

FSM SUPREME COURT APPELLATE DIVISION

KERSIN TILFAS,)	APPEAL CASE NO. K3-2014
)	(Civil Action No. 84-11)
Appellant,)	
)	
vs.)	
)	
HEIRS OF KILAFWAKUN LONNO,)	
)	
Appellees.)	

OPINION

Argued: July 15, 2016
Decided: December 28, 2016

BEFORE:

Hon. Dennis K. Yamase, Chief Justice, FSM Supreme Court
Hon. Cyprian J. Manmaw, Specially Assigned Justice, FSM Supreme Court*
Hon. Mayceleen J.D. Anson, Specially Assigned Justice, FSM Supreme Court**

*Chief Justice, Yap State Court, Colonia, Yap

**Associate Justice, Pohnpei Supreme Court, Kolonia, Pohnpei

APPEARANCES:

For the Appellant: Yoslyn G. Sigrah, Esq.
P.O. Box 3018
Kolonia, Pohnpei FM 96941

For the Appellees: Canney Palsis, Esq.
Micronesian Legal Services Corporation
P.O. Box 38
Tofol, Kosrae FM 96944

* * * *

HEADNOTES

Appellate Review – Standard – Civil Cases

On appellate review, the Kosrae State Court must focus on whether the Land Court decision was predicated on substantial evidence and not contrary to law. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 55 (App. 2016).

Appellate Review – Standard – Civil Cases

When reviewing a Land Court decision, the Kosrae State Court must determine if the record contained evidence supporting the Land Court decision that was more than a 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 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. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 55 (App. 2016).

Appellate Review – Standard – Civil Cases – Factual Findings

With respect to an allegation that a decision is clearly erroneous, an appellate court can find reversible error only if: 1) the trial court findings were not supported by substantial evidence in the record, or 2) the trial court's factual finding was the result of an erroneous conception of the applicable law, or 3) after reviewing the entire body of evidence and construing it in a light most favorable to the appellee, the appellate court is left with a firm conviction that a mistake has been made. In order to be clearly erroneous, a decision must strike the appellate court as more than just maybe or probably wrong; it must strike the appellate court as wrong with the force of a five-week old unrefrigerated dead fish. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 55 (App. 2016).

Appellate Review – Standard – Civil Cases – Abuse of Discretion

The FSM Supreme Court's standard of review when scrutinizing a Kosrae State Court decision, which in turn, reviewed a Land Court decision, is whether the former abused its discretion. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 55 (App. 2016).

Appellate Review – Standard – Civil Cases – De Novo

Issues of law are reviewed de novo on appeal. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 55 (App. 2016).

Appellate Review – Dismissal; Appellate Review – Notice of Appeal

In the absence of a timely notice of appeal, an appellate court has no jurisdiction over the appeal and the proper remedy is dismissal. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 56 (App. 2016).

Constitutional Law – Case or Dispute – Standing; Jurisdiction – Subject-Matter

A standing issue is addressed first, as it is a threshold issue going to a court's subject matter jurisdiction. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 56 (App. 2016).

Constitutional Law – Case or Dispute – Standing; Jurisdiction

Although standing is not expressly stated within the FSM Constitution, it is implied as an antecedent to the "case or dispute" requirement found in Article XI, § 6 and should be interpreted so as to implement the objectives of that requirement. Two factors are central to the determination of whether a party has standing: 1) the party must allege a sufficient stake in a controversy's outcome and it must have suffered some threatened or actual injury resulting from the allegedly illegal action or erroneous court ruling, and 2) the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 57 (App. 2016).

Constitutional Law – Case or Dispute – Standing; Jurisdiction

When the asserted ownership of a parcel constitutes a sufficient stake in the outcome; and when a challenge to the Kosrae State Court's ruling is capable of being redressed by a favorable decision in the FSM Supreme Court appellate division, an appellant, who did not appeal the Land Court decision to the Kosrae State Court, possesses standing to bring the present appeal. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 57 (App. 2016).

Appellate Review – Standard – Civil Cases – De Novo; Constitutional Law – Case or Dispute – Standing
Whether a party has standing is a question of law, to be reviewed de novo on appeal. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 57 (App. 2016).

Appellate Review – Standard – Civil Cases – Factual Findings

The test to be utilized in determining the adequacy of findings and thus the sufficiency of evidence, is whether they are comprehensive and pertinent to the issue at hand, in terms of formulating a sound basis for the decision. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 58 (App. 2016).

