

St. Regis Mohawk Tribal Court

Lorie David,)	
Appellant)	DECISION AND ORDER
)	
-V-)	Case No.: 11-LND-00003
)	
Charity Benedict,)	
Respondent)	

Procedural History

On April 14th, 2011 Ms. Lorie David on behalf of herself filed an appeal of a St. Regis Mohawk Land Dispute Tribunal (hereinafter SRMT LDT) decision dated March 18th, 2011 in St. Regis Mohawk Tribal Court.

Following several pre-trial conferences held in St. Regis Mohawk Tribal Court, a decision was rendered by the Court on June 12th, 2013 regarding a potential additional heir to the estate of Mr. Michael David who passed away intestate on July 18th, 2009. On September 5th, 2014 the Court sent a letter to the parties respective counsels regarding this issue.

Factual Background

On August 7th, 2003 Ms. Lorie David purchased two (2) acres of property from Mr. Rudy Hart. This property is known as Lot #703-F. *See*, SRMT Use and Occupancy Deed August 7th, 2003. On September 13th, 2005 Ms. Lorie David transfers 2 acres known as Lot #703 to Mr. Michael David (son) and an SRMT Use and Occupancy Deed was issued to Mr. David for Lot #703-F. This lot is now known in the SRMT Tribal Clerk's records as Lot #703-F-1. *See*, SRMT Use and Occupancy Deed September 7th, 2005.

In 2005 a trailer was placed on Lot #703-F-1 in which Ms. Lorie David resided. *See*, Record Audio SRMT LDT Hearings. Following this, in 2007 Mr. Michael David began constructing a garage on the property known as Lot #703-F-1. *See*, Record Audio SRMT LDT Hearings. During the process of constructing the garage located on Lot #703-F-1, Mr. Michael David decided to build a living space above the garage that would serve as a residence. *See*, Record Audio SRMT LDT Hearings.

On July 18th, 2009 Mr. Michael David passed away intestate. Mr. David was an enrolled member of the St. Regis Mohawk Tribe. The Indian Time Newspaper printed an obituary for Mr. David on July 23rd, 2009 in which two minor children were listed as Mr. David's children. The minor son, Baby B was born on November 30th, 2001 and Mr. Michael David is listed as Baby B's father on the minor son's SRMT membership

application. *See*, SRMT Membership Application March 1st, 2002. Baby B is an enrolled SRMT member. The minor daughter Baby A, was born on January 21st, 2008. Mr. Michael David is listed as the father of minor daughter Baby A's SRMT membership application. *See*, SRMT Membership Application September 2nd, 2010. Baby A is an enrolled SRMT member.

Following Mr. David's death, his mother Ms. Lorie David was issued letters of administration for the estate of her son (Michael David). *See*, SRMT Appointment of Administrator August 20th, 2009.

On September 8th, 2009, the St. Regis Mohawk Tribe on behalf of the Estate of Michael Joey David, issued an SRMT Use and Occupancy Deed to Ms. Lorie David for the property known as Lot #703-F-1. *See*, SRMT Use and Occupancy Deed September 8th, 2009.

On November 15th, 2010 Ms. Charity Benedict on behalf of her daughter Baby A, filed a land dispute complaint with the SRMT LDT. *See*, SRMT LDT Complaint September 15th, 2010. In her complaint, Ms. Benedict states that, "Baby A is the only heir to the estate of Michael Joey David Lot #703-F-1 which is currently in Lorie David (mother) I would like to transfer title to his child heir". *See*, Land Dispute Complaint Form November 15, 2010.

On March 18th, 2011 the SRMT LDT issued a decision that states that "Baby A is entitled to Lot #703-F-1....and to include any and all buildings on said property". *See*, SRMT LDT Decision March 18th, 2011.

Following the SRMT LDT decision, Ms. Lorie David filed an appeal in St. Regis Mohawk Tribal Court on April 14th, 2011. *See*, Notice of Appeal April 14th, 2011.

After several pre-trial conferences, the SRMT Court rendered a decision on the fact that there is another potential heir to the estate of Mr. Michael David's estate. *See*, SRMT Court Decision on Heir June 12th, 2013. On September 5th, 2014 we followed this up with another letter in response to purported DNA testing tending to show that Baby B is not Decedent's biological child.

Discussion

Counsel for Appellant, Ms. Lori David, first point on appeal is that "The Use and Occupancy Deed of September 8, 2009 is valid, subsisting and binding." *See* Appellants brief at p. 4.

We can begin by recognizing, as the appellant argues, that issuance of the September 8, 2009 SRMT Use and Occupancy Deed to the appellant appears to have been a valid exercise of SRMT authorities as they existed on the date that the deed was issued, which was prior to passage of the SRMT Land Dispute Resolution Ordinance (hereinafter LDRO). *See* Hathaway v. Thomas 12-LND-00007. It was this Sept. 8, 2009

deed which the respondent, Ms. Charity Benedict, asked the SRMT Land Dispute Tribunal (hereinafter LDT) to review under the SRMT LDRO. Therefore, we can agree with the appellant on two points, that the September 8, 2009 deed was validly issued and that it subsisted up until the time the SRMT LDT reviewed it. It is the 'binding' nature of the September 8, 2009 deed which we must now address.

Initially we note that the LDRO provides "persons"¹ may file a land dispute which can include a review of a prior Tribal Council decision:

"C. Review of Tribal Council Decisions

1. The Tribal Court may review any appeal from a Tribal Council Final Decision made no more than ten (10) years prior to the Effective Date of this Ordinance.
2. The Tribal Court shall take a fresh look at land dispute decisions rendered by Tribal Council and may request evidence or testimony as necessary to develop a full and complete record of information upon which to base its final decision, which shall not be subject to appeal." *See* SRMT LDRO (XV)(C)(1.)(2.)

Based upon these LDRO provisions we can begin by noting that 'review' of respondent's land dispute complaint perhaps should have been initiated in SRMT Court and not the SRMT LDT. Although we find that to be the appropriate mechanism we do not consider this a fatal flaw to these proceedings as the SRMT LDT has followed the LDRO in addressing this case. *See* SRMT LDRO (VII), (VIII), and (XIV). Furthermore, at the conclusion of the SRMT LDT proceedings either party may file an appeal to the SRMT Court, *See* SRMT LDRO (XV). This has occurred in this case. Finally, as we have noted in our decisions, in determining appeals from the SRMT LDT the SRMT Court does not have remand authority to return a case to the SRMT LDT, in it's place the SRMT Court "...may vacate the [LDT] decision and substitute its own decision.." *See* SRMT LDRO XV (B.) [*our note*]. Therefore, although this matter has taken a circuitous route to the SRMT Court via the SRMT LDT, we find it is properly before the Court and we render this decision.

Nowhere in the SRMT LDRO is there a definition provided as to what exactly constitutes a "Tribal Council Decision".² In other land dispute cases we have read "decisions' broadly to include virtually any SRMT "decision" which has an effect on land, including those rendered prior to passage of the SRMT LDRO. *See* *White v. White* 10-LND-00009, *Ransom v Jacobs* 10-LND-00002, *Cook v. Cook* 13-CIV-00006, *Hathaway v Thomas* 12-LND-00007. Therefore, we find that the respondent's complaint with respect to the SRMT "decision" to issue appellant the September 8, 2009 Use and

¹ *See* SRMT LDRO VII (A.) "A person filing a Land Dispute...", and SRMT LDRO VI (A)(1.)-(3.), permitting ("may") enrolled members to file disputes, and in certain instances, non-members to file land disputes as well.

