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

IN RE ESTATE OF SANTIAGO C. TUDELA,
Deceased,

BELLA AVELINO TUDELA, a guardian for LORIBELL AVELINO TUDELA
Petitioner-Appellant,
v.

MARIA HARUKO TUDELA,
Respondent-Appellee.

SUPREME COURT NO. 05-0027-GA
SUPERIOR COURT NO. 86-0884

SLIP OPINION

Cite as: 2009 MP 9

Decided August 7, 2009

Robert Tenorio Torres, for Respondent-Appellee
Douglas F. Cushnie, for Petitioner-Appellant

BEFORE: ALEXANDRO C. CASTRO, Associate Justice; TIMOTHY H. BELLAS, Justice Pro Tem; STEVEN S. UNPINGCO, Justice Pro Tem.

CASTRO, J.:

¶ 1 Appellant Connie T. Pangelinan seeks review of a probate order distributing all of her uncle's estate to his surviving spouse, Mrs. Maria H. Tudela, in fee simple absolute, arguing that (1) "exempt property" under 8 CMC § 2601 passes to the surviving spouse in the form of a life estate rather than in fee simple absolute, (2) upon application of 8 CMC § 2903, a surviving spouse takes only half of the estate when the decedent leaves no issue, (3) the land alienation restrictions set out at Article XII of the Commonwealth Constitution prevent Mrs. Tudela from being able to acquire a long-term interest in property, and (4) one of the parcels at issue should be classified as ancestors' land since it was purchased with proceeds from the sale of other ancestors' land. We hold that the trial court did not err in distributing the entire estate to Mrs. Tudela in fee simple absolute, as the plain language of 8 CMC §§ 2601 and 2903 provides ample evidence that the legislature intended the probate court to transfer the maximum estate under these circumstances. Further, we hold that Mrs. Tudela is specifically exempted from the land alienation restrictions by Article XII, Section 2, and that no part of 8 CMC § 2902 applies to the estate at issue, as none of the property can be classified as ancestors' land. Accordingly, the trial court's probate order is AFFIRMED.

I

¶ 2 Santiago C. Tudela, a Commonwealth resident of Chamorro ancestry, died intestate on November 18, 1986. He had no issue and was survived only by his wife, Mrs. Maria H. Tudela, and his sister's children. One of his sister's children, Connie T. Pangelinan, is the appellant herein.

¶ 3 At issue in this appeal is the ownership of three parcels of real property, each part of the decedent's estate.[1] Mrs. Tudela petitioned the probate court to distribute the parcels to her in fee simple. The appellant objected, arguing that Mrs. Tudela is not entitled to acquire a long-term interest in the property since she is not of Northern Marianas decent ("NMD"), and that her taking in fee simple violates the land alienation restrictions set out at Article XII of the Commonwealth Constitution.

¶ 4 The probate court rejected the appellant's argument. It read Article XII to expressly exempt from its alienation restrictions transfers via inheritance where the decedent is not survived

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[1] The three lots at issue are: (1) Lot 003 C 02, which is 40,001 square meters and located in Calabera; (2) Lot 003 C 06, which is 10,002 square meters and located in Calabera; and (3) Lot 1877-1-R1, previously known as Lot 1877-B, which is 6,547 square meters and located in Gualo Rai.

by issue eligible to own land. Consequently, it determined that Mrs. Tudela's non-NMD status was immaterial for purposes of the Commonwealth Constitution's land alienation restrictions. After determining that there was no constitutional bar, the trial court examined the parties' rights in the property in accordance with provisions set forth in the probate code. It classified the estate as "exempt property" under 8 CMC § 2601, a statute that automatically vests the family home, among other allowances, in the surviving spouse to ensure that he or she is provided for. The trial court also held that any remainder of the estate not exempted by 8 CMC § 2601 should pass to Mrs. Tudela pursuant to 8 CMC § 2903, the statute that governs intestate succession according to Chamorro custom.

¶ 5 As an alternative theory, the appellant argued that 8 CMC § 2903 should not uniformly apply, but that at least one of the three properties in question should be deemed "ancestors' land," and descend according to 8 CMC § 2902. This section of the probate code applies to land acquired by an individual from his or her Chamorro ancestors, and limits a surviving spouse to a life estate in that property. However, the decedent did not acquire the land in question from a Chamorro ancestor, but rather purchased it from a corporation using proceeds from the sale of land that otherwise would have qualified as ancestors' land. Appellant asked the probate court to utilize the concept of property tracing, as used in the family code to determine separate and marital interests in property, and to hold that property interests derived from the sale of ancestors' land should be traced for purposes of intestacy descent. The trial court refused to do so. It reasoned that: (1) the plain language of 8 CMC §2107(a) precludes the property from being classified as ancestors' land; (2) the appellant's reasoning is inconsistent with Article XII's exclusion of spouses taking through inheritance when the NMD spouse dies without issue or with issue not eligible to own land in the Northern Mariana Islands; (3) the probate code treats NMD and non-NMD surviving spouses alike; and (4) the probate code does not refer to the concept of "tracing."