Property – Adverse Possession; Statutes of Limitation

Adverse possession is a doctrine under which one can acquire ownership of land if that individual, absent the owner's permission, uses the land openly, notoriously, exclusively, continuously and under claim of right, coupled with a requirement that the owner does not challenge such action until after the statute of limitation has run. The applicable statute of limitation period for adverse possession is twenty years. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 58 (App. 2016).

Property – Adverse Possession

In order to successfully assert a claim that property rights have become vested through adverse possession, a claimant must establish that he entered the land in issue and remained in possession of it for the entire twenty-year statutory period, and such possession, pursuant to a claim of right, must be continuous (i.e. uninterrupted, as far as being challenged by the owner). Tilfas v. Heirs of Lonno, 21 FSM R. 51, 58 (App. 2016).

Property – Adverse Possession

When, in 1990, the Land Commission conducted preliminary and formal hearings, with contested ownership claims in order to determine ownership rights; when others expanded their boundaries, encroaching, and overlapping on the land in 2005; and when there were Land Court status conferences conducted to determine ownership rights during 2011, the requisite twenty-year "continuous" unchallenged time period needed for adverse possession was suspended by these interludes. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 58-59 (App. 2016).

Property – Adverse Possession

In order to uphold a claim of ownership based on adverse possession, all elements of adverse possession must be demonstrated. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 59 (App. 2016).

* * * *

COURT'S OPINION

DENNIS K. YAMASE, Chief Justice:

This appeal stems from a Memorandum of Decision (MOD) issued by the Kosrae State Court on January 30, 2014, which affirmed the Decision of the Land Court entered on December 7, 2011. Appellees maintain that subject matter jurisdiction is lacking, since the Appellant never appealed the Land Court decision, yet is now contesting the Kosrae State Court MOD. Appellant contends the Kosrae State Court MOD was, not only erroneous and contrary to law, but unsupported by substantial evidence.

I. BACKGROUND

The underlying Land Court decision involved an ownership dispute with respect to various parcels

located in Wiyu Section, Tafunsak Municipality. The tracts of land in issue had been owned by a couple of brothers: Asia Nena and David Nena. These two siblings had a sister: Karu Kilafwakun, with whom the property was apportioned. In short, David Nena owned the segment located on the left-hand side of the Wiyu River, Karu Kilafwakun, the top section of the right-hand section of that same river and Asia Nena, the lower component.

The evidence adduced at the Land Court proceedings revealed that Asia Nena conveyed his land (by Deed of Gift) to his heirs. These heirs included an adoptive daughter Rosa, as well as Esther Heuver, who happened to be the sister of Rosa; both of whom were raised by Asia Nena. The Deed of Gift from Asia Nena to Esther Heuver took place in the 1960's. Esther Heuver then gave her brother-in law, Kersin Tilfas ("Tilfas"), a subsection of her property.

This Deed of Gift to Tilfas consisted of Parcel No. 079T26, which was intended to be within the upper portion of her section. This conveyance and specifically the exact parameters of Parcel No. 079T26 constitute the gravamen of the instant appeal. The Land Court MOD stated:

Kersin Tilfas's claim overtakes the upper portion of the HO Kilafwakun Lonno as shown on the map. This Court found that the Walung side from the Wiyu River belongs to Karu Kilafwakun. Kersin Tilfas's claim of Wiyu is from Esther Heuver land or Asia Nena's of Wiyu, [which] is below the land of the HO Kilafwakun Lonno. Esther Heuver can only transfer [a] right to land that she owns. Therefore, it is not right for Kersin Tilfas to claim land on the Walung side of the river. . . . Evidence provided by Kersin Tilfas [was] insufficient for the Court to find that he owns the Walung side above Wiyu River[;] obstructing the land claimed by HO Kilafwakun Lonno.¹

The MOD issued by the Kosrae State Court similarly set forth:

This Court missed finding any evidence that Esther Heuver had any right to give away the portion for Kersin Tilfas. Clearly, if the two brothers divided the land[,] giving their sister Karu Kilafwakun the upper portion toward Walung, then Esther Heuver, who supposedly owned the lower portion, through Asia Nena, has no right to give away part of the upper portion that belongs to Karu Kilafwakun. Esther Heuver can only give away land from her portion of the property, which is the lower portion of Wiyu, Waling site of the Wiyu River.

. . .