² There is a definition for Tribal Council Final Decision: "a Tribal Council Final Decision is the most recent decision rendered on a land dispute that was approved by the majority of Tribal Council at the time it was rendered; this includes decisions rendered by the Tribal Councils within ten (10) years prior to the Effective Date of this Ordinance." *See* SRMT LDRO IV Definitions

Occupancy deed was proper under the SRMT LDRO as that is a "Tribal Council Decision" under the LDRO.

In this appeal we are forced to address the situation where the SRMT has issued a SRMT Use and Occupancy deed prior to passage and implementation of the SRMT LDRO, and whether a person who was affected by that action may request a review of that action under the SRMT LDRO. To address this we return to SRMT LDRO (XV)(C)(1.) which provides:

"C. Review of Tribal Council Decisions

1. The Tribal Court may review any appeal from a Tribal Council Final Decision made no more than ten (10) years prior to the Effective Date of this Ordinance."

This makes clear that pursuant to the SRMT LDRO a review of a Use and Occupancy Deed issued by the SRMT, which is a "Tribal Council Decision", "Made no more than ten (10) years prior to the Effective Date of this Ordinance" IS permitted. Thus, Respondent was within her rights under the LDRO to request a review of the SRMT Council decision to issue the September 8, 2009 deed to the Appellant. In addition, we can note that passage and implementation of the LDRO was ratified by the SRMT Council and if that body desired to not permit their prior "decisions" to be subject to 'review', then the SRMT could have simply prohibited such actions. They did not, and as the foregoing provision makes clear, they have effectively 'opened the door' for such actions under the LDRO. Furthermore, under the SRMT LDRO (See (XV)(C).(1).(2.)) it is clearly provided that the SRMT Court is the only forum which can provide a 'review' requested by the Respondent in her initial complaint of the Sept. 8, 2009 deed.

Our reading of the LDRO in this manner is supported by other provisions as well:

"Pursuant to the referendum held on June 6, 2009 this authority [*to make land dispute decision(s)*] is hereby delegated to a Land Dispute Tribunal and the Tribal Court, which shall have the authority to render final decisions." See SRMT LDRO Article II [*our note*].

And,

"Henceforth, no case may be presented directly to, nor may any case be taken directly by Tribal Council." See SRMT LDRO XIII(D).(5.).

These provisions clarify that in seeking review of a land dispute, or the issuance of a deed made prior to passage and implementation of the SRMT LDRO, can only be made to the SRMT LDT or SRMT Court respectively.³ To ensure compliance with these provisions the SRMT LDRO provides:

³ Recall that, as we have found in this decision, review of Tribal Council Decisions is only permitted in SRMT Court. See SRMT LDRO (XV)(C)(1).(2.)

"Failure of the Tribal Council to issue a deed pursuant to a valid Tribunal or Tribal Court decision and order shall be a per se violation of the Ethics Ordinance and shall result in appropriate sanctions." *Id* at (6.).

To conclude on this point, it is clear that the LDRO permits actions to review, in SRMT Court, deeds issued by the SRMT prior to ratification and implementation of the SRMT LDRO. This would include the review requested by the Respondent.

Appellant's next point on appeal is that the Respondent did not raise any allegation that there was "fraud, deceit, coercion, or duress" in the issuance of the September 8, 2009 SRMT Use and Occupancy Deed. Here the appellant is referencing the following LDRO provision:

"Use and Occupancy Deed- A Use and Occupancy Deed is an official Tribal document granting the holder the right to use and occupy land, signed by the Tribal Council and certified by the Tribal Clerk.

1. In the event that a land dispute should arise over the issuance of a deed, the deed that is recorded first with the Tribal Clerk of the St. Regis Mohawk Tribe will supersede all other deeds.
2. The issuance of deeds is not challengeable *unless the deeds are found to have been issued due to, but not limited to the following: fraud, deceit, coercion, or duress.* The Tribal Council reserves the right to correct or amend deeds due to error. All recorded deeds must bear the signature of the Tribal Council along with signatures and seal of the Tribal Clerk." *See SRMT LDRO V (F.) [our emphasis]*

In a recent case interpreting this provision, *Hathaway v. Thomas* 12-LND-00007, we recognized that although subsection (2.) begins with the phrase that "The issuance of deeds is not challengeable...", we found that this simply meant that all prior [pre-LDRO] issued SRMT Use and Occupancy deeds which are "not in dispute" are "presumptively valid". *See SRMT LDRO V(A.)* In fact, the LDRO is the mechanism which provides the opportunity to put a Use and Occupancy Deeds "in dispute". *See Hathaway.*

Our reading of this provision is supported by the additional language used in subsection (2.) that "unless the deeds are found to have been issued due to, but not limited to the following: fraud, deceit, coercion, or duress." Therefore, the LDRO at a minimum recognizes at least four (4) grounds in which to request the SRMT LDT or SRMT Court to 'review' an issued SRMT Use and Occupancy Deed. In addition, under the LDRO a person making such a request for review is "not limited to" those four (4) grounds. In fact, in *Hathaway* we added "mistake" as a fifth ground in which to put a SRMT Use and Occupancy deed into "dispute". Supporting our finding in *Hathaway* was the next sentence used in subsection (2.): "The Tribal Council reserves the right to correct or amend deeds due to error." In *Hathaway* we recognized that if there was no review of

these "presumptively valid" SRMT Use and Occupancy deeds, how could there ever be an error which needs, or is capable of, correcting. It was in this light that we recognized "mistake" as being an additional ground in which to challenge an issued SRMT Use and Occupancy Deed.⁴

The case at bar is unique in that the Respondent has not asked for a review of the September 8, 2009 issued deed to the appellant based upon the four (4) enumerated grounds provided in the LDRO, or a review based upon "mistake" which we have recognized since our decision in *Hathaway*. In its place, the Respondent in her initial application to the SRMT LDT, requested a review based upon other language contained in the LDRO, which brings us to the next point raised by Appellant, which provides the grounds upon which Respondent challenged the SRMT decision to issue the September 8, 2009 Use and Occupancy Deed.

Counsel for Appellant provides that "The Intestate Provisions of the Land Dispute Resolution Ordinance were not in effect on the date of the Issuance of the Deed.", which we read to mean the September 8, 2009 deed. Respondent in her initial filing with the SRMT LDT provided that:

"Baby A⁵ is the only heir to the estate of Michael Joey David. Lot 703-F-1 which is currently in Lorie Anne David (mother) I would like to transfer title to his child/heir Baby A ." See Respondent's Jan 15, 2010 SRMT Land Dispute Complaint form

The land dispute complaint completed by the Respondent sounds very similar to language which is utilized in the LDRO for intestate distribution:

"E. Intestate Distribution – when a Tribal member dies without leaving a Will, their real property located on the Reservation shall pass to Tribal members as follows:

1. The surviving Tribal member spouse shall inherit the possessory interest formally held by the deceased spouse.
2. *If there is no surviving Tribal member spouse, the surviving Tribal member children shall receive equal possessory interests in tribal lands formally held by a deceased tribal member parent.*
3. In any case where minor children may be entitled to a possessory interest, the land shall be held in trust by a Legal Guardian until they reach the age of maturity, which is 18 years old.