II

¶ 6 The Appellant appeals the distribution order based on the same rationale she presented to the probate court. The four issues she raises are: (1) whether "exempt property" under 8 CMC § 2601 passes to the surviving spouse in fee simple or merely creates a life estate; (2) whether, upon application of 8 CMC § 2903, a surviving spouse takes the entire estate when the decedent leaves no issue; (3) whether the land alienation restrictions set out at Article XII of the Commonwealth Constitution apply to a non-NMD spouse who inherits property from a spouse who dies without issue eligible to own land in the Northern Mariana Islands; and (4) whether property purchased with proceeds from the sale of ancestors' land should also be classified as

ancestors' land. As each of these are issues of constitutional and statutory interpretation, we review them de novo. *Commonwealth v. Tinian Casino Gaming Control Comm'n*, 3 NMI 134, 143 (1992).

A Non-NMD Surviving Spouse Takes "Exempt Property" in Fee Simple

¶ 7 The Commonwealth probate code specifically exempts certain real and personal property from the code's other decent and claims provisions.[2] Rights to exempt property trump competing claims against the estate and, in certain instances, will provisions attempting to pass exempt property to persons other than the beneficiary named in the probate code. The exempt property statute, 8 CMC § 2601, makes clear that a surviving spouse "is entitled to the primary family home and lot . . . " but does not specify the nature of the interest transferred.

¶ 8 The Commonwealth's exemption statute is based on an analogous section of the Uniform Probate Code. 8 CMC § 2101 cmt. There are at least three jurisdictions with similar UPC-based statutes which have considered the extent of the estate granted. *Cater v. Coxwell*, 479 So.2d 1181, 1183 (Ala. 1985); *Matter of Merkel's Estate*, 618 P.2d 872, 876-77 (Mont. 1980); *In re Estate of Kimbrell*, 697 N.W.2d 315, 318 (N.D. 2005). In *Cater*, the Alabama Supreme Court addressed whether exempted property rights automatically vest in a surviving spouse or if the spouse must actually claim those rights while living to ensure that they later pass through her estate. *Id.* at 1181. The court commented on the extent of the estate only in passing. It noted, "[o]nce these [exempted property] interests are awarded to the surviving spouse, they are fee interests." *Id.* Such language makes the transfer of a fee simple interest seem self-evident.

¶ 9 The Supreme Court of Montana dealt with the issue more directly in *Matter of Merkel's Estate*. 618 P.2d at 876-77. The court found that Montana's analogous statute created a fee simple interest. *Id.* at 877. In reaching its decision, the court relied primarily on its UPC-based statute, which specifically revoked the previous statute granting only a life estate. *Id.* Of particular relevance to the present case, however, is the court's assertion that "[i]t appears clear to us from the wording of the statute itself, as well as from the expressed purposes of the UPC, that the drafters intended that the surviving spouse should take a fee interest . . . ." *Id.*

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[2] 8 CMC § 2601 states:

> The surviving spouse of the decedent who was domiciled in the Northern Mariana Islands is entitled to the primary family home and lot, household furniture, one automobile, furnishings, appliances, and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the exempt property. Rights to exempt property have priority over all claims against the estate. These rights shall override any provision in the will of the decedent to the contrary unless the court finds that the will expressly provides an adequate substitute for the loss of these rights; otherwise exempt property rights are in addition to any benefit or share passing to the surviving spouse or children by the will of decedent, or by intestate succession.

¶ 10 More recently, the North Dakota Supreme Court determined that its exempt property provision granted surviving spouses only a life estate. *Kimbrell*, 697 N.W.2d at 318. However, that case provides no guidance here, as the *Kimbrell* court based its decision on the limited estate granted by other North Dakota probate statutes, which were not repealed when the state legislature adopted the UPC-based statute. *Id.*

¶ 11 For its part, the trial court in the immediate case found that 8 CMC § 2601 creates a fee simple estate. It reasoned that 8 CMC § 2601

> is highly protective of a surviving spouse's interest in exempt property. It specifically shields exempt property from creditors and even allows the override of a contrary provision in a will and implicitly excludes it from distribution by intestate succession. Most importantly, [Section] 2601 prohibits the decedent's children from obtaining an interest where there is a surviving spouse. From those safeguards, the court may reasonably conclude that the Legislature, in enacting [Section] 2601, intended to create a fee simple interest or specifically a fee simple absolute, in exempt property for the surviving spouse.

