Court. He cannot appeal to us directly. Our only authority is to enter an order dismissing this direct appeal from the Kosrae small claims judgment.

III. CONCLUSION

Accordingly, this appeal is dismissed because we lack jurisdiction over it since it is not an appeal from the highest state court in which a decision may be had.

* * * *

FSM SUPREME COURT APPELLATE DIVISION

HEIRS OF ISAIAH BENJAMIN, Appellants, vs. HEIRS OF CLINTON BENJAMIN, Appellees.	)	APPEAL CASE NO. K3-2010

OPINION

Argued: July 28, 2011
Decided: September 6, 2011

BEFORE:

Hon. Martin G. Yinug, Chief Justice, FSM Supreme Court
Hon. Dennis K. Yamase, Associate Justice, FSM Supreme Court
Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court

APPEARANCE:

For the Appellants: Sasaki L. George, Esq.
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P.O. Box 38
Tofol, Kosrae FM 96944

* * * *

HEADNOTES

Appellate Review – Standard of Review – Civil Cases; Property – Land Court

By statute, the standard under which the Kosrae State Court must review Land Court decisions is by applying the "substantial evidence rule." And, if the State Court finds the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court with instructions and guidance for re-hearing the matter in its entirety or such portions of the case as may be appropriate. Heirs of Benjamin v. Heirs of Benjamin,

17 FSM Intrm. 650, 655 (App. 2011).

Appellate Review – Standard of Review – Civil Cases – Factual Findings; Evidence – Burden of Proof

The substantial-evidence rule is the principle that a reviewing court should uphold an administrative body's ruling if it is supported by evidence on which the administrative body could reasonably base its decision. Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM Intrm. 650, 655 (App. 2011).

Appellate Review – Standard of Review – Civil Cases – Factual Findings; Property – Land Court

When reviewing a Land Court decision, the State Court, applying the substantial-evidence rule, does not determine where, in its view, the preponderance of the evidence lies. Under the substantial-evidence rule, the court's sole obligation is to review the entire record and determine whether the evidence as a whole is such that reasonable minds could have reached the same conclusion. The State Court thus must determine if the record contained evidence supporting the Land Court decision that was more than a mere scintilla or even more than some evidence. If there was, the State Court must affirm the Land Court decision even if the evidence would not, in the State Court's view, amount to a preponderance of the evidence but would be somewhat less and even if the State Court would have decided it differently. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM Intrm. 650, 655-56 (App. 2011).

Appellate Review – Standard of Review – Civil Cases – Factual Findings; Evidence – Burden of Proof

The record may contain evidence which preponderates one way and yet include substantial evidence to support an order reaching an opposite result. Substantial evidence need not be much evidence, and though "substantial" means more than a mere scintilla, or some evidence, it is less than is required to sustain a verdict being attacked as against the great weight and preponderance of the evidence. The substantial-evidence rule is a very deferential standard of review. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM Intrm. 650, 656 (App. 2011).

Appellate Review – Standard of Review – Civil Cases – Factual Findings; Property – Land Court

The Kosrae State Court cannot assume the role of fact-finder. The statute mandates that the standard of review that the State Court must apply to a Land Court decision is whether there was substantial evidence in the record to support it, not whether the Land Court "reasonably assessed" the evidence. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM Intrm. 650, 656 (App. 2011).

Appellate Review – Standard of Review – Civil Cases – Factual Findings; Evidence – Burden of Proof

"Some evidence" may be a higher standard than the scintilla of evidence standard, but "some evidence" still does not equate with "substantial evidence." "Substantial evidence" is a higher standard than "some evidence" but it is not as high as the "preponderance of the evidence" standard. It can be less. Substantial evidence is more than a mere scintilla or some evidence, but less than is required to sustain a verdict being attacked as against the great weight and preponderance of the evidence. The trial court does not assume the role of fact finder, the issue is purely one of law. In fact, the evidence may be substantial and yet greatly preponderate the other way. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM Intrm. 650, 656 (App. 2011).

Appellate Review – Briefs, Record, and Oral Argument; Translation

Appellate litigants should translate court decisions and other necessary parts of the record into English in order to facilitate and ensure a proper appellate review. Otherwise, the appellate court may be unable, except in an uncommon case, to ensure a proper review of the record and the litigants' arguments. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM Intrm. 650, 657 n.2 (App. 2011).