⁴ In *Hathaway* that was in fact what we found in our review of the deed at issue there, whereby a deed which should have been for an estimated 4.5-5.5 acre was expanded to 9.5 acres.

⁵ In this decision we will not utilize the names of the minor children as it has no effect on the outcome of this decision.

4. If there is no surviving Tribal member spouse or Tribal member children of the deceased, Tribal member grandchildren shall receive equal possessory interests.
5. If there is no surviving spouse or descendants, the parents of the deceased shall receive the possessory interest.
6. In the event that a deceased Tribal member has no Tribal member spouse, children, or grandchildren, or parents, the surviving brothers and sisters, then the surviving nieces or nephews shall receive equal possessory interests in tribal land formally held by the deceased tribal member.
7. If there are no survivors of the deceased Tribal member, the property shall revert back to the Tribe." *See* LDRO (V) General Provisions, (E.) Intestate Distribution. [*our empahsis*]⁶

This provision appears in the "General Provisions" of the LDRO and there is no indication in the LDRO if this permits a cause of action for a person who may have not received a portion of an estate due to the failure of the SRMT to issue a Use and Occupancy Deed in accordance with this provision.⁷ Likewise, there is no indication if this is to apply in the context of a SRMT member⁸ seeking to have this provision applied to an SRMT "decision" to issue a Use and Occupancy Deed PRIOR to the ratification and implementation of the LDRO.

In this appeal, Counsel for Appellant argues that the SRMT action of issuing the Sept. 8, 2009 deed to Appellant is not appropriately before this Court on review because it was a valid exercise of SRMT authority, and therefore the SRMT LDT committed an error when they overturned this deed and gave the property to *Baby A*. Counsel for Respondent argues that the initial appointment of Appellant, Ms. Lori David, as administrator of decedent's estate was an error (which permitted her to acquire the Sept. 8, 2009 deed), and was not consistent with SRMT law, and the deed should be deemed invalid based upon a purported 1995 SRMT law.

As we have discussed, the LDRO permits actions to be commenced in SRMT Court to review a Tribal Council decision. *See*, SRMT LDRO XV (C) (1) (2). This includes SRMT Council decisions which occurred ten (10) years prior to the ratification and implementation of the LDRO. *See*, SRMT LDRO XV (C) (1). Further, such actions

⁶ Respondent, as her complaint makes clear, is actually bringing this claim on behalf of the infant child she had with the decedent. This is necessary as it appears that Respondent and Decedent were never married. *See* SRMT LDRO definitions: "Spouse- the St. Regis Mohawk Tribe does not recognize 'common law' marriage and so for purposes of this Ordinance, spouse shall refer to the legally married husband or wife."

⁷ In that this provision does not appear to be a "fraud, deceit, coercion, or duress" as that term is used in the LDRO to challenge an issued deed.

⁸ In this context, the Respondent's claim is in fact for the minor child of the decedent (*Baby A*) pursuant to (3) above.

are "not limited to the following: fraud, deceit, coercion, or duress." See, SRMT LDRO V (F) (2). As such, we do not read the LDRO as containing any provision which would prohibit the Respondent from raising the claim which she made in her original complaint filed in this matter, even though it relates to an SRMT decision made prior to passage and implementation of the LDRO. Like our prior discussion, we note that the SRMT could have limited the application of the 'General Provisions' section of the LDRO with respect to 'reviews' of pre LDRO SRMT decisions. In our reading of the LDRO we see no such limitation.

With respect to this issue, Appellant also argues that permitting this type of action "would be bad public policy to allow the decisions of the Chiefs to be retroactively undone on laws that did not exist on the date of the first and challenged action." See Appellants submission at p.6. In this regard we take no position with respect to public policy, we must simply apply the law that has been provided with respect to land disputes. Doing so in the case at bar we find that it is the SRMT itself, with passage of the LDRO, which permits actions like the one at bar. See also Hathaway v. Thomas 12-LND-00007. Based upon the foregoing we find that Respondent can challenge the issuance of the September 8, 2009 deed to the Appellant based upon the grounds provided in the LDRO. To deny Respondent's request for review would make the LDRO provision[s] meaningless.

With respect to Counsel for Respondent's arguments, we can first note that we have found that decisions of the SRMT with respect to the handling of intestate matters was consistent with their authorities as they existed when the September 8, 2009 deed was issued. *Infra/supra*. However, we have also found that the LDRO now permits an aggrieved party to seek review of those SRMT decisions. *Supra*. Therefore, we do not need to address the applicability of the law cited in Respondent's appeal submission with regards to the decedent's estate.

Next, both Appellant's and Respondent's submissions request this Court to exercise its equitable powers in deciding the matter at bar. Before we address these equity arguments, we will first review an issue that has been a part of this case since it arrival at the SRMT Court.

Multiple Heirs:

Upon initial review of this matter. See, SRMT Court Decision on Heir David v Benedict 10-LND-00003, noted that although the SRMT LDT decision included in its evidentiary list an obituary notice which indicated the decedent had two (2) children, that issue was NOT addressed in their subsequent decision in this matter. It must be noted that Counsel for Appellant raised this fact in their appeal submission, and they also raised an issue with respect to the statement of live birth documents for *Baby A*. See, Brief for Appellant Lorie David Point V.

In light of this the Court caused to be conducted a preliminary hearing with respect to this issue, and wrote a preliminary decision with respect to the LDT's failure to

address the 'second child'. In that decision we recognized that this other child, *Baby B*⁹, should have been notified as an 'interested person' under the LDRO. *See* LDRO at IV (F), VIII (B) (3), IX (A) (1), XIII (C) (1) (2), XIII (D) (3). Subsequent to that decision, the Court received further correspondence from the Respondent with respect to the decedent's alleged and/or apparent biological NON-parentage of the children at issue.¹⁰ Based upon these inquiries the Court prepared a letter response for both parties to explain the Courts understanding of these issues under the LDRO.¹¹ We now incorporate our letter response into this decision:

"The SRMT Land Dispute Resolution Ordinance (LDRO) includes the following provisions with respect to child(ren):

"Child(ren)/grandchildren- refers to natural born, legally adopted, step or grandchild, as long as the child is a Tribal member." [our emphasis] *See*, SRMT LDRO IV (B.)

Next, under the General Provisions of the LDRO is Par. (B.) that provides:

"**Only Tribally enrolled members** shall be permitted to possess a Use and Occupancy Deed to otherwise own land on the Reservation." [our emphasis]

The next section which was relied upon by the SRMT Land Dispute Tribunal in their March/2011 decision:

"E. Intestate Distribution – when a Tribal member dies without leaving a Will, their real property located on the Reservation *shall pass to Tribal members* as follows:

1. ...
2. If there is no surviving tribal member spouse, the surviving Tribal member children shall receive equal possessory interests in tribal lands formally held by a deceased tribal member parent.
3. In *any case where minor children* may be entitled to a possessory interest, the land shall be held in trust by a Legal Guardian until they reach the age of maturity, which is 18 years old.

