Irikl Clan v. Renguul, 8 ROP Intrm. 156 (2000)

IRIKL CLAN,
Appellant,

v.

ANASTACIO NGIRCHOCHIT RENGUUL,
Appellee.

CIVIL APPEAL NO. 98-58
Civil Action No. 98-129

Supreme Court, Appellate Division
Republic of Palau

Decided: April 13, 2000[1]

Counsel for Appellant: John K. Rechucher

Counsel for Appellee: Lourdes Materne

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; DANIEL N. CADRA, Senior Land Court Judge.

MICHELSEN, Justice:

Appellant Irikl Clan appeals from the Trial Division's judgment recognizing an implied easement over Appellant's land and rejecting Appellant's assertion that Appellee's house encroached on Appellant's land. We affirm.

I. BACKGROUND

Appellant Irikl Clan, which owns Lot 008 N 11 known as Irikl, brought this action against Appellee Anastacio Ngirchochit Renguul, whose mother Yasko owns Lot 008 N 12 known as Ulechull.[2] Ulechull is entirely surrounded by Irikl. Appellee and Yasko presently live on Ulechull, as their family has done for several generations. Yasko has lived there since childhood. Before the Japanese administration, Ulechull was too small for a house, but Yasko's father Lebal Renguul was friendly with Irikl Clan, and the Clan and gave him more land so he could build a home.

---

[1] The parties have waived oral argument, and the Court agrees that oral argument would not materially advance the resolution of this appeal. *See In re Estate of Kubarii*, 7 ROP Intrm. 27, 27 n.1 (1998).

[2] Appellant named Appellee Anastacio Ngirchochit Renguul as the defendant even though Appellee's mother Yasko owns the property. However, the parties have not objected to this anomaly.

During Yasko's youth, her family accessed Ulechull via a public road that crossed Irikl on Ulechull's southern border. After the Japanese administration built the main road, which crosses Irikl about five hundred yards from Ulechull, her family created a footpath from that road to reach the house. They used this route until 1980, when Irikl Clan's trustee, Ngirutang Oit, constructed a building near the path. The family then began crossing Irikl with no set path. In 1983, Oit built a road through Irikl that ran from the main road, along Ulechull's border, and into Irikl's interior. Yasko's family began using this road to reach Ulechull from the main road. Throughout these times, their relations with Irikl Clan were friendly, so they did not ask permission to cross Irikl and Irikl Clan did not object.

⊥157 On August 2, 1982, a Determination of Ownership declared Irikl Clan the owner of Lot 008 N 001, which encompassed both Irikl and Ulechull without distinguishing between them. On November 16, 1993, Irikl Clan's chief title bearer Sakurai Blelas and Rdechor Tkoel, [3] who succeeded Oit as the Clan's trustee, executed a quitclaim deed which stated that they, on behalf of Irikl Clan, were the "owners of . . . Ulechull." The deed purported to convey the part of Lot 008 N 001 known as Ulechull to Appellee's family along with "all appurtenances thereunto belonging." Tkoel requested a parcel split of Lot 008 N 001, and a parcel split map was issued designating Ulechull as Lot No. 008 N 011 and Irikl as Lot No. 008 N 12. A certificate of title to Lot No. 008 N 011 then issued to Appellee's family.[4]

At the time of the 1993 quitclaim deed and parcel split, Appellee and Yasko were using the 1983 road to reach Ulechull from the main road. Although they had been doing so with no objection from Irikl Clan for approximately ten more years, some time after 1993 their relations with Irikl Clan soured when Tkoel asked Appellee to relocate and Appellee refused. Tkoel then blocked the 1983 road, and Appellee and Yasko began accessing Ulechull by walking from the main road through taro patches and streams on Irikl.

Appellant filed this action alleging that Appellee was trespassing on Irikl and his house was encroaching on Irikl. Appellee asserted an implied easement across Irikl, but did not respond to the encroachment claim. [5] After trial, the court recognized an implied easement over Irikl, reasoning that this means of access had been in use throughout the time Irikl Clan owned Ulechull under a unified title as part of Lot 008 N 001, and was necessary because Ulechull was wholly surrounded by Irikl. The court also held that Irikl Clan, by presenting only conclusory testimony on the encroachment issue, failed to prove its encroachment claim. Irikl Clan then brought this appeal.