Appellate Review – Standard of Review – Civil Cases; Property – Land Court

The Kosrae Legislature has mandated that the State Court must use the substantial-evidence rule when it reviews all Land Court decisions. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM Intrm. 650, 657 (App. 2011).

Property – Adverse Possession

Adverse possession is a doctrine under which one can acquire ownership of land if he, without the owner's permission, uses the land openly, notoriously, exclusively, continuously and under claim of right, and the owner does not challenge such action until after the statute of limitations has run. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM Intrm. 650, 657 (App. 2011).

Property – Adverse Possession; Property – Land Court

Land Court proceedings are the time and place adverse possession can and should be raised since Land Court jurisdiction includes all matters concerning the title of land and any interests therein. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM Intrm. 650, 657 (App. 2011).

Property – Adverse Possession

Land has a "true owner" or a rightful owner or a legal owner before any Land Court proceedings have been conducted even though it may be uncertain until the proceedings have concluded just who that owner is. A land occupant asserting adverse possession would have to prove that all the elements of adverse possession were satisfied against whoever would be the true owner or against all persons who could possibly be the true owner. Some authorities state that the possessor does not hold adversely unless he intends to hold against the whole world, including the rightful owner, but the really significant fact is that he hold against, that is, not in subordination to the rights of the legal owner. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM Intrm. 650, 658 (App. 2011).

Property – Adverse Possession; Property – Registered Land

Once an owner has a certificate of title to land, that ownership can never be lost through adverse possession. Under a Torrens land title registration system, such as the one in Kosrae, an adverse possession claim will never prevail over a validly-issued certificate of title. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM Intrm. 650, 658 (App. 2011).

Property – Adverse Possession; Property – Registered Land

Claims founded on adverse possession or prescription, are not permitted to come into existence once the title has been registered. Once a title is registered, it is impossible thereafter to acquire title to the registered land by holding adversely to the registered owner. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM Intrm. 650, 658 (App. 2011).

Property – Adverse Possession; Property – Registered Land

One of the attractions of a land registration system (as opposed to a land recordation system) and one of the great benefits of land title registration (as opposed to title recordation) is that once a landowner has gone through the laborious process of validly registering title to land, that landowner and that landowner's successors can never lose that land to an adverse possession claim. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM Intrm. 650, 658 (App. 2011).

Property – Adverse Possession; Property – Land Court; Property – Registered Land

The proper time and place to make adverse possession claims, if a land occupant has one, is in a Land Court (or other) proceeding before the land title has been registered. Afterward is too late. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM Intrm. 650, 658 (App. 2011).

Property – Adverse Possession

Adverse possession is a disfavored method or doctrine for acquiring title to land and a claimant must prove all the elements of adverse possession before title can be issued based on that doctrine. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM Intrm. 650, 658 (App. 2011).

Appellate Review – Standard of Review – Civil Cases

When the State Court either applied the wrong (preponderance of the evidence) standard or incorrectly applied the substantial-evidence rule and when the State Court made a clear error of law in its adverse possession ruling and it is difficult to determine to what extent that error tainted the State Court's review of the Land Court decision, the State Court's decision must be vacated and the matter remanded for further proceedings in the State Court. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM Intrm. 650, 658 (App. 2011).

Appellate Review – Standard of Review – Civil Cases; Evidence – Judicial Notice

By statute, no evidence or testimony can be considered at the appeal hearing except those matters which constituted the official record, transcripts, and exhibits received at the Land Court hearing. Thus, when a transcript of 2004 Land Court hearing testimony and 1991 testimony before the Land Registration team were part of the title registration process, they should have been part of the official Land Court record and thus reviewable by the State Court. And when a Trust Territory High Court case that was mentioned in the Land Court decision both that court and the State Court could properly take judicial notice of its files if the files had been given to the Land Court and to the other parties. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM Intrm. 650, 659 (App. 2011).

Appellate Review – Standard of Review – Civil Cases; Evidence; Property – Land Court

The Land Court should not exclude any relevant evidence and the Kosrae Rules of Evidence do not apply in the Land Court, but the State Court cannot consider evidence that was not "received" in the Land Court. "Received" in the statute is read to include evidence offered or introduced but improperly excluded. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM Intrm. 650, 659 (App. 2011).