⁹ Like *Baby A*, the use of the minor child's name (*Baby B*) is not relevant and has no effect on the outcome of the case.

¹⁰ These issues included a purported DNA test which would seem to indicate that the decedent is NOT the biological father of *Baby B*, and a request to direct the Court's attention to questions with respect to issues centered upon the statement of live birth for *Baby A*.

¹¹ *See*, September 5, 2014 Letter to Parties Counsel.

4. If there is no surviving Tribal member spouse or Tribal member children of the Deceased, Tribal member grandchildren shall receive equal possessory interests.

5. If there is no surviving spouse or descendants, the parents of the deceased shall Deceased shall receive it's possessory interest." See, SRMT LDRO V (E).

It is these provisions that do not permit us to definitively hold that in relation to land disputes that come to the SRMT Court or SRMT Land Dispute Tribunal, that the sole and exclusive issue to determine is 'biological parentage' to make a determination as to who should have rights to property on the Reservation. The foregoing provisions clearly indicate that there is the pertinent question of SRMT enrollment.

With respect to 'biological parentage' and SRMT enrollment, we point the parties' attention to the following which appears in the SRMT Family Support Act:

"Establishment of paternity under this section *has no effect* on Tribal enrollment or membership." See SRMT FSA Section II Paternity Establishment (8.) (VI).

Therefore, although the SRMT Court under the Family Support Act has the jurisdiction to determine paternity (even by DNA testing) and to set a child support order, this has NO effect on the enrollment of the affected child(ren). We have searched other SRMT laws that are publicly available, (See srmt-nsn.gov) and it does not appear there are any other authorities with respect to 'enrollment' determinations. Therefore, although both parties to this matter can raise issues with respect to the 'biological parentage' of the children and the decedent named in this action, based upon the foregoing provisions of the SRMT LDRO, coupled with the provision of the FSA, the primary issue is one of enrollment. In fact, the SRMT LDRO speaks primarily to 'enrolled' members of the SRMT.

It is at this point that the record of the case is problematic. The record of the case before us was devoid of any information with respect to SRMT 'enrollment' prior to the rendering of the March/2011 decision by the SRMT Land Dispute Tribunal. We bring this to light as the following provisions are contained in the SRMT LDRO.

"The Tribunal possesses the authority to hear all aspects of a Land Dispute Case." [our emphasis] See SRMT LDRO VII (B).

Next, it appears the information necessary to decide the enrollment/heir issue[s] should have been addressed prior to this appeal and our consideration as the following LDRO provisions provides:

"B. In addition, the Tribal Clerk, or any of the Clerk's designees, shall research and retrieve any and all known documents held and maintained by the Tribal Clerk's Office with respect to the land dispute, and add certified copies of these

documents to the case file. This may include prior Council determinations, interpretation of discovered documents, completion of family trees, and whatever else competent, relevant, and necessary for the Tribunal to render its decision, all of which shall be added to case file." See SRMT LDRO XIII (B) [our emphasis].

It is the "case file" that is to be provided to the Land Dispute Tribunal. See SRMT LDRO XIII (A). Upon inquiry by SRMT Court staff the SRMT Clerk has provided the attached enrollment information on the minor children who are named in these proceedings.¹² This information, for whatever reason, does not appear to have been 'retrieved' by the SRMT Clerk, placed into the 'case file', and provided to the SRMT Land Tribunal prior to their decision.

In reviewing this information it is clear that each of the minor children are enrolled, and that the decedent is included in their "family tree" on SRMT records as their father. Furthermore, it appears that each child is enrolled under the David surname of the SRMT as each of their enrollment numbers begins with the letter "D". "

See SRMT Court letter to Parties' Counsel September 5, 2014

In addition to the foregoing, in our review of the audio record from the SRMT Land Dispute Tribunal proceedings, BOTH parties provided witnesses that testified the decedent (Michael David) presented himself as the father/caretaker of both *Baby A* AND *Baby B*. This also occurred long after the purported DNA test was completed, and up until the decedent's passing on July 18th, 2009. See SRMT LDT Audio Record. This oral testimony, as well as some written submissions made to the LDT which are a part of the record of this case, indicates to us that both Respondent and Appellant had knowledge of this apparent father/child relationship with *Baby B*. This was only further confirmed by the SRMT enrollment information. Finally, the Court notes that if we presume that the DNA Parentage Test of September 4th, 2003 is valid, the decedent had ample opportunity to dispute, alter, or amend the SRMT enrollment documents, or to even have his name removed from them. It appears no such action was taken by the decedent in this regard. With regard to equity among the parties and the "interested person", we can note that clearly any interest *Baby B* had in the matter at bar would be counter to, or competitive with, the interests of Appellant and Respondent for *Baby A*. Based upon this record before us, we are not aware of why the SRMT LDT did not address these matters prior to their decision and the subsequent appeal made to SRMT Court.

In light of the foregoing, the Court contacted the parent/guardian of the other infant, *Baby B*, to advise them of their opportunity to be an "interested person"¹³ under the LDRO with respect to this case now before the Court. The Court also offered to *Baby B* (through their respective parent-guardian), that IF they desired to participate in the case at bar and offer any evidentiary material to the "case file" that the Court would permit

¹² This was in reference to SRMT Enrollment information received by the Court on August 4th, 2014, which clearly identified the decedent as the father of *Baby B*.

¹³ An "interested person" is a term provided for in the SRMT LDRO. See, SRMT LDRO IV (F).

them to do so. ("...Tribal Court...may request evidence or testimony as necessary to develop a full and complete record of information upon which to base its final decision, which shall not be subject to appeal." See SRMT LDRO (XV)(C)(2.)) Furthermore, and consistent with the 'due process' embodied in SRMT Laws¹⁴, and as is customary in cases handled by the Court, notice would have been provided to Attorneys of both Appellant and Respondent and each would be afforded an opportunity to respond if any submission was made by the "interested party"/ *Baby B*.¹⁵

We include the foregoing as it highlights the Court's concerns in reviewing the SRMT LDT decision which included the following:

"On July 18/11 Michael Joey David dies intestate leaving his minor daughter *Baby A* sole heir to his estate." See March, 8, 2011 LDT Decision [our emphasis].

We must now write to substitute this finding with our own. First, we cannot approve the LDT finding that Michael Joey David had a single "sole heir" to his estate. The pertinent question under the SRMT LDRO is enrollment. In that, did the decedent have children which were "enrolled" with the SRMT as that term is used in the LDRO. In the LDRO language: "as long as the child is a Tribal Member." Here we find that there are in fact two children/"heir[s]": *Baby A* and *Baby B*. Each of which are enrolled with the SRMT, and their SRMT enrollment information indicates that the Decedent is their father.

In our review of the record of this case, Appellant at one point during a proceeding at the LDT referenced that she thought '*Baby B*' was the son of the decedent until that proved to be "untrue". This is in apparent reference to the DNA results which is a part of the record of this case. This clearly shows that issue[s] involving *Baby B* had in fact been discussed at some point in the LDT proceedings. This was confirmed in other proceedings when witnesses for the Respondent provided to the LDT that the house being built was for the Decedent, *Baby A*, Respondent, and *Baby B*. Furthermore, Respondent's own witnesses acknowledged that decedent had continued to purchase gifts for, visited with, and accompanied *Baby B* to the building site which is a large part of the dispute in the case at bar.