. . . This Court failed to find any evidence that Esther Heuver had legal authority to give Kersin Tilfas a portion beyond her boundary"²

Against this backdrop, the following issues were framed in the appeal of the Kosrae State Court's ruling.

II. ISSUES ON APPEAL

- A. Whether subject matter jurisdiction exists, since Tilfas did not appeal the underlying Land Court

¹ Land Court MOD at 3-4 (Dec. 7, 2011).

² Kosrae State Court's MOD at 2-3 (Jan. 30, 2014).

decision, yet is now challenging the Kosrae State Court MOD.

- B. Whether the Kosrae State Court MOD, entered on January 30, 2014, which denied the claim of Tilfas to Parcel No. 079T26, was erroneous and contrary to law.
- C. Whether the Kosrae State Court MOD, entered on January 30, 2014, which denied the claim of Tilfas to Parcel No. 079T26, was based on substantial evidence.

III. STANDARD OF REVIEW

Kosrae State Code (Kos. S.C.) 11.614(5)(d) provides:

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

Kun v. Heirs of Abraham, 13 FSM R. 558, 559 (Kos. S. Ct. Tr. 2005), mirrors the statutory directive of Kos. S.C. § 11.614(5)(d), in terms of a review by a State Court which must focus on whether the lower court decision was predicated on substantial evidence and not contrary to law.

The standard of review to be utilized by a reviewing court, was stated in Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650 (App. 2011). The State Court thus must determine if the record contained evidence supporting the Land Court decision that was more than a 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 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. *Id.* at 655-56.

In addition, George v. George, 17 FSM R. 8, 9-10 (App. 2010), found that the standard of review on appeal, regarding sufficiency of the evidence, is very limited and only findings that are clearly erroneous can be set aside. With respect to an allegation that a decision is clearly erroneous, an Appellate Court can find reversible error only if: 1) the trial court findings were not supported by substantial evidence in the record or 2) the trial court's factual finding was the result of an erroneous conception of the applicable law or 3) after reviewing the entire body of evidence and construing it in a light most favorable to the Appellee, the Appellate Court is left with a firm conviction that a mistake has been made. *Id.* In order to be clearly erroneous, a decision must strike the Appellate Court as more than just maybe or probably wrong; it must strike the Appellate Court as wrong with the force of a five-week old unrefrigerated dead fish. Smith v. Nimea, 19 FSM R. 163, 173 (App. 2013).

In sum, the standard of review to be employed by this Court, as far as scrutinizing a decision of the Kosrae State Court, which in turn, was reviewing a decision of the Land Court, is whether the former abused its discretion. Such abuses must be unusual and exceptional; an Appellate Court will not merely substitute its judgment for that of the trial court. Simina v. Kimeou, 16 FSM R. 616, 619 (App. 2009). Finally, issues of law are reviewed *de novo* on appeal. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 351 (App. 2012).

IV. ANALYSIS

A. *Subject Matter Jurisdiction and Standing*

Appellees ("Lonno") claim that the threshold determination of subject matter jurisdiction is suspect, since the present appeal is essentially challenging the December 2, 2011 Land Court MOD, albeit ultimately affirmed by the Kosrae State Court. Lonno references the failure of Appellant ("Tilfas") to comply with the time prescriptions set forth in Kosrae State Code (Kos. S.C.), in terms of bringing an appeal.

Kos. S.C. § 11.614(1) provides, in pertinent part: "An appeal from an adjudicated matter by the Land Court shall be made within sixty (60) days of service of the written decision of the Land Court Justice upon the party appealing the decision."

It is well established, that in the absence of a timely notice of appeal, we would have no jurisdiction over the appeal and the proper remedy is dismissal. Q'Sonis v. Bank of Guam, 9 FSM R. 356 (App. 2000). Implicit within the argument advanced by Lonno, is that a final determination was rendered by the Land Court on December 7, 2011 and since Tilfas was not the party who filed the underlying appeal to the Kosrae State Court (as the Appellants in Civil Action 84-11 were HO Lonno, who challenged the boundaries delineated by the Land Court, between their parcel and that of another party), he should be precluded from bringing the instant appeal, which takes issue with the decision of the Kosrae State Court. In other words, Lonno posits that since Tilfas never filed an appeal of the Land Court MOD to the Kosrae State Court, he should not be allowed to ride the coattails of the parties involved in said appeal; as the decision therefrom constitutes the impetus for the instant appeal.