In Re Estate of Tudela, Civ. No. 86-884D (NMI Super. Ct. July 5, 2001) (Order Re Objection on Final Distribution at 3). We agree that 8 CMC § 2601 should be construed as transferring a fee simple interest in exempt property. Despite the existence of authority suggesting exemption statutes traditionally grant surviving spouses only life estates,[3] the current approach appears to interpret exemption statutes as granting property in fee simple. *See* 40 C.J.S. Homesteads § 173 (1991). More importantly, a comparison of 8 CMC § 2601 with its UPC analogue reveals an effort on the part of the Commonwealth legislature to strengthen the protections afforded surviving spouses and children from creditors' claims against an estate or from being disinherited.[4] *See* Unif. Probate Code § 2-402 (amended 2006). The legislature included amongst 8 CMC § 2601's exemptions "the primary family home and lot" and deleted language limiting the total value of exemptions. These modifications can only be understood as a conscious attempt at elevating the beneficiaries' rights in certain estate property beyond typical exemption statutes. Transferring less than a fee simple absolute interest in exempt property would run counter to the clear legislative intent of increasing the beneficiaries' ownership interest.

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[3] *Matter of Merkel's Estate*, 618 P.2d at 876.

[4] Similarly, the Commonwealth's Marital Property Act evidences the legislature's support for policies strengthening joint spousal ownership of family property. *See generally* 8 CMC § 1811 *et. seq.* The "Purpose and Findings" section of the Act, 8 CMC § 1812, explains that the Act's goal is to remedy "grave injustice in the distribution of marital property upon the dissolution of marriage or death, and in the exercise of property rights by spouses during marriage." Reading 8 CMC § 2601 as transferring a fee simple interest in exempt property, rather than a life estate, furthers such policies by increasing financial protection and independence of surviving spouses.

¶ 12 Similarly, since a fee simple interest is generally the default form of property conveyance when parties do not specify otherwise, in the absence of express language to the contrary, there is no reason to assume the legislature intended the statute to convey an interest less than fee simple. Since we find no legal imperative to read 8 CMC § 2601 as transferring less than a fee simple absolute interest, and since we find ample legislative intent for reading 8 CMC § 2601 as transferring the maximum estate, we conclude that 8 CMC § 2601 transfers a fee simple absolute interest in exempt property to the named beneficiary.

A Non-NMD Surviving Spouse Takes "Other Property" in Full When Decedent Dies Without Issue

¶ 13 Real property owned by an NMD of Chamorro ancestry, if such property is not ancestors' land, is "other property" for purposes of intestate succession. *See generally* 8 CMC §§ 2902, 2903. Other property passes according to 8 CMC § 2903.[5] Subsection (a) of 8 CMC § 2903 grants Mrs. Tudela, as the surviving spouse, a one-half interest in the decedent's properties. However, one question remains: who takes the remaining one-half interest?

¶ 14 Appellant argues that when Article XII of the Commonwealth Constitution, 8 CMC § 2902, and 8 CMC § 2411 (stating that remaining interests, if any, of land taken by non-NMDs vests in the next closest heir allowed to own land) are taken together, they demonstrate a clear intent by the people of the NMI to restrict land transfers to NMD's and to keep land within bloodlines as much as possible. She argues that this policy, in turn, should be used by the Court as a type of gap-filler in the present case. Appellant also asserts that 8 CMC § 2903(d) specifically provides that property descends to the decedent's siblings when there is no spouse, issue, or parent to take. Employing this reasoning, she claims that the remaining one-half interest not granted to Mrs. Tudela by 8 CMC § 2903(a) should descend to the appellant and her siblings under 8 CMC § 2903(d).

¶ 15 Mrs. Tudela, on the other hand, argues that the only logical construction of 8 CMC § 2903 is to read subsections (a) and (b) together. This construction views subsections (a) and (b)

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[5] 8 CMC § 2903. Chamorro Custom: Other Properties.

(a) The surviving spouse obtains one-half of all properties, other than [ancestors' land].

(b) The issue of the decedent obtain one-half of all properties, other than [ancestors' land], by representation.

(c) If there is no surviving spouse, the surviving issue obtain all properties by representation.