The foregoing testimony has to be looked at as being in addition to other material which appears on the evidentiary list prepared by the LDT. For instance, the decedent's obituary which listed *Baby B*. In fact, it was this notice which precipitated the prior hearing and decision of this Court which is part of the law of this case.¹⁶ This resulted in our finding that there was in fact two children who could be potential heirs to the decedent, and that one (*Baby B*) had not received any notice of these proceedings.

¹⁴ See, SRMT Civil Code and SRMT Civil Procedure Law

¹⁵ The Court never received any response from the parent of *Baby B*.

¹⁶ See, SRMT Decision on Additional Heir June 12th, 2013.

Although both Appellant and Respondent may have legitimate concerns with respect to the 'biological parentage' of the minor children, under the SRMT LDRO there is no room for either SRMT Court or the LDT to address such enrollment concerns. This is because neither the SRMT Court nor the LDT can make enrollment decision[s]. Such issues would have to be directed to the SRMT.¹⁷ This is important because as the LDRO makes clear, it is an "enrolled member" who can bring a dispute under the LDRO, and it is only an "enrolled member" who can have issued to them an SRMT Use and Occupancy Deed under the LDRO. In reading the LDRO, it is also clear that the definition of "Child(ren)" includes "Step" Child. *See*, SRMT LDRO IV (4). It is this definition that must be used in reading the LDRO, as there appears to be little differentiation in the type of children, as the LDRO mandates that "as long as the child is a Tribal member" they have the rights to property as embodied in the LDRO. There is no current requirement that the child must be a 'biological' child of a Tribal member. In the record of this case, there are two minor children of the decedent who are "enrolled members".

Finally we do not assign any blame to the LDT with respect to this issue for as we have pointed out it does NOT appear that a full and complete "family history" was provided to the LDT as is provided for in the LDRO.¹⁸ However, it is clear from the record that there may have been an over reliance upon the biological parent issue by the LDT, and that this led to the result where the other 'enrolled child' of the decedent (*Baby B*) was not properly addressed (e.g. identified as an "interested party" under the LDRO). It is for these reasons that we must overrule the LDT decision with respect to their finding that *Baby A* is the "sole heir" of the decedent.

Administration of Decedent's Estate:

The LDT decision rendered in this matter also found that:

"Accordingly the tribunal also found that in this case, there is no excuse for the lack of research conducted prior to the issuance of the tribal council's resolution for the appointment of Michael's estate administration." *Id.*

This finding is in regards to the appointment of Appellant as Administratrix of the Decedents estate. This was also a point raised by the Respondent's Counsel in this appeal. *See* Counsel for Respondent Appeal Submission at Point 1. Under the LDRO we offer no

¹⁷ This would include the purported DNA test for *Baby B* and how that may or may not effect SRMT enrollment, as well as questions with respect to the Province of Ontario 'statement of live birth' with respect to *Baby A* and if that may or may not have an effect on enrollment. Finally, it should also be noted that in some of the documents there is missing any attestation (meaning a witnessed statement) provided by the Decedent with respect to his biological parentage of either *Baby A* or *Baby B*. This includes the SRMT enrollment documents for *Baby A* and *Baby B*. Again, whatever role that may have on enrollments is currently within the jurisdiction of the SRMT Court. Otherwise, the LDRO speaks primarily to "enrollment" and NOT simply biological parentage.

¹⁸ Although the audio record of this case from the LDT is extremely difficult to understand, it does not appear that there was much colloquy between the LDT and the parties with respect to the child/enrollment issue.

opinion as to the efficiencies or inefficiencies in making such appointment by the SRMT. We must now advise the LDT that they must do the same.

An important but simple fact to remain cognizant of is that the LDRO involves land and only land. This fact permeates the entire contents of the Land Dispute Resolution Ordinance. For instance, the "Authority" section of the LDRO states that "The Tribal Council is vested with the authority to control the use of lands on behalf of the Tribe and has customarily been responsible for resolving land disputes on the Reservation." Here though, we direct our attention to the fact that it was only the "land dispute" authority which was "...delegated to a Land Dispute Tribunal and the Tribal Court." after passage of the LDRO. Next, the General Provisions section of the LDRO with respect to Intestate Distribution, is specifically limited to "real property located on the Reservation". *See*, LDRO V (E.).

In the case at bar the LDT decision referenced many matters which were presented at the LDT hearing[s]. These included: "...SRMT appointed the Appellant as administrator of decedent's estate WITHOUT consulting the mother, Charity Benedict..."; "She (Charity Benedict) also claims that a number of recreation vehicles were sold by Lori David."; "...respondent Lori David, gets herself appointed as Administrator of Michael's Estate, and immediately begins liquidating her son Michael's assets, including transfer of Lot # 703-F-1 back to her name without consulting Michael's family."; "The Tribunal Found that prior to the issuance of the administrator to Michael's Estate, NO consent was requested from the mother of Michael's daughter Baby A "; "The Tribunal found that Lori David did not fulfill minimum requirements of the administrator of son Michael's estate in not paying for Michael's funeral expenses." *See* LDT decision for all. A review of the audio recordings of the LDT hearings confirms that information about the foregoing was presented to the LDT.

We provide the foregoing as a cautionary note so that other issues which may be present in a land dispute case do not carry over into deciding the primary issue which is the subject of any LDRO proceeding: Land. Although we, perhaps as well a large number of SRMT members, may concur with the LDT as to it's displeasure with what transpired following the death of the decedent, we must caution the LDT that these matters are beyond the scope of the LDRO. Our reading of the LDRO indicates that it is devoid of any legal requirements which are to be placed upon an administrator of an Estate.¹⁹ This includes those who may have been 'appointed' by the SRMT.

The closest LDRO provisions on Estate Administration are the General Provision which talks about intestate distribution. *See* SRMT LDRO V (E.) (1.)-(7.) cited herein. But again, this is limited to "real property located on the reservation". *Id.* And although

¹⁹ It is on this note that we can provide that a person is NOT without any legal recourse with respect to Estate issues which do not involve land. Under the SRMT Civil Code and Civil Procedure Law the SRMT Court has general jurisdiction over civil disputes occurring on the SRMIR. This can easily include intestate disputes. Next, under the Applicable law provision of the Civil Code, an aggrieved person can request the Court to apply certain laws to their dispute. This can easily include estate disputes as there is no prohibition for an SRMT member from doing so. Such proceedings though would have to be under a separate action to any 'land dispute' brought under the SRMT LDRO.

there is a provision with respect to "Wills", this is limited to proscribing what is deemed to be a valid will under the LDRO. *See* SRMT LDRO at V (K.) (4.) Furthermore: "Wills made prior to the adoption of this Ordinance may be submitted as evidence, although not in conformity with these requirements, and the Tribunal or Tribal Court shall determine the validity and weight to given to such will." *Id.*²⁰ Therefore, under the LDRO it appears that any inquiry on 'Estate' issues is relatively simple and straightforward: Is there a will that meets the definition provided in the LDRO, AND, was the land (and just the land) distributed as provided in the "Will". Or, if there was no "Will" meeting the LDRO definition, were the intestate provisions of the LDRO followed as it relates to the distribution of land. Clearly it is only evidence which is relevant to these inquires about the land, and the distribution thereof, which should be considered. *See* SRMT LDRO XIV (A.). Otherwise, we leave to the sound discretion of each tribunal to determine what is or is not relevant evidence to land issues in cases before them.

