IN THE HIGH COURT OF AMERICAN SAMOA

LAND AND TITLES DIVISION

ROBIN KNEUBUHL ROUSH, FRANCES K. OPELLE and BENJAMIN "BEN" KNEUBUHL, JR., Plaintiffs, v. DOUGLAS C. "MIKE" KNEUBUHL, DOUGLAS KNEUBUHL, JR., CARRIE SUE KNEUBUHL LAVIGNE ECKERT and KELLY KNEUBUHL NADINE FULTS Defendants.	LT No. 18-18 [CA No. 28-13]† ORDER DENYING PLAINTIFFS' MOTIONS FOR RECONSIDERATION

Before PATEA,* Acting Associate Justice; MAMEA, Chief Associate Judge; and TUNUPOPO, Associate Judge.

Counsel: For Plaintiffs, Pro Se
For Defendants, Roy J.D. Hall, Jr.

We issued our Declaratory Judgment in this matter on July 9, 2018.[1] On July 17, 2018, Plaintiff Robin Kneubuhl ("Robin") filed her Motion for Reconsideration/Clarification ("Robin's Motion"). Two days later, Plaintiff Frances K. Opelle ("Frances") filed her own Motion for Reconsideration/Clarification ("Frances' Motion").

† On June 15, 2018, the court transferred Civil Action No. 28-13 to the Land and Titles Division, noting that the case related to land and should therefore be under the jurisdiction of the Land and Titles Division pursuant to A.S.C.A. § 3.0208(b). This case has since been referred to as LT No. 18-18.

* Honorable Elvis R. Pila Patea, Judge, District Court of American Samoa, serving by designation of the Secretary of the Interior.

[1] Our 25-page decision offers extensive treatment of the facts of this case. We shall not go back over well-trodden ground. We instead incorporate the facts and law as presented in our previous order. *See Roush v. Kneubuhl*, LT No. 18-18, slip op. (Land & Titles Div. July 9, 2018) (decl. j.). We also incorporate many of the abbreviations used in our July 9 order.

Although still on the same side of the "V" in the case caption, Plaintiffs appear to have been working at cross-purposes for some time now. Here, they raise separate issues in their respective Motions. In fact, on July 20, 2018, Robin filed an opposition reply brief, asking the court to deny Frances' Motion. Frances, for her part, filed a reply, both supporting and objecting to portions of Robin's Motion.

On August 15, 2018, Defendants filed their opposition to both Robin's Motion and Frances' Motion. A hearing was held on August 23, 2018.[2]

For the reasons stated below, we deny both Motions.

Legal Standard

"The court may grant a motion for reconsideration or a new trial based upon a manifest error of law or mistake of fact, a decision contrary to the clear weight of evidence, a decision that is manifestly unjust, an intervening change in the law, or the discovery of previously unavailable evidence." *Ala'ilima v. Am. Samoa Gov't*, CA No. 22-09, slip op. at 1 (Trial Div. Apr. 11, 2014)(order den. pls.' & defs.' mots. for recons.). "It is the responsibility of the movant to fully articulate his or her arguments in opposition to the original order and to provide the court with research and justification beyond unadorned, conclusory

[2] Frances did not participate during oral arguments at the hearing. Nonetheless, the court has carefully reviewed Frances' Motion.

statements." *Id.* A motion for reconsideration should not be used as "a vehicle for presenting theories or arguments that could have been advanced earlier." *Estate of Gaither ex rel. Gaither v. District of Columbia*, 771 F. Supp. 2d 5, 10 (D.D.C. 2011).

Discussion

Frances' Motion

Though her Motion is far from a paragon of clear writing, we gather that Frances attempts to raise four main arguments. First, she asks the court to find that the SGBs are not beneficiaries of the Trust. Second, if the SGBs are still found to be beneficiaries of the Trust, then Frances argues that they have no power to appoint or remove a trustee -- that power being reserved only to the FGBs. Third, Frances argues that, with respect to the requirement of "majority approval" of the beneficiaries for the transfer of the Trust Land by a trustee, the term "majority" refers to a majority of the FGBs only, and not to the SGBs. Lastly, Frances asks the court to clarify the legal term "equitable title," which she finds to be ambiguous.

To begin, Frances attempts to convince us that the SGBs are somehow not beneficiaries of the Trust. As the word suggests, a beneficiary is one "for whose benefit property is held in trust." RESTATEMENT (SECOND) OF TRUSTS § 3 (2012). The Trust specifically attempted to convey land in trust to Settlor's grandchildren. American Samoan law allows the issue of Settlor's children to hold

an interest in land under the Trust. The Trust Land is thus held in trust for the benefit of the SGBs, meaning that they are beneficiaries of the Trust. It is as simple as that. Nonetheless, Frances argues that the SGBs cannot be beneficiaries because they were not explicitly labeled as beneficiaries in prior court decisions concerning the Trust. But just because a court refrains from explicitly stating proposition "X" does not mean that a later court must necessarily find "Not X." We treat Frances' proposal for reading case law as an attempt to show a manifest error of law. However, such a reading would strain the rules of logic and we decline to follow it, especially considering that the SGBs are so clearly beneficiaries of the Trust.