(d) If there is no surviving spouse and no issue, the parents of the decedent take all properties, other than [ancestors' land], and if there are no surviving parents, then to the siblings of the decedent by representation.

as corollaries. In the typical situation, when a decedent leaves a spouse, he will also leave issue, and each will take half. However, when decedent leaves a surviving spouse but no issue, subsections (a) and (b) cannot be collectively implicated, and, reading the statute as a whole in an attempt to effectuate legislative intent, the surviving spouse should take the entirety. Mrs. Tudela claims that there is no need to go beyond the statute and turn to policy arguments in interpreting 8 CMC § 2903. Further, she argues, relying on both 8 CMC §§ 2902 and 2903, as the appellant does, is plainly wrong. She claims that it is clear from the dualistic nature of 8 CMC §§ 2902 and 2903 that the legislature intended each piece of property to be either one or the other. There are no hybrid properties and no reason to judicially create hybrid statutes.

¶ 16 The trial court agreed with Mrs. Tudela. Looking to legislative intent, the trial court reasoned:

> Because subsection (d) conditions the decedent's parents and siblings from taking "other property" on there being no surviving spouse, the court may not read [Section] 2903, as [appellant] suggests, as creating an interest in the decedent's parents and siblings to the remaining half of the property where there is a surviving spouse. Neither may the escheat statute, 8 CMC § 2914, be involved since there are heirs in the instant case, namely the surviving spouse and decedent's nephews and Appellants. There is also no justification, in either the purpose of the probate code or its legislative history, in treating the converse situation of subsection (c), which expressly gives all of the "other property" to the decedent's issue where there is no surviving spouse, in a different fashion. Instead, the wording of the statute and its logical structure steers the court to the conclusion that [Section] 2903 should be interpreted as implicitly vesting a right in the surviving spouse to all of [Section] 2903 property, in situations where the decedent leaves no issue. Accordingly, subsection (a) should be construed as applying only to those circumstances where there is a surviving spouse and decedent's issue, with each receiving one half of [Section] 2903 property.

In Re Estate of Tudela, Civ. No. 86-884D (Order Re Objection on Final Distribution at 7).

¶ 17 The commission comment to the Commonwealth's probate code notes that "[m]any provisions in PL 3-106 [adopting the code] are similar to provisions in the Uniform Probate Code approved . . . in 1969." 8 CMC § 2101 cmt. Although the commission comment does not state which edition of UPC it used in drafting the Commonwealth probate code, since the public law enacting the probate code went into effect in early 1984, the UPC as updated through 1982 should provide guidance here. The 1982 UPC section dealing with a surviving spouse's share in intestacy proceedings grants the spouse the entire estate "if there is no surviving issue or parent of the decedent." Unif. Probate Code § 2-102 (amended 1982). Further, the comment section elaborates on the commission's rationale by stating, "[t]his section gives the surviving spouse a larger share than most existing statutes on descent and distribution. In doing so, it reflects the

desires of most married persons, who almost always leave all of a moderate estate to the surviving spouse when a will is executed." Unif. Probate Code § 2-102 (amended 1982) Purpose and Scope of Revisions.

¶ 18 Because the Commonwealth's probate statute is largely based on the UPC, in the absence of expressed legislative intent to the contrary, the UPC reasoning should be given effect. This is especially true where, as here, there is a complete statutory void which the Court is asked to fill. Because Mrs. Tudela would not be limited to only one-half of the estate under the UPC, she is not so limited under 8 CMC § 2903. Based on UPC rationale, as well as the trial court's reasoning and interpretation of the interplay between different subsections of 8 CMC § 2903, we conclude that Mrs. Tudela should take the entire estate.

Tudela's Ownership Interest Does Not Violate Article XII of the Commonwealth Constitution

¶ 19 Since the Court finds that 8 CMC §§ 2601 and 2903 attempt to grant Mrs. Tudela a fee simple interest, the next question is whether such a grant is constitutional. The plain text of Article XII, Sections 1 and 2 of the Commonwealth Constitution provides the answer.

> Section 1: Alienation of Land**.** The acquisition of permanent and long-term interests in real property within the Commonwealth shall be restricted to persons of Northern Marianas descent.
>
> Section 2: Acquisition. The term acquisition used in Section 1 includes acquisition by sale, lease, gift, inheritance or other means. A transfer to a spouse by inheritance is not an acquisition under this section if the owner dies without issue or with issue not eligible to own land in the Northern Mariana Islands. …

Based on Section 2's express exclusion from the definition of "acquisition" surviving spouses taking through intestacy when there are no issue who may own land, Mrs. Tudela is able to take in fee simple. Indeed, any other reading would not be possible.