EQUITY ARGUMENTS:

Prior to addressing the request for equity made by both parties, we can quickly summarize that this case was in fact a request to have a SRMT Council decision reviewed in SRMT Court. The LDRO permits these 'types' of actions. Although this did not occur first under the LDRO, it is still clear that there was substantial compliance with the LDRO so that an appeal to SRMT Court is proper with the record developed by the LDT. Next, it was proper for the SRMT LDT to permit Charity Benedict to challenge, put into "dispute", the September 8, 2009 deed issued to the Appellant Lori David by the SRMT. However, as we have found, the Decedent under SRMT law has two [2] "enrolled" minor children which are to be considered as "heir"[s], as that term is used for intestate distribution under the LDRO. Finally, although there was evidence submitted to the LDT with respect to the Administration of the Decedent's estate, and the LDT made some findings in this regard, those issues should have been limited under the LDRO to their relevancy with respect to distribution of the land in "dispute".

It is here that we can now address the requests for equity made by the parties. In particular, Appellant argues that the improvements made by her prior to the passing of the decedent should be weighed by the Court in making any determination in this matter. Respondent's Counsel questions the assertions made by Appellant with respect to 'contributions' made by her. In its place the Respondent provides that it was the decedent who made the improvements to the property and that this was done for his companion (Charity Benedict) and for his daughter *Baby A*. Neither party in their equity request to the Court mentions *Baby B*.

After a review of the totality of facts as developed in this case, and upon our findings made in this decision, we will grant some of the requests made. In so doing, we must also vacate some of the findings made by the LDT and substitute those findings with our own.

²⁰ For an example of this, *see* Hathaway v. Thomas

According to Black's Law Dictionary "equity" includes: 1. Fairness; impartiality; evenhanded dealing; 2. The body of principles constituting what is fair and right; natural law; 3. The recourse to principle of justice to correct or supplement the law as applied to particular circumstances; 4. The system of law or body of principles originating in the English Court of Chancery and superseding the common and statute law; 5. A right, interest, or remedy recognizable by a court of equity; 6. The right to decide matters in equity.²¹

Under the LDRO there is very little guidance provided to the SRMT LDT as to the rendering of a land dispute decision:

"The decision made by the Tribunal will be based upon the record developed by the parties and the Tribunal. The decision and the reasons thereof, will be provided to the persons involved and the Interested person whose name appears on the contact list. The Tribunal will be guided by this record, as well as prior decisions reached in similar cases, and by the historic customs and usages of the St. Regis Mohawk Tribe. The recommendation will be in writing and shall provide as much relevant detail as possible." *See* SRMT LDRO XIII.(D.)(3.)

For the SRMT Court under the LDRO there also is little guidance with respect to the use of equitable principles to decide land dispute cases. *See* SRMT LDRO XV (B)(C) The provisions do require the Court to "review the appeal based upon the record developed before the Tribunal". For cases filed directly to SRMT Court (those of a Tribal Council decision) the Court may "take a fresh look" and "develop a complete and full record", upon which to base it's final decision which is not subject to appeal. *Id.* It is here again that we can note the unique and circuitous route this case has reached the SRMT Court. Even in light of this, the purpose of the LDRO provides: "The purpose of this Ordinance is to provide a fair and equitable procedure for resolving land disputes within the St. Regis Mohawk Tribe's jurisdiction." *See* SRMT LDRO III

We must begin by providing that we agree with the SRMT LDT that the "Intestate provisions" of the LDRO must be applied to the case at bar. In applying this provision it is clear that the Decedent's mother, Appellant here, would be secondary to the Decedent's two minor SRMT enrolled children with respect to any right to receive a distribution of land held by the decedent. Again though, this distribution under the LDRO must be for both "enrolled children". Therefore, whatever interest *Baby A* may have in the estate/land of the decedent would be the same as *Baby B*, who is also an "enrolled" child of the decedent under SRMT Law.

Next, in applying the LDRO Intestate provision as we have, our inquiry then becomes to determine whether this application necessitates a finding requiring distribution of the entire estate (meaning all land) to the two "enrolled" children of the Decedent. Such a result would obviously result in denying the Appellant any and all rights to any portion of the estate/lands held by the Decedent. It is here, based upon the record before us, that we answer that in the negative.

²¹ See Black's Law Dictionary, 8th., Bryan A. Garner

Life Estate

In the case at bar, from the record developed by the LDT, we can glean the following facts: In August of 2003 the Appellant acquired two acres of property from a Rudy Hart.²² This two acre plot would become identified as Lot #703-F-1 which is the subject of these proceedings. By September of 2005 this lot, which had been solely in Appellant's name, was transferred to the decedent Mr. Michael David (her son). It is here that we take notice of other evidence that is in the record of the case, which however did not make it into the findings of the LDT.

In a February 16, 2011 Letter to the Tribunal, the Appellant Ms. Lorie David provided:

" That was over 1000 ft of road. I have made my home on this property or lot # 703 From the time of purchase. I purchased a trailer in 2005 and put it on this land. It took me a couple of years to have my road and land ready, to put my home on lot 703". See 2/16/11 letter.

Next, we can note that this coincides with and is affirmed by testimony provided by Respondent's (Ms. Charity Benedict's) witness[es] at the LDT proceedings. Wherein:

"Mike had purchased a double wide trailer for his mother that is on the same property."

Other testimony also identified that the "Trailer next door was his mothers." This was also confirmed by the appellant, Ms. Lori David, in her presentation to the LDT when she indicated that in 2005 she put the trailer there on lot 703.

It is the construction of another structure near this "trailer", also located on lot #703, which has caused considerable issues.²³ In this regard though, Appellant and Respondent acknowledge that Decedent was frequently there, was making a substantial financial contribution towards its construction, and was engaged in the construction process of this other structure. In addition, Appellant provided to the LDT that she would at times prepare meals for the workers building this other structure, and that the workers, apparently inclusive of the Decedent, would eat these meals at/in the trailer that was on the property which Appellant resided at. This fact was also noted in one the Respondent's, Ms. Charity Benedict's, witness' testimony.

Looking at a totality of the circumstances, it is clear that by 2005 the Appellant and the Decedent had engaged in land transactions with one another, and had done so knowing that each was going to be able to take advantage of some equitable contributions

²² In testimony to the LDT, the Appellant references that the land in question was part of her family's, based on this it is presumed that Mr. Hart and Ms. David have some type of familial relationship.

²³ Much testimony was offered and some documentary evidence was given to the LDT with respect to who contributed what to the construction of this other building which was to be a structure with a building and living quarters, what its intended purpose was, and who it was intended for.

(e.g. road) which had been made in the area adjacent to lot #703. Most importantly for current discussions, it is clear that the Decedent had knowledge of, AND, therefore had to be aware that his mother (Appellant herein) had placed a Trailer on Lot # 703, and that she was in fact living there. In fact, based upon some of the testimony it appears he may have contributed financially to the acquisition of the trailer for the benefit of the Appellant. Next, this "trailer" where Appellant (decedent's mother) was living was already located on the lot when decedent acquired the SRMT Use and Occupancy deed for Lot # 703 in 2005, and was located there at the time of his passing in 2009. There is no indication in the record before us that at any time did the Decedent, even after acquiring the 2005 SRMT Use and Occupancy Deed, attempt to have the trailer removed from Lot 703.