II. ANALYSIS

A. IMPLIED EASEMENT

---

[3] Rdechor Tkoel also uses the name Moses Bernardino.

[4] The deed conveyed Ulechull to Appellee's sister Virginia Borja and her husband, who later conveyed it to Yasko. While the conveyance to Yasko not in the record, the parties agree that Yasko now owns Ulechull.

[5] Although Appellee asserted the easement as an affirmative defense, the trial court construed it as a counterclaim. Appellant does not object.

Because neither party has argued that Palauan customary law is applicable to this dispute and there is no controlling statute, we turn to the common law as expressed in the Restatements of law. See 1 PNC § 303. The Restatement of Property provides in pertinent part that,

> [w]hen land in one ownership is divided into separately owned parts by a conveyance, an easement may be created . . . in favor of one who has . . . a possessory interest in one part as against one who has . . . a possessory interest in another part by implication from the ⊥158 circumstances under which the conveyance was made, alone.

Restatement of Property § 424 (1944). While implied easements may arise from a range of circumstances, *see id.* § 476, they often arise from uses of the land prior to its division into separate ownership. *See Davis v. Peacock* , 991 P.2d 362, 367 (Idaho 1999); 25 Am. Jur. 2d *Easements & Licenses* § 30. An implied easement across one lot may be implied in favor of another lot based on pre-existing use of the lots where: (1) there is "unity of title or ownership" between the parcels and a "subsequent separation by grant of the dominant estate;" (2) the easement is in continuous use for a significant time before the separation; and (3) the easement is reasonably necessary to the proper enjoyment of the dominant estate. *Davis*, 991 P.2d at 367.

Appellant does not dispute that the 1983 road was used continously to access Ulechull for the decade preceding the division of Lot 008 N 01, as required under the second element of this test, but avers that the trial court erred in finding the unity of title and necessity required under the first and third elements of this test. We review the trial court's factual findings for clear error, and must affirm them if they are supported by evidence that would permit a rational trier of fact to reach the same conclusion. *See Haruo v. Thomas*, 6 ROP Intrm. 48, 49 (1997).

1. Unity of Title

Appellant contends that, because Ulechull had long been used and occupied by Appellee's family and viewed as distinct from Irikl, the trial court erred in finding the requisite unity of title. We disagree. Despite Appellee's family's long use and occupancy of Ulechull, the record reveals that in 1982, Appellant acquired title to both Ulechull and Irikl as undifferentiated parts of Lot 008 N 01. The Clan retained this unified title to Lot 008 N 01 for over a decade, throughout which Appellee's family continuously used the 1983 road to access Ulechull, before dividing the Lot into separately owned parcels through the 1993 quitclaim deed and parcel split.

The Clan contends that the trial court could not properly credit this evidence of unity of title and subsequent separation because Yasko's family's long occupancy of Ulechull demonstrated that the 1982 Certificate of Title was erroneously issued to the Clan, and the 1993 quitclaim deed merely corrected this error and confirmed the separate ownership that had always existed.[6] The trial court, however, could not properly disregard the 1982 Certificate as

[6] Appellant concedes that it owned part of Ulechull before giving it to Lebal Renguul. However, Appellant reacquired title to this land as part of Lot 008 N 01 in 1982. Thus the only issue is whether Appellant's 1982 Certificate of Title to Lot 008 N 001, encompassing both Ulechull and Irikl, established the requisite unity of title to support the recognition of an implied

erroneous or the 1993 quitclaim deed as a mere formality. This Certificate of Title was "prima facie evidence of ownership" and was "conclusive upon all persons" who had notice of the proceedings, including Appellant Irikl Clan. 35 PNC § 1313(a)(2). Appellant did not contst the 1982 Determination of Ownership awarding it legal title to Ulechull as an undistinguished part of Lot 008 N 01, and the Clan did not promptly relinquish this title, but rather retained it for over a decade. ⊥159 Moreover, as the trial court noted, the 1993 quitclaim deed did not indicate that it was merely correcting an erroneously issued certificate of title or confirming Appellee's family's ownership of Ulechull. Instead, it explicitly averred that Appellant's trustee and chief titleholder were the "owners of . . . Ulechull" and that they intended to convey it to Appellee's family along with "all . . . appurtenances thereunto belonging." [7] We therefore conclude that the trial court did not clearly err in finding the unity of title and subsequent separation required to give rise to an implied easement.[8]

