

fore an “agreed boundary” cannot exist. We have no alternative but to reverse the finding of the trial court and remand this case back to the trial court for findings consistent with this decision.

ANTONIO R. KAPILEO, Plaintiff-Appellant

v.

DOMININA F. OLOPAI, Defendant-Appellee

Civil Appeal No. 271

Appellate Division of the High Court

Northern Mariana Islands District

October 27, 1982

Appeal from a judgment of the trial court upholding an award of the War Claims Commission. The Appellate Division of the High Court, Gianotti, Associate Justice, held that appellant, who sought review of a War Claims Commission award by filing suit against one of the recipients of the monies awarded, used an improper procedural method, and therefore the trial court judgment denying him relief was affirmed.

1. Real Property—Micronesian Claims Act—Procedure

Party, who sought review of a decision of the War Claims Commission by filing suit against one of the recipients of the monies awarded, used an improper method to review such awards; the proper method was to appeal to the Trial Division of the High Court or to a court having jurisdiction.

2. Decedents' Estates—Distribution

Under common law rules of inheritance in effect in Micronesia, where there is no surviving spouse, the children and descendants of deceased children take the entire estate, to the exclusion of other blood relatives.

Counsel for Appellant:

JACK D. LAYNE, ESQ.

Counsel for Appellee:

DOUGLAS F. CUSHNIE, ESQ.

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

GIANOTTI, *Associate Justice*

This appeal arises from an award of certain war claims money to specific heirs by the trial court in the amount of \$64,132.00. The heirs were designated heirs of one Benigno Kapileo, deceased. Appellant is the brother of said Benigno and as an alleged heir of Benigno has made a claim for a share of said moneys; however, an award to him was excluded by the trial court.

Lot 1816, Chalon Ruedo, Saipan Island, was damaged during World War II. Prior to World War II, Benigno had received this said tract of land as a gift from his godmother. Subsequently, in 1952, Benigno made a claim for determination of ownership on behalf of himself and his brother, the appellant herein, before the Land Commission. This determination by the Land Commission was made in September 1952, declaring Benigno and appellant co-owners of said lot. Benigno died in 1963. A claim was filed under the Micronesian Claims Act of 1971 by appellee and appellant as representatives of Benigno. An award of said moneys was then made to:

Antonio Kapileo and Dominina Olopai, for the benefit of the heirs of Benigno Kapileo. [Dominina is the appellee herein.]

Appellant filed action for his share of said war claims money; however, the trial court excluded him, holding:

Even if, under Carolinian custom, a co-owner must share reimbursement for loss of crops with his co-owner this does not make him an heir of the co-owner. The award herein is to the heirs of Benigno Kapileo and not to any co-owner of the property.

From this judgment, an appeal was filed.

The notice of appeal raises as a primary matter: Did the trial court err in concluding that the acquisition or co-ownership of the land in September of 1952 entitles appellant to be regarded as an heir of Benigno and to share in the award?

In order to determine this question, we first look at the award of funds by the War Claims Commission. This award of funds was made under 50 U.S.C.A. section 2018, et al., Public Law 92-39, July 1, 1971, 85 Stat. 92, described as the "Micronesian War & Post-War Claims."

Section 2019, subsection (c), states:

. . . that upon an application for a claim the Commission can render final decisions in accordance with the Trust Territory laws and upon an issuance of a decision, the Commission shall notify all claimants of the approval or denial of their claims. Any claimant whose claim is denied shall be entitled to a hearing.

In the case under advisement, the appellant did not seek a re-hearing upon the rendering of the decision of the War Claims Commission; however, this in itself would not deny the appellant access to the courts.

The general rule is that whenever a statute prescribes an administrative remedy to be followed before resort is had to the courts, that remedy must be followed to its ultimate conclusion. But, where an administrative remedy is provided, but not required to be used before suit, the plaintiff is not required in all cases to pursue the administrative remedy as a prerequisite to suit.

[W]here this right to pursue an administrative remedy is given, but not required, it is within the discretion of the court to entertain suit before the administrative procedure has been exhausted.

[W]e also find that administrative remedies are not necessarily required to have been exhausted before invoking the court's power where disposition of the matter depends solely on the decision of a question of law. *Ballinger v. Trust Territory*, 5 T.T.R. 598, 602-603.