An older legal axiom provides that 'one can only sell what one owns'. This has carried over to other contexts, such as gifts whereby 'one can only give what one possesses'. As such, it is uncertain as to how the LDT determined that the Decedent's land would be 'free' of the Appellant's use and occupancy when it awarded the land to *Baby A*. We say this because in our review of the record there is no indication that the Decedent had in any way attempted to remove the Appellant (his mother) from this lot. In fact, the record before us tends to show that the Decedent assisted his mother (Appellant) in residing upon the lot in the trailer he helped her acquire.

As we recognize the presence of the Appellant on a portion of the Decedent's property at the time of his passing, our next inquiry becomes is there any recognition of this type of land holding by the Appellant and the Decedent under the LDRO. In reviewing this issue we take note of the following from the LDRO:

"Life Estate- a way of holding real property, that is limited to the life of the party holding it and upon whose death, the property reverts to another Tribal member."
See SRMT LDRO IV (I).

This "way of holding real property" is just as it is described. It is a means by which a person who may no longer own a parcel property still uses and/or occupies the property until their passing. This could be in regards to the entire property or just a portion thereof. When the person occupying the 'Life Estate' property perishes, the property fully reverts/is acquired by the person who has ownership of it. This option can create some unique property holding scenarios.

For instance, it is entirely possible, and in some instances feasible, for a person to set themselves up in a life-estate on property they already own! By way of example: an elderly person may wish to deed their property to a close relative during their lifetime, but still may desire to have use and occupancy of the property. In this context the elderly person simply deeds the property to their chosen close relative and at the same time sets them-self up in a "life-estate". Upon their passing the person whom they had already deeded the property to, would then have full ownership/control over the property. In a similar vein, the elderly person could set up one person in a 'life-estate', while still deeding the property to another (e.g. a close relative). Here, the person who has received

the deed would not assume full ownership over the property until the person who has received the life-estate perishes.

For current discussions, we can note that there may be instances where an SRMT member may wish to establish a life-estate for a person involving real property that they own on the SRMIR. Clearly they can do so, for as our cases on land disputes have recognized, SRMT members have historically and customarily transferred property amongst and between themselves. *See White v. White* 10-LND-00009, *Point v. Peters* 10-LND-00005. The only historic customary prohibition has been against non-SRMT members being able to hold property on the reservation. *Id.* The SRMT LDRO, upon its passage, recognized many of these historic and customary practices. Unique to the LDRO was the inclusion of the 'life estate'. *See SRMT LDRO IV. (I.)* Yet, the inclusion of the 'life estate[s]' in the LDRO can cause difficulties.

These difficulties can be illustrated in the following example: Let's say that an SRMT member has married a person who is not a member of the SRMT, and they reside in a home built on real property owned by the SRMT member located on the Reservation. Under the SRMT LDRO the non-Member spouse would not be eligible to receive or possess a SRMT Use and Occupancy Deed. *See SRMT LDRO*²⁴ Let us now presume that the SRMT-member spouse predeceases the non-Member spouse.²⁵ Clearly the question which arises is to determine whether or not the non-Member spouse has any rights to the SRMT real-property. It is here that the SRMT LDRO provides contradictory results.

First, the SRMT LDRO provides that "Reservation land may not be sold to, held by or in any way relinquished to a non-Member of the St. Regis Mohawk Tribe. *See SRMT LDRO V (C.)* [our emphasis] This language appears to indicate that in no way can the non-Member Spouse hold property. This would seem to include a "Life-Estate" as used in the LDRO, as this is a "way of holding real property" which means "Reservation Land." *Supra.* It is here though, that we see one of the bigger contradictions of the LDRO. In Section VI of the LDRO, which covers Who May File a Land Dispute Claim, it includes:

"A non-member spouse who may seek a life estate after the death of his or her Member spouse." *See SRMT LDRO VI (A.)*(3.)

Therefore, although the non-Member spouse is not eligible to receive an SRMT Use and Occupancy Deed, and although there appears to be an outright prohibition for real property on the Reservation to be "held by" them, it appears that they can still seek a "Life Estate" under the LDRO.

²⁴ Other provisions of the LDRO clearly prohibit non-members from owning reservation real property. "Only Tribally enrolled members shall be permitted to possess a use and occupancy deed or to otherwise own land on the Reservation" *See SRMT LDRO V (B.)* and "Reservation land may not be sold to, held by or in any way relinquished to a non-Member of the St. Regis Mohawk Tribe. *See SRMT LDRO V (C.)*

²⁵ Recall in our example the marital home is located on that property.

We bring this to light for as we review the case at bar, it does not appear that a 'Life Estate' under the LDRO was ever considered by the LDT with respect to the Appellant. From the record before us none of the prohibitions contained in the LDRO apply to the Appellant (e.g. non-member holding of real property on Reservation), and there is no language in the LDRO that limits "Life Estates" to just a "non-member spouse". In fact, it would be an abhorrent holding to recognize that a non-Member spouse would be permitted under the LDRO to seek a 'Life Estate' involving SRMIR real property, while at the same time an SRMT member would be denied the right to seek the same under the LDRO. We do not give the LDRO such an abhorrent reading.

The record of this case clearly shows that the property was originally acquired by the Appellant and subsequently deeded to the Decedent. By 2005 the Appellant and Decedent had engaged in land transactions with one another, and had done so knowing that each was going to be able to take advantage of some equitable contributions (e.g. road) which had been made by both of them in the area adjacent to lot #703. Next, the Decedent clearly had knowledge that his mother (Appellant herein) had placed a Trailer on Lot # 703, and that she was in fact living there. In fact, based upon some of the testimony it appears the Decedent contributed financially to the acquisition of the trailer for the Appellant to reside in. Next, while building another structure on lot 703, Decedent and construction workers ate at the Appellant's trailer which was on lot 703. Appellant's home (the trailer) was located on lot #703 until the time of Decedent's passing in 2009, and there is no indication in the record before us that at any time did the Decedent, even after acquiring the SRMT Use and Occupancy Deed in 2005, attempt to remove Appellant from Lot #703. It is in this manner in which the Decedent owned, used, and occupied Lot #703.

The next step in our inquiry is to determine whether this manner of "holding real property" by the Decedent and Appellant can equate to a "Life Estate" under the LDRO.

We begin by recognizing that our land dispute decisions have recognized the historic custom and right of SRMT members to structure land agreements by and between themselves, and in whatever manner they choose. *See White v White 10-LND-00009, Point v Peters 10-LND-00005, Oakes v Oakes 11-LND-00008.* In the case at bar there is nothing in the record indicating that the Appellant or the Decedent had ever made a formal written agreement creating a "Life Estate" for the benefit of the Appellant on property which was deeded to the Decedent. It is here though that we can take notice of both Appellant's and Decedent's actions. As presented by the Appellant and witnesses for the Respondent, their actions strongly show that a "Life Estate" was in fact being enjoyed by the Appellant on property owned by the Decedent. These actions include those which we have addressed (e.g. Decedent acquiring property from Appellant, Decedent contributing to Appellant to reside on acquired property, Decedent not taking any action to remove Appellant from property).

