St. Regis Mohawk Tribal Court

	)	**DECISION AND ORDER**
	)	
[redacted] **Cook,**	)	
Petitioner	)	
	)	**Case No.: 11-LND-00003**
	)	

PROCEDURAL HISTORY

On May 13, 2014, [redacted] Cook filed a complaint with the St. Regis Mohawk Tribal Court requesting that he be named administrator for the Estate of [redacted] Cooke, his father. [redacted] Cooke died on [redacted] 2014. [redacted] Cook's siblings, [redacted] all consented to [redacted] Cook being named as administrator of their father's estate.

Letters of Administration were granted on August 15th, 2014 by the St. Regis Mohawk Tribal Court. Notice to creditors was posted by Mr. Cook on August 28th, 2014 and September 4th, 2014 in the Indian Time newspaper. No creditors filed notice of a claim with the Court. Mr. Cook filed an inventory of the Estate with the Court in January 2015.

JURISDICTION

The Tribal Court has original jurisdiction over cases, matters or controversies arising under the laws, ordinances, regulations, customs and judicial decisions of the Tribe.[1] The Court possesses civil jurisdiction over disputes arising in, connected with, or substantially affecting Mohawk Indian Country.[2] Given that the resolution of the Estate of a Tribal member affects land on the St. Regis Mohawk Indian Reservation and resolution of a person's estate is a civil issue that substantially affects Mohawk Indian Country,[3] the Court assumes jurisdiction over this Estate.

APPLICABLE LAW

The Saint Regis Mohawk Tribe (SRMT) Civil Code § V states the applicable laws are "such portions of the Constitution of the United States and federal law are clearly applicable in

[1] The Saint Regis Mohawk Tribal Court and Judiciary Code § V.1. (2012).
[2] SRMT Civil Code § II.A. (2008).
[3] The Saint Regis Mohawk Tribal Court and Judiciary Code § V.1. (2012).

Mohawk Indian Country"; written Mohawk law adopted by the Tribe; unwritten Mohawk laws, and written and unwritten Mohawk customs, traditions and practices; generally recognized principles of contracts; and generally recognized principles of the law of torts.

The Civil Code directs the Court to apply all "written laws adopted by the recognized governmental system of the Mohawk Tribe."[4] The SRMT Land Dispute Resolution Ordinance (LDRO) was enacted by the Tribe in February 2010. The LDRO's stated purpose is "to provide a fair and equitable procedure for resolving land disputes within the St. Regis Mohawk Tribe's jurisdiction"[5] and specifically addresses intestate distribution[6] and wills.[7] This Court finds that this written Mohawk law adopted by the recognized governmental system of the Mohawk Tribe is also applicable to the case at bar. The Court will use its intestacy provisions regarding division of real property for an intestate case as a guide for division of Mr. Alex A. Cooke's personal property.

ANALYSIS

In this case, the record has established that the decedent, [redacted] Cooke, had no signed will as defined by the LDRO, and, accordingly, the Court has determined that the Estate shall proceed intestate. His wife, [redacted] predeceased Mr. Cooke and he is survived by four children, [redacted]. There are no outstanding bills with the Estate and Mr. Cooke's Estate consists of real property; the home located on the real property; and personal property located within the home. The Court requested the Tribal Clerk locate Mr. Cooke's deed, however, no deed was found in Mr. [redacted] Cooke's name. After some research and discussions with Administrator [redacted] Cook, the will of [redacted] Cook, ([redacted] Cooke's father), was located by the Tribal Clerk and provided to the Court with a GIS map of the real property in issue. Both of these documents have been made part of this record and have been provided to Administrator [redacted] Cooke.

[redacted] Cook's will devised and bequeathed to his son, [redacted] (spelled [redacted] in the will) the following two parcels of land:

1. "Twenty two (22) acres of land located next to the share of [redacted] Cook (22 acres), on the east by the Canadian boundary line. This land should measure 40 rods wide at the point of the Canadian boundary line."
2. "A second parcel of land located on the west side of the [redacted] Road described as follows: Bounded on the south by the boundary line of Mitchell Back. On the west by the boundary line of [redacted] on the north west by the boundary of the

[4] SRMT Civil Code § V.2.
[5] LDRO Section III.
[6] LDRO § V. E. 1-7.
[7] LDRO § V. K. 1-5.