Tilfas's response to this jurisdictional challenge, simply cites Rule 4(a)(1) of the FSM Rules of Appellate Procedure, which provides for a forty-two (42) day window from the entry of Judgment, within which to file an appeal therefrom. Tilfas additionally notes that "[n]either the Kosrae Constitution[,] nor state law[,] requires that Land Court decisions be appealed to the State Court appellate division."³

Notwithstanding the fact that Tilfas never appealed the Land Court decision, the crux of the matter is whether he has standing, in terms of bringing the appeal from the Kosrae State Court decision. Stated somewhat differently, although Tilfas did not participate in the appeal which was brought before the Kosrae State Court, he nevertheless had a sufficient stake in its outcome, which could be redressed by a favorable decision, via the appeal before us. The standing issue is addressed first, as it is a threshold issue going to a Court's subject matter jurisdiction. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM R. 491, 496 (Kos. 2003).

In rejecting the claim of Tilfas to Parcel No. 079T26, the Land Court found that

Evidence provided by Kersin Tilfas [was] insufficient for the Court to find that he owns the Walung side above the Wiyu River[,] obstructing the lands claimed by HO Kilafwakun Lonno. . . . The claim of Kersin Tilfas should not be within the claim of HO Kilafwakun Lonno. If Esther Heuver gave land to Kersin Tilfas, then the claim of Kersin Tilfas should be within Esther Heuver's lands.⁴

³ Reply Br. of Tilfas, at 4

⁴ Land Court MOD at 3-4 and 5 (Dec. 7, 2011).

As previously noted, Lonno then appealed the Land Court decision to the Kosrae State Court, challenging the portion of the Ruling which spoke to the specific lines of demarcation, concerning their parcel and that of another claimant: Mawell Salik.⁵

Lonno brought this appeal on December 27, 2011 and Tilfas took no part in that appellate matter. At the expense of repetition, on January 30, 2014, the Kosrae State Court affirmed the Land Court decision, which included *inter alia*, the repudiation of the Tilfas ownership claim. Therefore, Lonno's position is that Tilfas never appealed the Land Court decision in a timely manner and in lieu thereof, is attempting to piggyback on the resultant Appellate decision rendered by the Kosrae State Court, by virtue of bringing the present appeal.

Although standing is not expressly stated within the FSM Constitution, it is implied as an antecedent to the "case or dispute" requirement found in Article XI, § 6 and should be interpreted so as to implement the objectives of that requirement. Sipos v. Crabtree, 13 FSM R. 355, 362 (Pon. 2005). Two factors are central to the determination of whether a party has standing. At the outset, the party must allege a sufficient stake in the outcome of a controversy and it must have suffered some threatened or actual injury resulting from the allegedly illegal action or erroneous court ruling. Furthermore, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. FSM v. Udot Municipality, 12 FSM R. 29, 40 (App. 2003).

We find that these "conditions precedent" are satisfied, since the asserted ownership of Parcel No. 079T26 by Tilfas constituted a "sufficient stake in the outcome" and a challenge to the Kosrae State Court's ruling is capable of being "redressed by a favorable decision" here. Whether a party has standing is a question of law, to be reviewed *de novo* on appeal. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 59 (App. 2008). Accordingly, we find Tilfas possessed standing to bring the present appeal and as such, subject matter jurisdiction is proper.

B. Substantial Evidence

Tilfas contends

The record clearly established that there was no dispute [as] to ownership, only boundaries. Therefore, the work of the Land Commission and passed on to [the] Land Court which produced the subject MOD, was limited to determining boundary lines and not ownership[,] as ownership was agreed upon by [the] parties and was not in dispute.⁶

Contrary to the affirmation of Tilfas, the Land Court MOD noted that preliminary and formal hearings had been conducted by the Land Commission in March 1990 and continued until July of that year; acknowledging the mappings denoting the various claims of ownership which were asserted, however "No determination of ownership was issued"⁷ Furthermore,

[During the Status Conferences which commenced in June of 2011 and continued until August of that year], the Land Court found that all parties to this case agreed no further

⁵ Kosrae State Court MOD at 3 (Jan. 30, 2014).

⁶ Opening Br. of Tilfas at 9.