Frances' second and third arguments, which both deal with the powers of the Trust's beneficiaries, can be addressed together. In our Declaratory Judgment we enumerated in full Plaintiffs' prayer for relief as found in their Complaint. None of the 11 declarations sought by Plaintiffs in their Complaint addresses the issue of Settlor's grandchildren's power to appoint a trustee or to vote on a decision to have a trustee sell the Trust Land. Nor was such a determination necessary to our resolution of any of Plaintiffs' claims. It is improper for Frances to raise these issues at this stage and we will not address them here. *See Estate of Gaither*, 771 F. Supp. 2d at 10.

Lastly, Frances' request that the court clarify what she finds to be an "ambiguous" term is, quite frankly, baffling. Motions to clarify a previous ruling are, admittedly, not unheard of in the federal courts. *See, e.g., Am. Home Assurance Co. v. Pope,* 487 F.3d 590, 604 (8th Cir. 2007) (noting the trial court's ruling on such a motion); *Cook, Inc. v. Bos. Sci. Corp.*, No. 01 C 9479, 2002 U.S. Dist. LEXIS 4333, at *4 (N.D. Ill. Mar. 18, 2002) (granting the plaintiff's motion to clarify). But here, Frances requests that the court supply the parties with the definition of a well-known legal term of art. We recognize that Plaintiffs are pro se parties, but the court does not serve as a functionary who provides legal information that is widely and readily available.

Frances' Motion is therefore denied.

Robin's Motion

In our analysis and application of A.S.C.A. § 37.0205 -- a statute which was at the very heart of this trust dispute -- we read the word "issue" in the statute to mean "biological child(ren)." To put it another way, we offered a modern synonym ("biological child") for an older word that often only appears in statutes and other legal texts ("issue"). Robin raises four problems with our doing so.[3] First, Robin argues that "the term

[3] We should note that the worry animating Robin's Motion is that certain of Settlor's grandchildren would not be viewed as SGBs per our recent Declaratory Judgment. Robin states that there are five adopted grandchildren who, under our reading of A.S.C.A. § 37.0205, would have no rights to the Trust Land.

'biological' is not grounded in any claim or request for relief, nor litigated at trial or tried by consent of the parties, and therefore not susceptible or available to constitute the relief of modification of a term." Second, Robin argues that, because the term "biological" is a so-called "judicially added term," our ruling "contravenes the applicable Canons of Construction requiring restraint in statutory interpretation." Third, Robin argues that "the word 'issue' as used is out of date and presently of little or no legal significance, but when modified by 'biological' has significant deleterious effect." Lastly, Robin argues that "American Samoan jurisprudence and customary law are judicially inclusive of adoptees, and use of these two terms together made presently applicable to trust law[] does not reflect current circumstances or practice with regard to them." As we explain below, all of these arguments must fail.

A.) "Term Not Grounded in Any Claim/Request for Relief"

To begin, Robin is mistaken in thinking that we "modified" a statutory term and thereby raised an issue that was not put before us in the Complaint. Plaintiffs brought this action to seek "a declaration of [their] rights and duties, including a determination of any question of construction or validity arising under an instrument or contract." A.S.C.A. § 43.1101. In their Complaint, Plaintiffs sought three specific declarations that bear repeating in this order: "[1] A declaration that the grandchildren

of Adeline Pritchard Kneubuhl obtained a vested beneficial life estate in the Land Trust upon the execution of the Land Trust document on August 15, 1960; [2] A declaration that upon the death of a named beneficiary of the Land Trust, the beneficial interest held by that beneficiary is terminated and results in a life estate in his or her children; and [3] A declaration that any beneficial interest conveyed by a beneficiary during his or her lifetime terminates upon the death of that beneficiary[] and that his or her beneficial interests devolves [sic] to his or his or her [sic] children as a life estate."

As we made clear in our Declaratory Judgment, as non-Samoans, the beneficiaries can only hold interests in the Trust Land pursuant to A.S.C.A. § 37.0205, which states in full:

> [The restriction on alienation of native lands] shall not apply to any native proprietor of land other than communal family land, who desires to make provision for his son or daughter, in view of legal marriage with a nonnative, or for his son or daughter already married to a nonnative, *or for any of the issue of any such marriage*, by deed or will in favor of a trustee to hold in trust for the use of such son or daughter *or such issue.*

(emphasis added). Thus, A.S.C.A. § 37.0205 was plainly at the very heart of the dispute in this case, for the rights of the beneficiaries would necessarily depend upon this court's interpretation of the statutory language found in the exception to the general restriction on alienation of native lands. The statute specifically identifies those who are able to hold interests in

real property under this narrow exception: 1) the "son or daughter" of a "native proprietor" and 2) the "issue" of a "legal marriage" between the native proprietor's child and a "nonnative." It appears that Robin failed to parse this critical statutory language.