[redacted] Estate, on the east by the [redacted] Road. This parcel of land contains twenty two and one-half (22 ½) acres more or less."

The LDRO was not enacted at the time of [redacted] Cook's will in 1959. The LDRO states with regards to wills dated prior to its enactment, "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 be given to such Will."[8] [redacted] Cook's will is dated August 24, 1959 and is signed by him. Although also signed by a sub-chief, Andrew Bero, two Chiefs, Thomas L. Tarbell and Alexander Solomon, and the Tribal Clerk, Margaret C. Lazore, it is not clear when these "witnesses" signed it. The LDRO requires that witnesses be present to witness the testator sign the will, then sign it in the presence of the testator, include their addresses, and sign it within thirty (30) days of the testator's signing.[9] [redacted] Cook's will has a date type-written on it, but it is not clear if both the testator and witnesses signed it on this day, whether the witnesses witnessed the testator's signing it, and whether the witnesses signed it in the testator's presence. And the witnesses did not include their addresses. However, as noted the LDRO was not enacted at the time and the Court may accept the will as valid. The Court notes that the GIS map matches the land in the will and the heirs' understanding of their father, [redacted] Cooke's property boundaries. Thus, the Court will accept the will of Decedent's father, [redacted] Cook as valid evidence of the boundaries of the property bequeathed to [redacted] Cooke.

The LDRO also states that a valid will is to be accepted as evidence of ownership at an LDT proceeding, although the Land Dispute Tribunal shall determine the weight of the evidence.[10] Although this will is before the Court and not the Tribunal, the Court will use this section of the LDRO as a guide. It's important to note that this is not a land dispute case and the Court is not making any findings as to any future land dispute that may arise between the heirs of [redacted] Cooke's Estate and the neighbors surrounding the real property of his Estate. Rather, the Court is making a determination as to what is in [redacted] Cooke's Estate and to whom it will be distributed. The Court accepts [redacted] Cook's will as valid evidence of [redacted] Cook's ownership of the land stated in the will and evidence of [redacted] Cooke's ownership of the property bequeathed to him by [redacted] Cook, as described above.

Administrator [redacted] Cook stated on the record that he shared [redacted] Cook's will and Tribal Clerk's GIS map with his siblings and that he believed the map and will accurately represented the real property in his father's, [redacted] Cooke Estate. It should be noted that the map indicates that there is some discrepancy with regards to acreage bequeathed to heirs of [redacted] Cook. The Court does not make a finding as to this discrepancy and it is an open question than can be raised by any parties that may have an interest in [redacted] Cook's Estate.

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[8] LDRO § V. K. 4.
[9] LDRO § V. K. 1(c), (d).
[10] LDRO § XIV D. 3.

To prevent any future land disputes, the heirs are encouraged to obtain a survey of the property that involves their neighbors and is then submitted to the Tribal Clerk's office. A survey may clarify the discrepancy in acreage between the will and map.

Pursuant to the LDRO, when a tribal member dies intestate, without a will, and the tribal member spouse is no longer living, the surviving tribal member children shall receive equal possessory interests in tribal lands formally held by a deceased tribal member parent.[11] In this case, [redacted] Cooke's wife, [redacted] predeceased him and his surviving children are [redacted] all of whom are tribal members. As a result, all four siblings are to receive equal possessory interests in the tribal lands owned by [redacted] Cooke, as described in the will of [redacted] Cook, and in the home located on those lands, and in all personal property contained within the home.

