



TRANSCRIPT

Of HEARING/PROCEEDINGS

Held:

August 23, 2018

1 APPEARANCES:

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FOR DEFENDANT MICHAEL KNEUBUHL:

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19 EDNA POROTESANO - COURT INTERPRETER

20 RENEE AGUON-LUTU - COURT CLERK

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1 FAGATOGO, AMERICAN SAMOA; THURSDAY, AUGUST 23, 2018

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THE COURT: Call our matter.

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THE CLERK: LT 20-13, Opelle v. Kneubuhl.

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THE COURT: Appearance?

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MR. HALL: Roy J.D. Hall, Jr., for Mike

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Kneubuhl.

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THE COURT: On the line?

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MS. KNEUBUHL: Hello. This is Robin Kneubuhl

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calling from Santa Barbara, California, acting pro se.

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THE COURT: Very well. We have -- for this

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matter, LT 18-18, it's your motion for reconsideration,

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Ms. Kneubuhl. We have reviewed your filings, as well

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as all matters filed in response to your request.

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Without repeating what's already been stated in your

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pleadings, Ms. Kneubuhl, is there anything else you

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wish to be heard on regarding this matter?

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MS. KNEUBUHL: Your Honor, we'd like to

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prepare remarks because I had hoped that the Court

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would be able to take it on the papers, but we did get

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a last-minute objection from Mr. Hall. And I wanted to

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point out that where Mr. Hall states that we have not

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met the burden for reconsideration, we feel that, in

1 fact, we have. And we have because we feel that it is
2 appropriate to request reconsideration when the Court
3 may have granted relief which was not requested even

4 though we do acknowledge I think in the brief that the
5 Court has under the declaratory judgment statute broad
6 discussion to state the rights and duties of the
7 parties therein.

8 We also note that the word "issue," just to
9 repeat, is we stated it was 60 years since it was at
10 issue at least in this case. But I wanted to point out
11 that Mr. Hall has actually made use of that word
12 even further by adding perhaps another half a century
13 to the analysis that we began. So I hope the Court
14 notes the extent at which Mr. Hall actually agrees with
15 us that the use of the word "issue" is somewhat out of
16 date and that the policy of Samoan statutory
17 development has been towards inclusiveness for that
18 piece. And yet I think Mr. Hall also agrees with us
19 for having very carefully delved into how that has
20 occurred every time. We hope all these points will be
21 taken by the Court.

22 There's one other issue which I wanted to
23 point out, which was a new fact introduced by Mr. Hall;
24 and my uncle, the defendants, pointing out that Lina
25 kneubuhl had an opportunity to revisit her trust and

1 that she chose not -- and that she did not reopen and
2 modify her trust. She had made an intentional decision
3 to exclude her adopted grandchildren. And I found it
4 very, very difficult to read. I found it offensive to
5 her memory as a loving person with an inclusive life

6 and to her memory as a grandmother. And I think if he
7 brings it up, the Court needs to know that four of
8 Lina's six children; James, Jones, Frank and Mike
9 himself, the adopted children, that's nothing
10 exceptional. And these adoptions took place between
11 the years 1928 and 1971 although I'm not sure about the
12 last one.

13 And even if Lina did notice the word "issue,"
14 she probably didn't notice it, but even if she had
15 noticed it, she would not have delved into its
16 particular statutory meaning, but, in fact, her trust
17 is irrevocable and not modifiable. And a
18 non-modifiable trust can only be modified by a
19 unanimous -- by a unanimous agreement of the
20 beneficiaries. And she certainly would never have
21 gotten that even if it would have occurred to her to do
22 so. And I'm sure it did not, but the fact that she
23 could not is more legally relevant than the fact that
24 she did not. And I would hope the Court would
25 disregard that.

1 So with those three points to be made in
2 closing, I would thank the honorable court for this
3 opportunity to represent the family and for every
4 consideration the Court has given us today and for an
5 expeditious resolution of this matter. I know the
6 cornerstone of the organic law, which Mr. Hall calls
7 the constitution sense (phonetic), is the land itself,

8 but I am confident that the foundation of that
9 cornerstone is the affected family, which is large and
10 inclusive and welcoming throughout American Samoa, and
11 I would hope the Court would begin with that point that
12 we do make and I think underscores in all of the cases.

13 That said, thanking the Court once again. We
14 would not appeal any further beyond this motion of
15 reconsideration the meaning of the word "issue," and
16 that will upon decision by this court conclude our
17 participation in that particular matter as to the
18 meaning of the word "issue."

19 THE COURT: Thank you, Ms. Kneubuhl.

20 Counsel Hall, we've read all of your
21 pleadings. Any response to what we've heard this
22 morning?

23 MR. HALL: No, Your Honor, except what we
24 filed in this matter.

25 THE COURT: Very well then.

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1 With regard to this particular motion and in
2 this case, LT No. 18-18, we will take the matters under
3 advisement and we'll issue something in writing within
4 the next 30 days or so. Thank you.