Moreover, the definition of "issue" was a key part of evaluating and ruling on the merits of Plaintiffs' claims. The Complaint sought declarations that 1) Settlor's "grandchildren" would take equitable title to Trust Land, and 2) that the "children" of an FGB take an equitable interest in the Trust Land upon the death of their parent. In order to resolve these questions, the court was required to clarify that the word children (or grandchildren) may not necessarily mean the same thing as "issue." Pursuant to A.S.C.A. § 37.0205, not *all* of an FGB's potential "children" would take an equitable interest in the Trust Land. The addition of the word "biological" was thus necessary so as to avoid an incorrect and misleading statement of the law when we resolved the claims that were properly raised by Plaintiffs in their Complaint. The declarations sought by Plaintiffs, though mostly correct, were nonetheless erroneous formulations of the statutory law of this Territory; and we refuse to sign an opinion that is inconsistent with the law. *See* A.S.C.A. § 3.0202(a) (making clear that the High Court has the power to issue orders that are "not inconsistent with law").

B.) "Term Contravenes Canons of Construction"

In her second argument, Robin cites to the so-called "Omitted Case Canon," which she says stands for the proposition that, when a court is engaged in statutory construction, "[n]othing is to be added to what the text states or reasonably implies. That is, a matter not covered is to be treated as a matter not covered." Robin cites no caselaw for this statutory canon, citing only to a book written by former Supreme Court Justice Antonin Scalia. *See* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS (2012). We ourselves found an Eleventh Circuit Court of Appeals case where the doctrine was employed. *See Samak v. Warden, FCC Coleman-Medium*, 766 F.3d 1271, 1289 (11th Cir. 2014). In *Samak*, the court cited to the Omitted Case Canon when it declined to find that a federal statute, which specifically allowed prisoners to file successive petitions "only for new rules of *constitutional* law," could be read to also mean that prisoners could file successive petitions for "new rules of *statutory* law." *Id.* The court went on to say that "where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied[] in the absence of evidence of a contrary legislative intent." *Id.* (quoting *TRW Inc. v. Andrews*, 534 U.S. 19, 28, (2001)).

Ironically, application of the Omitted Case Canon buttresses our interpretation of the word "issue." As with the statute in

Samak, the word "issue" is a narrow exception to a general rule. Expanding this exception, so that it also meant "adopted children," would be to imply additional exceptions "in the absence of evidence of a contrary legislative intent." Just as Congress was fully capable of saying both "constitutional law" and "statutory law" in the statute at issue in *Samak*, so too was the *Fono* capable of using the phrase "adopted child" in addition to the term "issue." The *Fono* did not do so, and Robin gives us no evidence of an intent on the part of the *Fono* for including adopted children in the language of A.S.C.A. § 37.0205.

Robin's citing of the Omitted Case Canon rests on the erroneous premise that, by reading "issue" to mean "biological child," the court added something to the statute which the text does not state or reasonably imply. Quite to the contrary, a synonym for a statutory word, to the extent it is faithful to the statutory language, should not be viewed as an improper addition to a statutory text. *See, e.g., Tyler v. Cain*, 533 U.S. 656, 664, 121 S. Ct. 2478, 2483 (2001) ("Congress, needless to say, is permitted to use synonyms in a statute"); *All Party Parliamentary Grp. v. United States DOD*, 754 F.3d 1047, 1051 (2014) ("[w]here, as here, two words share at least one common meaning, we read nothing into Congress's use of one rather than the other"); *United States v. Rodriguez*, 360 F.3d 949, 959 (9th Cir. 2004) (the word "interfere," though not in the statute, "is a clear synonym for

the terms that are"). For example, if a statute required all employees of the local Department of Public Safety to wear blue, a ruling by the court that police officers are required to wear blue would not be improper under the Omitted Case Doctrine; the court would have merely identified the obvious fact that police officers are indeed employees of the Department of Public Safety. To say that such standard statutory analysis amounts to an improper "adding" to the text is, simply put, absurd.