The LDRO does not state whether those receiving equal possessory interests in land hold the land as tenants in common with no right of survivorship or as joint tenants with right of survivorship. Tenants in common and joint tenants hold equal possessory shares, but they differ as to what happens to the property when a tenant dies. Joint tenancy includes right of survivorship, which means that when one of the siblings dies, his or her right then passes to the surviving siblings and does not become part of the deceased sibling's estate. Tenancy in common allows the property to become part of a person's estate. Both forms of holding property as heirs with equal possessory interests present challenges. As tenants in common, the Cooke heirs would be free to sell, gift, and devise their interest in the property and carefully plan for the future of their father's property. However, if the Cooke heirs fail to leave wills, their estates will proceed intestate, which means the interests in the Cooke homestead could fractionate, leaving multiple heirs with small possessory interests, which would make it difficult to do anything with the land. A joint tenancy with right of survivorship seeks to protect against this happening and would mean that the Cooke heirs could not sell, gift, or bequeath their property interest, except possibly to sell it to another sibling. And the end result would be that the interests would never fractionate, but rather the last surviving sibling would receive all of his/her deceased sibling's interests and then the surviving sibling's heirs would receive the property upon his/her death.

The LDRO is silent on this issue and provides no guidance. However, the Court has recognized that individuals are free to use their land unencumbered and transfer it to their heirs.[12] Thus, this Court finds that the Cooke heirs shall hold the real property as tenants in common, which means they are free to sell, gift, or bequeath their interest as they see fit. The Court encourages the Cooke heirs to plan for their futures and develop wills that include their equal interests in this property.

In a Court hearing two of the heirs and Administrator Cook indicated to the Court that they wished to hold the land jointly. Given that the Court is not deviating from the LDRO's

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[11] LDRO § V. E. 2.
[12] *White v. White,* 10-LD-00009, 6.

provision that siblings share equal possessory interests, a hearing was not held where all the siblings were present as the Court is not disturbing their equal possessory interest. The Court also informed [redacted] Cook that the siblings could agree to change the nature of their holdings at any time. They could sell their shares to each other or change the nature of their holding either by petitioning the Court or by coming to an agreement amongst themselves and filing the appropriate paperwork with the Tribal Clerk to show changes in the deed or deeds. Thus, the Court holds that the siblings hold their equal possessory interests in the real property, including the home, as joint tenants with a right of survivorship. Upon the passing of any sibling, his or her possessory interest shall pass to all of the surviving siblings and they will continue to hold an increased, but equal possessory interest in the land and home.

CONCLUSION

Based on the above, the Court hereby Orders the following:

1. As sole eligible heirs with equal legal interest, all of [redacted] Cooke's personal property in his Estate is hereby bequeathed to [redacted]

2. As sole eligible heirs with an equal legal interest all of [redacted] Cooke's real property, including the home, as described in the last will and testament of [redacted] Cook and also described below, is hereby transferred to [redacted]. As tenants in common, each shall own an equal possessory interest of 25% of the two parcels of land, and home described below from the [redacted]. Cook will:

   "Twenty two (22) acres of land located next to the share of [redacted] Cook, on the east by the Canadian boundary line. This land should measure 40 rods wide at the point of the Canadian boundary line.

   A second parcel of land located on the west side of the [redacted] Road described as follows: Bounded on the south by the boundary line of [redacted]. On the west by the boundary line of [redacted], on the north west by the boundary of the [redacted] Estate, on the east by the [redacted] Road. This parcel of land contains twenty two and one-half (22 ½) acres more or less."

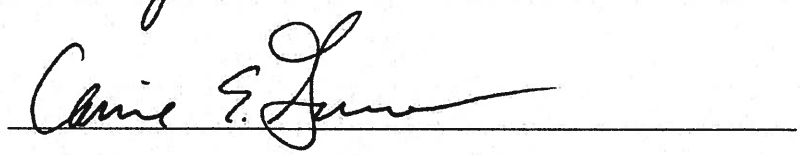
3. [redacted] Cook are hereby Ordered to seek a new deed in their name from the Tribal Clerk's Office which reflects that they each own 25% of the property described above as tenants in common.

4. [redacted] Cook has faithfully fulfilled his duties as administrator and is now released from this role.

5. The Estate of [redacted] Cooke is closed.

This constitutes the Decision and Order of the Court.

Signed by my hand this 14th day of July 2015



Carrie Garrow, St. Regis Mohawk Tribal Court Judge