Just as important, is to recognize that had the Decedent NOT perished it would appear that the Appellant would have continued to enjoy the use of a portion of Lot #703, which she had deeded to Decedent, just like a "Life Estate". Upon the passing of the

Appellant, the property would have then been fully vested in Decedent as he had already acquired the SRMT Use and Occupancy Deed in 2005 from the Appellant. This would have made the current case just like a LDRO Life Estate: "... limited to the life of the party holding it (*Appellant*) and upon whose death, the property reverts to another Tribal member (*Decedent*)."
See SRMT LDRO IV (I.) (*our notes*). In the facts of this case, that reversion would have gone to the Decedent as he already had the SRMT Use and Occupancy Deed issued to him.

Next, recognizing a Life Estate in the Appellant is not inconsistent with what is provided for in the LDRO. As we have discussed there is a definition of "Life Estate" provided for in the LDRO. *See*, LDRO IV (I). Likewise, there is a provision permitting that a non-Enrolled spouse "...may seek a life estate after the death of his or her Member spouse." *See* SRMT LDRO VI (A.)(3.) These provisions identify what a Life Estate is, and in the latter, permits a non-member surviving spouse to make application for one. Otherwise, there are no other requirements under LDRO with respect to creating a "Life Estate". Meaning, there is no LDRO requirement that any certain type of written documentation and/or instrument is necessary to show that a Life Estate, as a "way of holding real property", has been created. In fact, the LDRO provision with respect to evidence permits the use of: "The customs and traditions (traditional law)" of the St. Regis Mohawk Tribe, "Sworn written testimony", "Sworn oral testimony", and "Any other relevant evidence" accepted by the SRMT LDT or SRMT Court to decide a land dispute through a "...fair and equitable procedure". *See*, SRMT LDRO XIV (A.)-(D.) for Evidence, and III for LDRO Purpose. Clearly, and as we have demonstrated in this decision, such evidence is also permitted to show the creation of a "Life Estate" under the LDRO even in the absence of a formal written agreement.

In reviewing land dispute cases decided by the SRMT Court, it appears the case at bar is one of first impression for the Court to address a 'Life Estate' issue under the LDRO. It is for that reason we provide that the following factors should be reviewed when determining whether or not to find that a "Life Estate" exists under the LDRO:

1. Exacting review of applicable legal documents in chronological order. Here the documents in the case at bar show that when Appellant received it she deeded the parcel to the Decedent. When decedent passed, the SRMT deeded the property to the Appellant, and then a Land Dispute case was filed.
2. The relationship between the parties and to the land parcel in dispute. Relationship in this context is intended to cover multiple fronts. This can be familial, personal, economic, and also inquire if there was an adverse relationship between the parties. For instance, was there prior litigation, prior proceedings in front of a Court or SRMT Council of a land dispute?

In the case at bar the Appellant and the Decedent were mother and son. Their economic interests with one another is discernible by the deeding of the parcel from Appellant to Decedent. Next, both shared in the prior equitable contribution surrounding the property (the road), and both had worked together to obtain a sewage system from the

SRMT. Finally, there does not appear to have been an effort by the Decedent (son) to remove his mother (Appellant) from the premises even after he obtained the SRMT Deed. There was also some support as Appellant assisted Decedent in construction of other building on the parcel.

3. History of the parcel in question. This is akin to a title abstract of property that one would find for non-reservation property. Here the task is to inquire if the parties share/shared any of the 'parcel history' with the others knowledge.

In the case at bar we can see that the Appellant initially acquired the property from family in 2003, and then in 2005, caused the property to be deeded to the Decedent (her son). According to Appellant, it was her desire to keep it in her immediate family. Most importantly following this action, the Appellant continued to reside on a portion of the parcel even after deeding it to Decedent, and resided there with the knowledge and support of the Decedent.

4. Contributions made by either party tending to show the creation of a Life Estate. The factors to review here include both monetary and non-monetary contributions.

It is clear that the Appellant was the one who initially acquired the parcel. This was not challenged by the Respondent. The record is devoid of any information indicating if the Decedent had paid any consideration to the Appellant to acquire the parcel. Next, as we have indicated, by Respondent's own witness testimony, it appears that the Decedent contributed financially to the Appellant for her to acquire and place her residence (trailer) on a portion of the parcel. Both the Decedent and the Appellant at some point appeared to have worked together to obtain the benefit of a sewage system (e.g. leech field) from the SRMT. *See*, record SRMT Planning and Infrastructure Sanitation Facilities Construction Application. Prior to and during the period in which the property was transferred, it appears that other contributions were made in the form of a roadway that was put in by the Appellant. Here again though, the record is devoid of any information with respect to whether or not either party had to re-compensate the other for this contribution. The record does show that both Appellant and Decedent shared in this equitable contribution before and after the Decedent had received the SRMT Deed for the parcel. Finally, it is clear that the Appellant shared with the Decedent the opportunity to utilize her residence when he was constructing the other building on the Parcel. In light of these actions, it does not appear that either Decedent or Appellant was using, or attempting to use, the property exclusively.

Based upon the foregoing, we find that a minimum at minimum Appellant had a life estate under the LDRO in the parcel deeded to the Decedent.

Conclusion

This case can best be summarized by the words of the Appellant's counsel, " That one does not know the time or place of one's passing."

It is from the vantage point of the bench that we are afforded the opportunity to see the difficulties that emerge when a young man with an extended family perishes. Although we as a Court frequently come into contact with land dispute cases from here in our own territory, we remain cognizant of the fact that for in a majority of such incidents, families themselves come to some type of resolution of the matters. It is the rare case that requires our attention.

As such, we do not tread carelessly when called upon to address and resolve cases such as the one at bar. We do so with an exacting and exhaustive review of facts, while remaining conscious of the fact that there is "no appeal" from a decision we render. *See*, SRMT LDRO XV (B) (2).

It is for the reasons provided for in this decision that we must find that the Decedent did in fact own Lot 703, as such its distribution upon his passing must follow the LDRO. However, it is just as clear that Appellant occupied a portion of Lot 703 in such a manner that this equated to a "Life Estate" as that term is used in the LDRO.

Therefore, it is clear that, pursuant to the LDRO, Lot #703 should be deeded to Decedent's Tribal member children (Baby A and Baby B). This means that each has an equal undivided share in the land of Lot 703.

Next, in light of our finding that Appellant has a Life Estate Interest, we limit their ownership share those portions of lot 703 which is not being utilized by the Appellant as part of her "Life Estate". It is here that Baby A and Baby B can only receive the land in the same manner in which the Decedent was enjoying the ownership, use, and occupancy of Lot 703. Meaning, he was only enjoying those portions not used by the Appellants Life Estate.

Upon the passing of Appellant, that portion of the parcel of lot 703, which is used as Appellant's Life Estate, will revert to being a part of Lot 703. This is just as Decedent would have also enjoyed the ownership, use, and occupancy of Loy 703 at that point.

Signed by my hand this 9th day of February, 2015



Peter J. Herne, Chief Judge St. Regis Mohawk Tribal Court