Appellate Review – Briefs, Record, and Oral Argument

Documentary evidence that is offered and excluded should be listed as part of the certification of record and so should be a part of the record on appeal to the State Court, which would consider and decide, on a party's assignment of error, if it had been improperly excluded. If evidence that was offered and excluded is not listed in the certified Land Court records as an excluded exhibit, the evidence's proponent, and the State Court if it considers the evidence, ought to be able to point to where in the record it was offered. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM Intrm. 650, 659 n.3 (App. 2011).

Appellate Review – Standard of Review – Civil Cases; Property – Land Court

The statute does not give the State Court the power to reverse the Land Court and order it to enter a decree the opposite of the Land Court's original decision, but it does allow the State Court to vacate the Land Court decision and to give the Land Court such instructions and guidance that may result in a reversal after the Land Court re-hearing. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM Intrm. 650, 660 (App. 2011).

* * * *

COURT'S OPINION

READY E. JOHNNY, Associate Justice:

This appeal is from the Kosrae State Court's July 7, 2010 partial reversal of a November 4, 2008 Kosrae Land Court decision determining title to land in Utwe known as Yemelil (also spelled Yemilil or Yemulil). We vacate the State Court reversal and remand the matter to the State Court for it to re-hear the matter. Our reasoning follows.

I. BACKGROUND

On November 4, 2008, the Kosrae Land Court ruled that within Yemelil the Heirs of Clinton Benjamin owned Parcels No. 33-U-11 and 33-U-12; the Heirs of Tolenna Joseph owned Parcels No. 33-U-09 and 33-U-10; Chang B. William owned Parcel No. 33-U-08; the Heirs of Isaiah Benjamin owned Parcels No. 33-U-05 and 33-U-06; and the Heirs of Konlulu George owned Parcel No. 33-U-03. On February 3, 2009, the Heirs of Clinton Benjamin ("Clinton heirs") appealed the award of Parcels No. 33-U-05 and 33-U-06 to the Heirs of Isaiah Benjamin ("Isaiah heirs") and the award of Parcel No. 33-U-03 to the Heirs of Konlulu George.[1] .

The State Court considered that two issues were before it: 1) whether the Land Court reasonably assessed the evidence about the land usage of Parcels No. 33-U-05, No. 33-U-06, and No. 33-U-03; and 2) whether the Land Court decision applying detrimental reliance and adverse possession was contrary to law. Heirs of Benjamin v. Heirs of Benjamin, Mem. of Decision and Order of Remand at 2 (Kos. S. Ct. Tr. Civ. No. 6-09, July 7, 2010) (hereinafter "Order of Remand"). The State Court concluded that the Land Court decision awarding Parcels No. 33-U-05 and 33-U-06 to the Isaiah heirs was not supported by substantial evidence. *Id.* at 5. It noted that the Land Court "found that the Heirs of Isaiah Benjamin should own parcels 033U05 and 033U06 because they have developed, controlled and maintained the land." *Id.* The State Court concluded that the Land Court had erred and had not reasonably assessed the evidence when it held that the Isaiah heirs had open, exclusive, and notorious control of the subject land. *Id.* at 5-6. The State Court, discounting the presence of Isaiah Benjamin's name on the 1932 Japanese map and the testimony of an Isaiah heir, then went on to state what evidence supported an award of those parcels to the Clinton heirs. *Id.* at 5.

The State Court also ruled that the Land Court should not have excluded certain documentary evidence that supported the Clinton heirs' claim. *Id.* at 6-7. It then discussed the adverse possession doctrine and decided that, contrary to the Land Court decision, that doctrine could not apply to either the Isaiah heirs' award or the Heirs of Konlulu George award, *id.* at 8-11, but that the Heirs of Konlulu George award could be upheld on a detrimental reliance theory, *id.* at 11-13.

The State Court affirmed the Land Court award of Parcel No. 33-U-03 to the Heirs of Konlulu George and reversed the award of Parcels No. 33-U-05 and 33-U-06 to the Heirs of Isaiah Benjamin and ordered that those parcels be awarded to the Heirs of Clinton Benjamin. The Isaiah heirs then appealed to the FSM Supreme Court.

