in most of the states, the title to real property vests in the heir or heirs immediately on the death of the intestate . . . .") (citation omitted).

thus her heirs) of this right because the adoption occurred after Isaac had already died. Accordingly, we hold that Dolores' estate is entitled to a share of Isaac's estate, and that the probate court improperly denied Appellants' claim. Neither the passage of time nor the subsequent adoption alters Dolores' vested right to inherit from her natural father.

¶ 21 Our holding is further supported by common law jurisprudence permitting inheritance unless a statute takes away this right.[16] For example, in *In re Estate of Cregar*, 333 N.E.2d 540, 541 (Ill. Ct. App. 1975), a mother died leaving behind her two children and three sisters. The two children were adopted by two of the sisters, who later passed away. *Id*. When the last of the four sisters—Anna Mae Cregar—died, the two children claimed they were entitled to a double share of her estate—one share in their capacity as blood decedents of their natural mother (a sister of the intestate) and one share as descendants of their adoptive mothers (also sisters of the intestate). *Id.* The court stated that there were only two possible theories for denying the children both shares: "(1) the theory that an adoption works to sever all rights of inheritance from natural relatives no matter who the adopting parents are; or (2) the theory that an adoption severs rights to inheritance from natural relatives only where one of the adopting parents is a blood relative." *Id.* at 542. After noting that the first theory had been previously rejected, the court held that because nothing in the Illinois Probate Act barred the dual inheritance sought by the appellants, the adopted children's right to inherit from their natural parents (and natural relatives by implication) was not cut off. *See id.* at 545.

¶ 22 While many jurisdictions do not follow *Creger* because they have statutes requiring otherwise, there is consensus that denial of inheritance is only appropriate when expressly or impliedly prohibited by statute. *Compare In re Benner's Estate*, 166 P.2d 257, 259 (Utah 1946) ("Since we hold that our statutes neither by express terms nor by necessary implication prevent an adopted child from inheriting from or through its natural parents, does the mere fact that the adopting parent is a blood relative prevent him from inheriting both from the adoptive parent and also from his natural parent by right of representation? In our opinion it does not . . . ."), *with Billings v. Head*, 111 N.E. 177, 177 (Ind. 1916) (denying dual

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[16] The Restatement (Third) of Property: Wills and Other Donative Transfers (1999) ("Restatement"), does not directly address whether children adopted by blood-relatives may inherit intestate from both their adoptive and biological parents. Restatement § 2.5 cmt. i states that a "child who is adopted by a genetic relative cannot inherit from an intestate decedent in both a genetic and adoptive capacity." However, this section only establishes that an adopted child cannot inherit from a *single* intestate decedent in both a genetic and adoptive capacity. It does not directly address whether an adopted child can inherit from both natural and adoptive parents, and the related question of whether such inheritance is permitted when part of the inheritance is derived from a common ancestor. The distinction is subtle. To ground this discussion in the present case, the Restatement makes clear that Dolores cannot receive a "double share" directly from the estate of Vicenta Kaipat; that is, she cannot inherit from Vicenta both as a natural granddaughter and as an adoptive granddaughter. However, the Restatement does not address the outcome where, instead of inheriting from the same individual in a genetic and adoptive capacity, Dolores inherits from the estates of two parents—Isaac and Rita—in different capacities.

inheritance by holding that it was "not the legislative purpose" in enacting intestacy statutes that an adopted child inherit more than a natural child).[17]

¶ 23 We acknowledge Appellee's argument that the practical effect of our ruling will permit Dolores' heirs to inherit twice—once from Isaac's estate and once from Rita's estate. However, Appellee has failed to make a compelling legal argument against this practice, and established common law principles do not support denying Appellee's claim. Our holding that Dolores may inherit from both Isaac and Rita's estates is consistent with the consensus position that the right to inherit from a natural parent will not be extinguished except by statute. By enacting 8 CMC § 2102, the Commonwealth legislature made clear that provisions in the Northern Mariana Islands Probate Law concerning inheritance rights of adopted children are not applicable to persons dying before February 15, 1984. The authorities this section makes applicable—primarily the Trust Territory Code and by implication local custom—do not address this issue. In the absence of any on-point authority, we look to the common law and find that Dolores' vested right to inherit from her father was not divested by her subsequent adoption. Absent a statute to the contrary, we will not contradict long-standing precedent and divest Dolores and her heirs of a vested inheritance right.

III

¶ 24 For the foregoing reasons, we find that the probate court erred in denying Appellants' claim, and hold that the Estate of Dolores K. Pelisamen and its heirs are entitled to be recognized as heirs to Isaac Kaipat's estate. After correctly finding customary law inapplicable, the probate court erred by basing its conclusion on broad assertions of equity, instead of examining Trust Territory precedent and applicable common law. These proper authorities establish that Dolores' right to inherit from Isaac's estate vested upon his death in 1944, and that Dolores' subsequent adoption did not divest her of this right.

We therefore REVERSE the probate court's order denying the heirship claim and REMAND this case for proceedings consistent with this opinion.

SO ORDERED this 9th day of December 2010

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[17] *See, e.g.*, *In re Estate of Darling*, 159 P. 606, 607 (Cal. 1916) ("It appears to be well settled in all jurisdictions where the common law constitutes the rule of decision, that the right of inheritance of a child is affected by its adoption only to the extent that the statutes bearing on the matter in terms or by implication provide."); *In re Kay's Estate*, 260 P.2d 391, 395 (Mont. 1953) ("In the absence of a statute to the contrary, although the child inherits from the adoptive parent, he still inherits from or through his blood relatives, or his natural parents. . . . [I]t cannot be assumed that the adopted child cannot inherit from its natural parent unless there is an express legislative declaration to that effect.").

/s/
MIGUEL S. DEMAPAN
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
ANITA A. SUKOLA
Justice Pro Tem