¶ 20 Further strengthening this reading are this own Court's words in *In re Estate of Tudela*, 4 NMI 1 (1993). That case involved the same estate at issue here and most of the same parties. Speaking hypothetically, this Court said, "if . . . the probate court finds that [there are no issue] and that the properties are not ancestral, [Mrs. Tudela] would take the properties in fee simple consistent with Article XII . . . ." *Id.* at 4. Since the issue was not before the Court, we are not bound by this conjecture. However, it demonstrates that this Court, when presented with the exact facts before us now, has read Article XII as granting Mrs. Tudela a fee simple interest.

¶ 21 We note that allowing a non-NMD spouse to own land in the Commonwealth does not defeat the strong interest in keeping land within the local population. Even though the spouse, being a non-NMD, briefly removes the fee simple ownership of the land from local control, the land must eventually revert to an NMD. This is because she can only convey her fee simple interest to an NMD. Thus, since the exemption found in Article XII, Section 2 does not permit

the alienation of a fee simple estate beyond the one-time exception to the surviving spouse through inheritance, the policy concerns which were the impetus for Article XII are satisfied.

Real Property Does Not Acquire "Ancestors' Land" Status if that Property is Purchased with Proceeds from the Sale of Ancestors' Land

¶ 22 The definition of ancestors' land is found at 8 CMC § 2107(a): "'Ancestors' land' means land acquired by a person in any manner from one or more of his Chamorro ancestors of Northern Marianas descent, whether by inheritance, gift, will, or family agreement." Again, based on broad assertions that NMI policy prevents land alienation to non-NMDs as much as possible, the appellant claims that one of the decedent's properties should be classified as ancestors' land because it was purchased with proceeds from the sale of land owned by her ancestors. In effect, the appellant asks this Court to supplement the plain statutory language above by including the concept of tracing to expand the category of ancestors' land.

¶ 23 As the trial court pointed out, "[a] plain reading of § 2107(a) would disqualify the [property at issue] as ancestors' land because the land was acquired from a corporation . . . and not from any of [the decedent's] NMD ancestors." *In Re Estate of Tudela*, Civ. No. 86-884D (Order Re Objection on Final Distribution at 9). Further, as discussed above, the appellant's contention that it is against NMI policy to allow Mrs. Tudela to take property is clearly refuted by Article XII, Section 2's specific exemption for surviving spouses. If the framers of the NMI Constitution had desired to prevent alienation outside the NMD family, then they surely would not have carved out a special exception specifically allowing it. Finally, the probate code and its legislative history are silent as to whether the Court should employ the tracing doctrine in order to classify property as ancestors' land.

¶ 24 The appellant's argument that ancestors' land should somehow transcend a particular piece of real property and encompass any economic benefit derived from that property stretches the statutory language beyond reason. There is simply no basis in law or logic to accept her claim. The argument is based solely on broad policy assertions, and those assertions are negated by Article XII itself. Further, if the appellant's argument was taken to its logical extreme, then courts would be required to treat anything purchased with proceeds from the sale of ancestors' lands as ancestors' land itself. Thus vehicles, stock, and household items, if purchased with proceeds from the sale of ancestors' land, would have to pass in intestacy according to 8 CMC § 2902. Additionally, if a decedent had paid for a family vacation or private school with such proceeds, under the appellant's logic the trial court would be required to offset that amount against the spouse's life estate interest. Such a situation, even if logical, would be extremely burdensome.

III

¶ 25 The Commonwealth probate code unequivocally grants Mrs. Tudela a fee simple interest in her deceased husband's real property. In doing so, the statutory scheme reflects the desire of most married individuals and protects a surviving spouse's interest in the primary family home and other personal property. Because there are no children resulting from their marriage, Mrs. Tudela's fee simple interest in the entire estate is consistent with the land alienation restrictions set forth in Article XII of the Commonwealth's Constitution. Finally, because no part of the probate code authorizes the trial court to apply the tracing doctrine, the parcel which the decedent purchased with proceeds from the sale of land owned by his ancestors does not qualify as ancestors' land. Accordingly, the trial court's probate order is AFFIRMED.

SO ORDERED this 7th day of August, 2009.

/s/
ALEXANDRO C. CASTRO
Associate Justice

/s/
TIMOTHY H. BELLAS
Justice Pro Tem

/s/
STEVEN S. UNPINGCO
Justice Pro Tem