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[1] On February 5, 2010, Timothy George, claiming that he, and not the Heirs of Konlulu George, should have been awarded Parcel No. 33-U-03, and the Heirs of Isaiah Benjamin, claiming that they had title over the Heirs of Tolenna Joseph and the Heirs of Clinton Benjamin, filed a separate appeal in the State Court. It was docketed separately. Although considered, that appeal was not consolidated with the Clinton heirs' appeal.

II. Issues Presented

Appellants Heirs of Isaiah Benjamin contend that the Kosrae State Court erred:

1) when it did not explain why it did not accept as adequate Land Court testimony and documentary evidence that supported the Land Court decision;

2) when it reversed the Land Court decision by holding that the Land Court had erred by not accepting and considering a document that was never offered at the Land Court hearing and when the Land Court never adopted adverse possession as a ground for determining ownership; and

3) when, although it has jurisdiction to review Land Court determinations, it determined an ownership interest in land while at the same time ordering the Land Court, which has original and exclusive jurisdiction in land matters, to re-hear the matter.

III. Analysis

A. *Standard of Review of Land Court Decisions*

1. *Statutory Requirements*

The Kosrae statute sets forth the standard under which the State Court must review Land Court decisions. It provides that "[t]he State Court shall decide the matter by applying the 'substantial evidence rule' to any decisions rendered by the Land Court." Kos. S.C. § 11.614(5)(b). And,

> If the State Court finds the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it shall remand the case to the Land Court with instructions and guidance for re-hearing the matter in its entirety or such portions of the case as may be appropriate.

Kos. S.C. § 11.614(5)(d).

The substantial-evidence rule is "[t]he principle that a reviewing court should uphold an administrative body's ruling if it is supported by evidence on which the administrative body could reasonably base its decision." Black's Law Dictionary 1566 (9th ed. 2009). Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Palsis v. Kosrae, 17 FSM Intrm. 236, 243 (App. 2010); George v. Albert, 17 FSM Intrm. 25, 33 n.3 (App. 2010); Nakamura v. Moen Municipality, 15 FSM Intrm. 213, 217 n.1 (Chk. S. Ct. App. 2007); Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM Intrm. 368, 374 (Kos. S. Ct. Tr. 2009). "Substantial evidence is defined as 'evidence of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions.'" Rhodes v. Guberson Oil Tools, 75 F.3d 989, 993 (5th Cir. 1996) (quoting Boeing Co. v. Shipman, 411 F.2d 365, 374 (5th Cir. 1969)).

Thus, when reviewing a Land Court decision, the State Court, applying the substantial-evidence rule, does not determine where, in its view, the preponderance of the evidence lies. "The sole obligation of the court, under the substantial evidence rule, is to review the entire record and determine '. . . whether the evidence as a whole is such that reasonable minds could have reached the same conclusion . . . .'" United Sav. Ass'n of Tex. v. Vandygriff, 594 S.W.2d 163, 166 (Tex. Civ. App. 1980). The State Court thus must determine if the record contained evidence supporting the Land Court decision that was more than a mere scintilla or even more than some evidence. If there was, the

State Court must affirm the Land Court decision even if the evidence would not, in the State Court's view, amount to a preponderance of the evidence but would be somewhat less and even if the State Court would have decided it differently.

> The record may contain evidence which preponderates one way and yet include substantial evidence to support an order reaching an opposite result. Substantial evidence need not be much evidence, and though "substantial" means more than a mere scintilla, or some evidence, it is less than is required to sustain a verdict being attacked as against the great weight and preponderance of the evidence.

United Sav. Ass'n, 594 S.W.2d at 166 (citation omitted). The substantial-evidence rule is a very deferential standard of review. *See, e.g.*, Hincapie v. Gonzales, 494 F.3d 213, 218 (1st Cir. 2007); Hospital Corp. of Am. v. Federal Trade Comm'n, 807 F.2d 1381, 1385 (7th Cir. 1986). The State Court cannot assume the role of fact-finder. *See* Molliendo v. Texas Employment Comm'n, 662 S.W.2d 732, 735 (Tex. App. 1983). The statute mandates that the standard of review that the State Court must apply to a Land Court decision is whether there was substantial evidence in the record to support it, not whether the Land Court "reasonably assessed" the evidence.