5 MR. HALL: There was another motion filed
6 by --

7 THE COURT: We'll call it.

8 MS. KNEUBUHL: Your Honor, may I remain on the
9 line to --

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10 MR. HALL: This is the same case, Your Honor,
11 LT 18-18, that the motion for reconsideration was filed
12 by Frances Opelle.

13 THE COURT: No. We're going to take up your
14 request with regard to the anti-suit.

15 MR. HALL: Yes, Your Honor. Frances Opelle
16 filed a separate motion for reconsideration.

17 THE COURT: The clerk just informed me before
18 we walked in that Ms. Opelle will not be able to
19 participate in this morning's telephonic proceedings.

20 MR. HALL: And I assume that her motion will
21 be submitted on --

22 THE COURT: Everything that's been filed will
23 be considered as well as what was said here this
24 morning. Then let's move on to the other matter.

25 MR. HALL: In regards to that matter, Your

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1 Honor, and Mr. Robin Kneubuhl's question to be on the
2 line, I would object. She is not involved in this
3 case, Your Honor.

4 MS. KNEUBUHL: Your Honor, I can't hear
5 Mr. Hall.

6 THE COURT: He objects to your being on the
7 line because the next matter --

8 MS. KNEUBUHL: I understand. What's the
9 Court's decision?

10 THE COURT: And we honor that request. We
11 will now exclude you.

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MS. KNEUBUHL: Thank you very much.

(Ms. Kneubuhl was not present for LT 20-13)

THE COURT: LT 20-13, and this is your motion, Counsel Hall. Again, we have read everything that you have filed --

MR. HALL: Yes, Your Honor.

THE COURT: -- as well as all of the responses that were filed in response to your filings. Is there anything else we need to hear?

MR. HALL: I would only add, Your Honor, that in regards to Rule 15, which provides for the amendment of pleadings upon application to the court, I would emphasize also that the rule also provides "or by consent of the adverse party."

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1 It was my recollection that a stipulation and
2 consent was signed by Mr. Fiti Sunia representing
3 Ms. Opelle and myself. And I'm not sure it -- I was
4 concerned that it may not have been in the court
5 filing, but last week I had come to the court and I had
6 checked the court file and it was on file, and it was
7 filed I believe on the same date as the amended
8 complaint. So I believe, Your Honor, that there was
9 compliance with Rule 15, and a stipulation and consent
10 of the adverse party was duly filed. It provides for
11 an alternative method of amending the complaint without
12 further action by the court or the issuance of a court
13 ruling.

14 THE COURT: What about Rule 21? That's the
15 rule that deals with adding or dropping parties.

16 MR. HALL: I'm not prepared to respond to that
17 in regards to my motion, Your Honor.

18 THE COURT: In looking at the motion to -- or
19 the stipulation to amend the complaint, you're correct,
20 that comes under Rule 15, but the stipulation and what
21 the amendment encompassed went beyond that. It amended
22 the complaint, and it also added parties. In fact, it
23 added two more parties, Douglas, Jr., I believe, and
24 Mark Kneubuhl.

25 MR. HALL: Your Honor, the stipulation was

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1 prepared by Counsel Sunia. I would not be able to
2 speak for him, but in regards to the consent to allow
3 the filing of the amended complaint, I did consent to
4 that. Whether there was a fault for not applying under
5 Rule 2021 to add additional parties, Your Honor, if
6 that was not complied with, that part can be stricken.

7 THE COURT: Very well. And the last thing, I
8 had the law clerk comb through the files, and I think
9 we're now on volume V in this particular case. Was the
10 stipulation that you folks had entered into to amend
11 the complaint -- was there an order from the Court
12 accompanying that?

13 MR. HALL: There was no order, Your Honor.

14 THE COURT: All right. Very well.

15 MR. HALL: And again, Your Honor, I did not

16 prepare the stipulation. I signed it. I reviewed the
17 rule. I thought that -- I've come to the conclusion
18 that as an alternative method for amending the
19 complaint, an order was not required.

20 THE COURT: Okay. We understand. Very well.
21 Thank you, Counsel hall.

22 For this matter, we'll also take it under
23 consideration and issue something in writing in the
24 next 30 days or so.

25 MR. HALL: Thank you, Your Honor.

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1 THE COURT: All right. Thank you. Let's take
2 a short recess.

3 (The proceedings were concluded at 9:26 A.M.)

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1 REPORTER'S CERTIFICATE

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3 I, Aliiao Aulava, a Certified Shorthand
4 Reporter, do hereby certify:

5 That said proceedings were taken before me at
6 the time and place therein set forth and were taken
7 down by me in shorthand and thereafter transcribed into
8 typewriting under my direction and supervision;

9 I further certify that I am neither counsel
10 for, nor related to, any party to said proceedings, nor
11 in any way interested in the outcome thereof.

12 In witness whereof, I have hereunto subscribed
13 my name.

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Dated: September 5, 2018

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Aliiao Aulava
CSR No. 12804

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