2. Necessity

Appellant also argues that the trial court erred in finding that an easement was necessary to the proper use and enjoyment of Ulechull. Appellant avers that easements must be "necessary and not merely convenient to the beneficial enjoyment" of the land, 25 Am. Jur.2d *Easements & Licenses* § 35, and argues that because the old public road that was used before the Japanese administration remained available, access over the 1983 road was a matter of mere convenience, not necessity. However, "an easement by implication from a pre-existing use does not require an absolute, but only a reasonable necessity." *Id.* Under this reasonable necessity test, an easement cannot arise "merely because its use is convenient" but can arise if there is "no other reasonable mode of enjoying the [land]." *Id.; accord Davis,* 991 P.2d at 367 ("the easement must be reasonably necessary to the dominant estate").

---

easement upon the subsequent division of this Lot in 1993.

[7] While Appellant argues that it did not intend to create an easement, intent is inferred from the circumstances at the time the land is divided. *See Restatement of Property* § 474 comment a. Appellant's 1993 quitclaim deed expressly stated an intent to convey Ulechull "with all . . . appurtenances thereunto belonging," which included access to Ulechull over the 1983 road that had been the primary means of access to Ulechull for a decade. *See* 23 Am. Jur.2d *Deeds* § 65 (defining appurtenances as everything "reasonably necessary to the full beneficial use and enjoyment of [the] property"). Thus, the contemporaneous evidence reveals an intent to create an easement.

[8] In effect Appellant urges the Court to disregard the unity of legal title that existed from 1982 to 1993, and to focus instead on Appellee's family's use and occupancy of Ulechull. However, because the law of easements places significant emphasis on the unity of legal title, we find no basis for disregarding this critical fact or for requiring the trial court to do so. *See Davis*, 991 P.2d at 367 (requiring "unity of title or ownership"); *Hitchman v. Hudson*, 594 P.2d 851, 857-58 (Or. Ct. App. 1979) (holding that unity of legal title conferred "sufficient unity of ownership . . . to give rise to an easement" although other parties had equitable interests); 25 Am. Jur.2d *Easements and Licenses* § 26 (requiring that easement be in use "during the unity of title"); *Unity of Title or Ownership for Easement by Implication*, 94 A.L.R.3d 502, 507 (1979) (stating that "unity of title must have existed" while easement was in use).

There is sufficient evidence in this case to support the trial court's finding that an easement was reasonably necessary. The record indicates that the old road was overgrown by grasses, bushes, and trees, and that this route required Appellee and Yasko to cross streams and taro paddies on foot. A trier of fact could rationally conclude that vehicular access to the property was reasonably necessary, as Yasko's family could not practically reach their home by walking through streams and taro paddies. *See, e.g.,* ⊥*160 Davis* , 991 P.2d 368 (affirming finding of reasonable necessity where alternate road was "undeveloped . . . and therefore did not provide usable access"). Because the necessity factor requires reasonable rather than strict necessity and a rational trier of fact could find that vehicular access over a cleared road was reasonably necessary, the trial court did not clearly err in finding an easement reasonably necessary.

B. Encroachment

The trial court found that there was "insufficient evidence" to prove Appellant's claim that Appellee's house encroached on Irikl, as Appellant offered no survey evidence but relied solely on Tkoel's "conclusory statement that the house encroaches on Irikl." Appellant concedes that "conclusory testimony may not be sufficient," but argues that Tkoel's testimony was sufficient because he testified "with the aid of a map" that placed the house partially on Irikl. However, Tkoel prepared the map himself, and did not base it on any survey locating the house in relation to the boundary. Thus, the map simply restated, without independently corroborating, Tkoel's conclusory assertion as to where the house was located, and the trial court was not compelled to credit this conclusory, uncorroborated testimony, even if it was uncontroverted. [9] We accordingly hold that the trial court was not clearly erroneous in finding that Appellant failed to prove an encroachment by a preponderance of the evidence.

III. CONCLUSION

For the foregoing reasons, we AFFIRM the judgment of the Trial Division.

---

[9] We find no merit in Appellant's assertion that, because the trial court credited some of Bernardino's testimony on the easement issue, it was bound to credit his testimony on encroachment. The court could rationally find the former testimony credible, as it was corroborated by other witnesses and ran counter to his interests, while finding the latter testimony unpersuasive, as it was uncorroborated and self-serving.