2. *Issues Raised by Isaiah Heirs*

The Isaiah heirs complain that the State Court did not explain why it did not find adequate the evidence in the record that supported the Isaiah heirs' ownership of Parcels No. 033-U-05 and 033-U-06. The Isaiah heirs contend that the Land Court decision in their favor should have been affirmed. They rely on the holdings in Narruhn v. Aisek, 16 FSM Intrm. 236 (App. 2009); Heirs of Obet v. Heirs of Wakap, 15 FSM Intrm. 141 (Kos. S. Ct. Tr. 2007); Heirs of Nena v. Heirs of Nena, 13 FSM Intrm. 480 (Kos. S. Ct. Tr. 2005), for the proposition that, since there was some testimonial evidence in the record to support the Land Court's decision, it should not be disturbed on appeal.

"Some evidence" may be a higher standard than the scintilla of evidence standard, but "some evidence" still does not equate with "substantial evidence." "Substantial evidence" is a higher standard than "some evidence" but it is not as high as the "preponderance of the evidence" standard. It can be less.

> Substantial evidence is more than a mere scintilla or some evidence, but less than is required to sustain a verdict being attacked as against the great weight and preponderance of the evidence. The trial court does not assume the role of fact finder, the issue is purely one of law. In fact, the evidence may be substantial and yet greatly preponderate the other way.

Molliendo, 662 S.W.2d at 735 (citations omitted). If there is substantial evidence in the record supporting the findings, the Land Court decision must be affirmed even though the Land Court may have decided it differently from how the State Court would have decided it. *See id.*

The Isaiah heirs' brief cites many places in the record that they insist support the Land Court decision in their favor. They ask why this evidence was not considered adequate, that is, why this evidence did not constitute "substantial evidence" and thus lead to their title to Parcel Nos. 33-U-05 and 33-U-06 being affirmed. Since we cannot read the Kosraean-language transcripts and Kosraean-

language Land Court decision[2] that the Isaiah heirs cite to, we cannot ascertain if the evidence in the record is substantial. But the many cites do raise the question whether the evidence in support of the Land Court decision would satisfy the substantial-evidence rule although the State Court ruled that the Land Court did not reasonably assess the evidence. We feel that the State Court may have weighed the evidence on its own and applied a preponderance of the evidence standard when it concluded that the Land Court did not reasonably assess the evidence. That it should not do. The Legislature has mandated that the substantial-evidence rule be used. On remand, the State Court shall use the substantial-evidence rule, in the manner described above when it reviews this (and all future) Land Court decisions.

B. *Adverse Possession*

The State Court held that "the finding of the Land Court for HO Isaiah Benjamin . . . by the doctrine of adverse possession is in error and contrary to law." Order of Remand at 11 (July 7, 2010). The Isaiah heirs contend that the State Court improperly discussed the adverse possession doctrine when, in their view, the Land Court decision in their favor did not rely on the doctrine.

We are unsure to what extent the Land Court considered adverse possession since the November 4, 2008 Land Court decision has not been translated into English. The State Court believed that the Land Court had used the doctrine, and our perusal of the Land Court decision notices a fair number of instances where at least some of the adverse possession elements ("open and notorious") are written in English and where reported FSM court cases on adverse possession are cited and the applicable time period (20 years) is mentioned, leading us to believe that the Land Court considered or used the adverse possession doctrine without actually using the words "adverse possession." The State Court, which did not need a translation, apparently came to the same conclusion. The State Court most certainly should have considered adverse possession in its review if the Land Court considered it.

"Adverse possession is a doctrine under which one can acquire ownership of land if he, without the owner's permission, uses the land openly, notoriously, exclusively, continuously and under claim of right, and the owner does not challenge such action until after the statute of limitations has run." Etscheit v. Adams, 6 FSM Intrm. 365, 389 (Pon. 1994). The State Court concluded that the Land Court improperly considered and used the adverse possession doctrine. Order of Remand at 8 (July 7, 2010). The State Court, in reviewing the Land Court's use of adverse possession, held that:

> The doctrine of adverse possession may not be utilized in Land Court proceedings or relied upon by a claimant against another claimant, where title has not yet been awarded since there is no "true owner" of the land. The doctrine of adverse possession does not apply at original land registration proceedings for determination of ownership, because at that stage, no person is a "true owner" of the land. Therefore, at land registration proceedings, since title to land has not yet been awarded to the true owner title to land cannot be lost to an occupant through adverse possession.