In addition, this Court has previously held in the case of *Ngikleb v. Ngirakelbid*, Civil Appeal No. 184, decided January 29, 1979:

We hold only that the courts of the Trust Territory are not precluded by the finality provision of the Micronesian Claims Act from making determinations as to the rightful recipients of the Commission's awards.

We hold that this finality provision of the statute was intended to preclude appeals from final decisions of the Commission in granting or denying claims and in the amounts awarded.

Therefore, once the court has taken the position that judicial review of appellant's case is proper, we then determine what steps appellant should have undertaken in order to perfect his review.

On the entry of a final order reviewable under this chapter the agency shall promptly give notice thereof by service or publication in accordance with these rules. Any party aggrieved by the final order may, within 60 days after its entry, file a petition to review the order in the court of appeals wherein venue lies. 28 U.S.C.A., section 2344.

This ruling would appear to allow an aggrieved party seeking review to either file a petition for review and appeal or a request for certiorari. See 5 U.S.C.A. § 705.

However, here, appellant elected to file suit against Dominina Olopai, appellee herein, one of the recipients of the moneys awarded by the War Claims Commission. Under the rules existing as to Commission orders and decisions, such legal action was an improper method to review the award of damages by the Commission.

[1] We hold that appeal to the Trial Division of the High Court or to a court having jurisdiction was the proper method to raise this issue.

Secondly, the notice of appeal filed by appellant raises the issue that the ruling of the trial court regarding appellant's rights to a share in the Commission was erroneous in that appellant should have been considered an "heir" of Benigno. However, this argument would have no standing in Micronesia as there were children, natural and adopted, alive at the time of Benigno's death, i.e., 1963.

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 . . . 1 TTC § 103.

[2] As there is no written law pertaining to the determination of heirs, we must look to common law. Common law pertaining to the rules of inheritance is fully discussed in 23 Am. Jur. 2d Descent and Distribution section 54, stating under the common law canon of descent where there is no surviving spouse, the children and descendants of deceased children take the entire estate, to the exclusion of other blood relatives.

Here we could go one step further by invoking the statements in 1 TTC § 102:

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 so far as customary law is not in conflict with the laws mentioned in section 101 of this chapter.

In examining the judgment and the transcript, there are many references to "Carolinian custom." Also, Carolinians residing in the Marianas follow a form of Carolinian custom regarding land; the same is discussed in *Land Tenure Patterns*, Volume I, beginning on page 225. Carolinian custom provides:

Children of either sex inherit in preference to all other relatives. See *Land Tenure Patterns*, pp. 101, et seq.

Where Benigno left children upon his death they would inherit in preference to appellant, a brother of Benigno's, and even granting that appellant had proceeded properly by way of appeal, any rights he had in the proceeds of the Commission would be subservient to the rights of the children of Benigno.

However, we hold that the appellant failed to proceed properly by way of an appeal from the ruling of the War Claims Commission and therefore the judgment of the trial court is AFFIRMED.

FRANCISCO M. DIAZ, et al., Plaintiffs-Appellees

v.

RAMON L. G. DIAZ, Defendant-Appellant

Civil Appeal No. 274

Appellate Division of the High Court

Northern Mariana Islands District

October 29, 1982

Appeal from a judgment entered by the Trial Division upholding a decision of the Micronesian Claims Commission. The Appellate Division of the High Court, Nakamura, Associate Justice, held that trial court erred in holding that awards of the Claims Commission are absolutely final and not subject to review, and therefore case was remanded for further hearing.

1. Administrative Law—Judicial Review—Conclusiveness of Decision

Courts of the Trust Territory are not precluded by the finality provision of the Micronesian Claims Act from making determinations as to the rightful recipients of the Commission's awards.

2. Administrative Law—Judicial Review—Conclusiveness of Decision

Trial court erred, on review of a decision of the Micronesian Claims Commission, in holding that such an award is final and not subject to determination by the courts as to the rightful recipients of such awards.

3. Estoppel—Generally

Question of the existence of an estoppel is a question to be settled by the trier of the facts, the trial court, where there is a dispute as to the facts involving estoppel.

4. Estoppel—Generally

The determination of the trier of fact of estoppel is binding on appeal **unless the contrary conclusion** is the only one that can reasonably be drawn from the evidence.

5. Appeal and Error—Scope of Review—Clearly Erroneous

Findings of the trial court are not to be set aside on appeal unless there is manifest error or the findings are clearly erroneous.