⁷ Land Court MOD at 1 (Dec. 7, 2011).

hearings be held [and] that this Court should proceed with determination of ownership[,] using hearings [that were conducted, along] with evidence and records in the Court's possession.⁸

Bottom line: the Land Court ultimately discounted the claim of Tilfas to Parcel No. 079T26, specifically noting that Esther Heuver and Kersin Tilfas failed to proffer sufficient evidence to reflect the former actually owned the parcel conveyed to the latter.⁹

In affirming the Land Court's decision, with respect to its rejection of the Tilfas claim, the Kosrae Court MOD reflects a fastidious review of the factual evidence and records produced below (including documents from the Land Commission that memorialized the proceedings conducted therein). In addition, the testimony adduced during the Land Court proceedings was scrutinized.¹⁰ The test to be utilized in determining the adequacy of findings and *a fortiori*, sufficiency of evidence, is whether they are comprehensive and pertinent to the issue at hand, in terms of formulating a sound basis for the decision. Simina v. Kimeuo, 16 FSM R. 616, 622 (App. 2009). As such, we conclude that the Kosrae State Court decision was sufficiently comprehensive and pertinent to substantiate its determination, to wit: affirming the Land Court ruling which rejected the ownership claim of Tilfas.

C. *Adverse Possession*

Tilfas notes that he and his family have been "farming, tending, harvesting and . . . living off Parcel No. 079T26 [since Ester Heuver conveyed the land to him in 1975], thereby creating a clear alienation of any other contravening interests."¹¹ Consequently, Tilfas asserts "even if Appellee HO Kilafwakun Lonno, in attempting to assert right to portions of Parcel 079T26 this late in time, would be barred by the doctrine of adverse possession." [sic]¹²

Adverse possession is a doctrine under which one can acquire ownership of land if that individual, absent the permission of the owner, uses the land openly, notoriously, exclusively, continuously and under claim of right, coupled with a requirement that the owner does not challenge such action until after the statute of limitation has run. The applicable statute of limitation period for adverse possession is twenty (20) years. Iriarte v. Etscheit, 8 FSM R. 231, 239 (App. 1998).

In order to successfully assert a claim that property rights have become vested through adverse possession, Tilfas must establish that he entered the land in issue and remained in possession of same for the entire statutory period of twenty (20) years. In addition to actual possession for this statutorily mandated time frame, such possession pursuant to a claim of right must be continuous (i.e. uninterrupted, as far as being challenged by the owner). Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 145 (Kos. S. Ct. Tr. 2007).

Under the facts of this case, as noted above, the record reveals preliminary and formal hearings

⁸ *Id.*

⁹ Land Court MOD at 3-5 (Dec. 7, 2011).

¹⁰ Kosrae State Court MOD at 3 (Jan. 30, 2014).

¹¹ Opening Br. of Tilfas at 21.

¹² *Id.*

were conducted by the Land Commission in March 1990 and continued until July of that year, in order to determine ownership rights. Given the contested ownership claims, there was an interlude, with regard to the requisite twenty (20) year "continuous" time period. Furthermore, Tilfas acknowledges that Lonno began to "expand their boundaries[,] encroaching and overlapping Kersin's land" in 2005,¹³ this would also have suspended the necessary "continuous" element. Finally, as also previously referenced, status conferences were conducted before the Land Court to determine ownership rights during the months of July and August, 2011; constituting yet another subject hiatus.

All elements of adverse possession must be demonstrated, in order to uphold a claim of ownership based on adverse possession. Heirs of Obet, 15 FSM R. at 145. In light of the failure to prove all its elements (which includes a 20-year period of "unchallenged" possession), the claim of Tilfas, that the Kosrae State Court erred by not taking into consideration the doctrine of adverse possession in rendering its decision, is similarly devoid of merit.

V. CONCLUSION

Despite the fact that Tilfas did not appeal the Land Court decision, which rejected his claim of ownership to the parcel in issue, an appeal was taken by Lonno (contesting the boundary determination between it and another party). Since Tilfas had a sufficient stake in the outcome and an appeal of the Kosrae State Court decision could be favorably redressed, via the instant appeal, he had standing. Furthermore, we find that the MOD issued by the Kosrae State Court, which affirmed the underlying Land Court decision, was supported by substantial evidence. Finally, all the elements necessary to implicate the doctrine of adverse possession were not present and therefore, the absence of any consideration given to such a claim, as asserted by Tilfas, did not constitute error by the lower Court.

Accordingly, the Memorandum of Decision, entered by the Kosrae State Court on January 13, 2014, is hereby AFFIRMED.

* * * *

¹³ Opening Br. of Tilfas at 6.