Order of Remand at 10 (July 7, 2010). This holding is grave error.

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[2] We caution appellate litigants that court decisions and other necessary parts of the record should be translated into English in order to facilitate and ensure a proper appellate review. Otherwise, we may be unable, except in an uncommon case, to ensure a proper review of the record and the litigants' arguments. *See* Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM Intrm. 500, 504-05 & n.2 (App. 2011); Setik v. Ruben, 17 FSM Intrm. 301, 302 (App. 2010).

Land Court proceedings are the time and place adverse possession can and should be raised since Land Court jurisdiction "include[s] all matters concerning the title of land and any interests therein," Kos. S.C. § 11.604. The land has a "true owner" or a rightful owner or a legal owner before any Land Court proceedings have been conducted even though it may be uncertain until the proceedings have concluded just who that owner is. A land occupant asserting adverse possession would have to prove that all the elements of adverse possession were satisfied against whoever would be the true owner or against all persons who could possibly be the true owner. Some authorities "state that the possessor does not hold adversely unless he intends to hold against the whole world, including the rightful owner, but the really significant fact is that he hold against, that is, not in subordination to the rights of the legal owner." RALPH E. BOYER, SURVEY OF THE LAW OF PROPERTY 241 (3d ed. 1981).

The State Court held that someone must first have been awarded a certificate of title to property before he can lose ownership of the land to another through adverse possession. Order of Remand at 10 (July 7, 2010). This is error. Once an owner has a certificate of title to land, that ownership can never be lost through adverse possession. Under a Torrens land title registration system, such as the one in Kosrae, an adverse possession claim will never prevail over a validly-issued certificate of title. Setik v. Ruben, 16 FSM Intrm. 158, 166 (Chk. S. Ct. App. 2008); In re Engichy, 12 FSM Intrm. 58, 69 (Chk. 2003); ROGER A. CUNNINGHAM, WILLIAM B. STOEBUCK, & DALE A. WHITMAN, THE LAW OF PROPERTY § 11.15, at 830 n.11 (1984). Claims "founded on adverse possession or prescription, are not permitted to come into existence once the title has been registered." CUNNINGHAM ET AL., *supra*, § 11.15, at 833 n.26. "Once a title is registered, it is impossible thereafter to acquire title to the registered land by holding adversely to the registered owner." Konatz v. Stein, 167 N.W.2d 1, 5 (Minn. 1969). This is one of the attractions of a land registration system (as opposed to a land recordation system) and one of the great benefits of land title registration (as opposed to title recordation). Once a landowner has gone through the laborious process of validly registering title to land, that landowner and that landowner's successors can never lose that land to an adverse possession claim.

If the Land Court concluded that it could use the adverse possession doctrine in determining land titles, that conclusion was correct. It was not contrary to law. The proper time and place to make adverse possession claims, if a land occupant has one, is in a Land Court (or other) proceeding before the land title has been registered. Afterward is too late. The State Court made an error of law when it held that the Land Court could not consider or utilize the adverse possession doctrine. Even so, adverse possession is a disfavored method or doctrine for acquiring title to land and a claimant must prove all the elements of adverse possession before title can be issued based on that doctrine. Setik, 16 FSM Intrm. at 165; Cheni v. Ngusun, 6 FSM Intrm. 544, 547 (Chk. S. Ct. App. 1994).

Since the State Court either applied the wrong (preponderance of the evidence) standard or incorrectly applied the substantial-evidence rule and since the State Court made a clear error of law in its adverse possession ruling and it is difficult to determine to what extent that error tainted the State Court's review of the Land Court decision, we must vacate the State Court's July 7, 2010 reversal and remand the matter for further proceedings.

C. *Unoffered Evidence*

The Isaiah heirs contend that the State Court decision relied on evidence that the Land Court had not accepted and considered because that evidence had never been offered during the Land Court proceedings. For example, the State Court ruled that the Land Court improperly excluded a document that the Clinton heirs sought to have admitted – a document between Wilmer Benjamin, Isaiah Benjamin's son, and Leonard Benjamin allowing Leonard, Clinton Benjamin's son, to build a house on the land. The Isaiah heirs object to this document and a number of other documents – selected records from Trust Territory High Court Case No. 264; an order granting a temporary restraining order in a case

to which the Isaiah heirs were not a party; a memorandum of decision from another case, transcript of Wilmer Benjamin's 2004 Land Court hearing testimony; and the Clinton heirs' 1991 testimony before the Land Registration team – that were not introduced at the Land Court hearing and that had surfaced for the first time in the Clinton heirs' appendix in the State Court.