C.) "Term Has Significant Deleterious Effect" & "Term Does Not Reflect Current Circumstances or Practice"

Robin's last two arguments, which deal with the meaning of the term "issue," can be addressed together. Robin argues that "issue" should be read to include "adopted children" because "the word 'issue' has evolved over time," and because in "American Samoan Jurisprudence and Customary Law," the "exclusion" of adoptees is not favored. To bolster the first part of this argument, Robin informs the court that "[n]umerous jurisdictions now recognize adoptees as legally equivalent in *all* ways to their non-adopted siblings." As for the second part of the argument, Robin points to instances (unrelated to A.S.C.A § 37.0205) in which "American Samoa case law has advanced faster than the trust enabling statute." *See, e.g., Leasiolagi v. Fao*, 2 A.S.R. 451, 442-53 (Trial Div. 1949) (holding, in a case that had nothing to do with A.S.C.A. § 37.0205, that children adopted in accordance

with Samoan custom would be considered members of the adopting family).

To address Robin's arguments, we begin with two "cardinal rules" of statutory construction: "first that 'statutory construction must begin with the language employed by [the legislature] and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose,' *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194, 105 S. Ct. 658, 83 L. Ed. 2d 582 (1985); and, second, that 'we begin with the understanding that [the legislature] says in a statute what it means and means in a statute what it says there," *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6, 120 S. Ct. 1942, 147 L. Ed. 2d 1 (2000)." *Shi Liang Lin v. United States DOJ*, 494 F.3d 296, 305 (2d Cir. 2007).

When listing those non-Samoans who can hold equitable title to land in the Territory, the *Fono* specifically identified two groups: 1) a "son" and/or "daughter" of a native proprietor; and 2) the "issue" of a legal marriage between such son/daughter and a non-Samoan. A.S.C.A. § 37.0205. Had the *Fono* wished to use the more inclusive terms "grandchild" or "adopted child of such son/daughter," then it could have easily done so. *See, e.g., Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 7, 120 S. Ct. 1942, 1947 (2000) ("had Congress intended the provision to be broadly available, it could simply have said

so"). Tellingly, the *Fono* switched language in the middle of the statute, using the terms "son" and "daughter" for FGBs and the term "issue" for SGBs. This insistence on using the term "issue," instead of the readily available terms "grandson" and/or "granddaughter," is a good indication of the *Fono*'s intent to employ a more specific legal term.

In her argument Robin admits that, at least in the past, the term "issue" did in fact mean "lineal descendants; offspring," as so defined in our Declaratory Judgment. *See* BLACK'S LAW DICTIONARY 850 (8th ed. 2004). Robin states in her Motion that in 1960, when the Trust was created,[4] "the word 'issue' meant 'heirs of the body' [and] the presumption that a genetic relationship coincides with a natural birth or a 'lawful marriage' was prevalent." Robin goes on to admit: "[i]t is obviously no good legal argument in a Motion for Reconsideration to say that 'times have changed,' that the chosen words are outdated[,] or to speculate that the complexity of present day parentage renders the statute unenforceable." We agree. It is a fundamental canon of statutory construction that words shall be interpreted as taking their ordinary, contemporary, common meaning *at the time the statute was enacted.* *Perrin v.*

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[4] Of course, the language here is statutory. It is of little legal relevance what the word "issue" might have meant when Settlor created the Trust in 1960. As we have mentioned before, and as the parties in this case continue to forget, the laws of this Territory will defeat the intentions of Settlor when there is a conflict between the two.

United States, 444 U.S. 37, 42-43 (1979). Consequently, we continue to hold that when, in 1949, the *Fono* used the phrase *issue of a legal marriage*, it meant to say the *biological children* of such marriage. If Robin finds such language anachronistic, the proper forum for seeking an amendment reflective of "changing social conventions" is before the *Fono*, not this court.

Robin's Motion is thus denied.[5]

Order

Plaintiffs' motions for reconsideration are hereby denied.

Because Plaintiffs are located off-island and are representing themselves, the court, as a courtesy, will email a digital copy of this order to the parties. We do so to accommodate those who might wish to appeal our Declaratory Judgment, so that they might more easily comply with the requirements for filing a timely appeal. Of course, we are not the appellate court; and as such, we have no say over whether any potential appeal is timely.

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[5] In addition to her main arguments, Robin, almost as an aside, also raises the specter of conflict of laws issues, which she predicts will arise in the future as a result of our Declaratory Judgment. She states: "SGBs were mostly born off island and the possibility is undeniable that the second generation beneficiaries could assert the laws of their birth states where they are deemed to be 'natural children,' thereby presenting new conflict of law issues requiring disparate treatment under the statute in American Samoa." If that is so, then the High Court will address such issues when and if they arise. We note here, however, that it seems incredibly unlikely that foreign courts would have any right to tell this court how to read the Territory's statutes on alienation of real property. At any rate, the statutory language is controlling on this issue, and we will not be swayed otherwise by the possibility of future off-island litigation.

Parties should comply with our statutes and rules if they wish to successfully file an appeal.

It is so ordered.

Dated: September 11, 2018

ELVIS R. PILA PATEA
Acting Associate Justice

MAMEA SALA, JR.
Chief Associate Judge

TUNUPOPO ALAALAFAGA TUNUPOPO
Associate Judge

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