The statute requires that "[n]o evidence or testimony shall be considered at the appeal hearing except those matters which constitute the official record, transcripts, and exhibits received at the Land Court hearing." Kos. S.C. § 11.614(5)(a). Since the transcript of Wilmer Benjamin's 2004 Land Court hearing testimony and the Clinton heirs' 1991 testimony before the Land Registration team were part of the title registration process, they should have been part of the official Land Court record and thus reviewable by the State Court. The Trust Territory High Court case was mentioned in the Land Court decision and both that court (and thus the State Court) could properly take judicial notice of its files if the files had been given to the Land Court (and to the other parties). We are uncertain to what extent it was part of the official record but the State Court decision did discuss the Trust Territory High Court case and relied on it as some support for its decision, Order of Remand at 5-6 (July 7, 2010).

The State Court was correct when it held that the Land Court should not exclude any relevant evidence and that the Kosrae Rules of Evidence do not apply in the Land Court. Order of Remand at 7 (July 7, 2010). The State Court, however, cannot consider evidence that was not "received" in the Land Court. Kos. S.C. § 11.614(5)(a). We read "received" in the statute to include evidence offered or introduced but improperly excluded. The Trust Territory High Court case file may not have been before the Land Court. Any other documents considered by the State Court, but which were not in the Land Court record because they had never been offered there, should not have been considered by the State Court. The statute, Kos. S.C. § 11.614(5)(a), prohibits it. Counsel for the Isaiah heirs asserts that he has combed the record and cannot find where the Clinton heirs offered any of this evidence. These documents certainly are not listed in the Land Court certification of record where the other exhibits are listed.

Taking the Isaiah heirs' counsel at his word, the State Court improperly took evidence (in violation of the statute, Kos. S.C. § 11.614(5)(a)) and considered it. In making this ruling, it does not matter whether we can tell to a certainty exactly what evidence was not part of the official Land Court record. Since the matter is remanded to the State Court to re-conduct its appellate review applying the proper substantial-evidence rule standard and a correct understanding that it is within the Land Court's jurisdiction to consider adverse possession (and that a certificate of title bars an adverse possession claim), we add the further instruction that the State Court consider only the evidence that is a part of the Land Court record or was offered or introduced there and improperly excluded.[3]

D. *Determination and Rehearing*

The Isaiah heirs also assign as error the State Court's determination that the Clinton heirs owned Parcels No. 33-U-05 and 33-U-06. For this they rely on the statute that provides that "[i]f the State Court finds the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it shall remand the case to the Land Court with instructions and guidance for re-hearing the matter . . . ." Kos. S.C. § 11.614(5)(d).

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[3] Documentary evidence that is offered and excluded should be listed as part of the certification of record and so should be a part of the record on appeal to the State Court, which would consider and decide, on a party's assignment of error, if it had been improperly excluded. If evidence that was offered and excluded is not listed in the certified Land Court records as an excluded exhibit, the evidence's proponent, and the State Court if it considers the evidence, ought to be able to point to where in the record it was offered.

The Isaiah heirs have a point here. The statute does not give the State Court the power to reverse the Land Court and order it to enter a decree the opposite of the Land Court's original decision. But the statute does allow the State Court to vacate the Land Court decision and to give the Land Court such instructions and guidance that may result in a reversal after the Land Court re-hearing.

IV. Conclusion

The State Court's July 7, 2010 decision concerning Yemelil Parcels No. 33-U-05 and 33-U-06 is hereby vacated, its ruling on adverse possession law reversed, and the matter remanded to the State Court. The State Court shall re-hear the matter and apply the deferential substantial-evidence rule, as it is described above, while remaining cognizant that the Land Court has the power to rule on an adverse possession claim to title, and that the State Court generally does not have the power to consider evidence outside of the Land Court record unless it was offered in the Land Court and improperly excluded.

We hereby remand this matter to the Kosrae State Court for it to institute such further proceedings as are consistent with this opinion. The Kosrae State Court may ask the parties for supplemental briefing before holding another oral argument in this matter.

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