



connected with, or substantially affecting Mohawk Indian Country.<sup>2</sup> Given that the probating of a will is a civil issue that substantially affects Mohawk Indian Country and there is no SRMT law limiting the Court's jurisdiction,<sup>3</sup> the Court assumes jurisdiction over its first probate case.

### 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 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 Court has previously stated:

[T]he SRMT Civ. Code, as the applicable law section, is not a single law that must guide this Court's approach to any case, including land disputes; as it could be a combination of laws that must guide the Court; and, furthermore the parties must request the applicable laws to be used and the Court shall determine if they do apply within the context of each case and pursuant to SRMT. In the SRMT Civ. Code §V(1), which speaks of applicable U.S. Constitutional and federal laws, the Court finds that there is no automatic application of such provisions in SRMT Court with respect to land disputes. Therefore, any party before the Court seeking to have the U.S. Constitution or Federal laws applied would have to request such application, as provided for in the SRMT Civ. Code.<sup>4</sup>

Additionally, the Court has previously stated "that pursuant to SRMT Civ. Code §V(6) there is no automatic use of New York State law in the SRMT Court. In fact New York State law is listed last in the hierarchy and is only applicable if it is

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<sup>2</sup> SRMT Civil Code § II.A. (2008).

<sup>3</sup> The Saint Regis Mohawk Tribal Court and Judiciary Code § V.1. (2012).

<sup>4</sup> *White v. White*, 10-LND-00009, 55-56.

consistent with principles of Tribal sovereignty, self-government, self-determination; and, consistent with the applicable laws preceding it.”<sup>5</sup>

The case before the Court is not a land dispute, but rather probate. However, the Court finds the interpretation of the Civil Code in *White v. White*, a land dispute case, to be applicable to probate proceedings. Thus, the law will be applied in the manner stated in *White v. White*.

In this case, no party has made a request for application of federal law or New York State law. The Tribe has yet to enact a Probate Code. However, the SRMT Land Dispute Resolution Ordinance (LDRO) provides brief and limited, yet applicable law to the requirements of making a valid will. The LDRO § V(K) requires a will must be written; signed by the person making the will; signed by two witnesses in the testator’s presence within thirty (30) days of the testator’s signing and include their address of residence with their signatures; and witnesses to the Will cannot be a beneficiary of the Will.

#### ANALYSIS

Applying the LDRO, the Court found and stated on the record on February 21<sup>st</sup>, 2014 that there was a valid will. It is written and signed by the decedent on November 6, 2013. The first witness, [REDACTED] witnessed the will on November 6, 2013 and provided her signature and address. The second witness, [REDACTED] witnessed the will also on November 6, 2013 and provided her signature and address. Neither of the witnesses are named as beneficiaries in the will. Thus, all the requirements of a valid will under the LDRO were met.

The will appoints [REDACTED] Gray, the decedent’s daughter, as Executor or if she is unable, [REDACTED], her son and Petitioner. The Court takes judicial notice that [REDACTED] Gray died on January 29<sup>th</sup>, 2014.

No objection was filed with the Court as to naming the Petitioner the Executor of [REDACTED] Gray’s will. The Court issued Letters Testamentary on April 7<sup>th</sup>, 2014. Mr. Gray testified under oath on July 25, 2014 that [REDACTED] Gray’s Estate was limited to personal property. There were no bank accounts or money as stated in the will. [REDACTED] Gray stated under oath there were no vehicles owned by [REDACTED] Gray or other

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<sup>5</sup> *Id.* At 56.

personal items of value. Her sole property was personal items which were mixed in with the personal items of [REDACTED] Gray's Estate. The Court takes judicial notice that [REDACTED] Gray is also the named Administrator in the Estate of [REDACTED] Gray.

The will states "that in the event that [REDACTED] Gray predeceases me, I bequeath the following: I bequeath the whole of my estate, property, real or personal, tangible or intangible to my son [REDACTED] Gray who is to take care of my pets as they have become accustomed to and to live out their natural lives and is to place \$50,000 in an interest bearing savings account solely for [REDACTED] Gray, my grandson, this funding along with accumulated interest shall be released to [REDACTED] Gray when he reaches the age of 21 years old."

[REDACTED] Gray, the Petitioner, stated under oath there is not \$50,000 contained within [REDACTED] Gray's Estate as she had no bank account or items of value. Nor was any cash found in her place of living. [REDACTED] Gray owned no real estate or vehicles, as stated by [REDACTED] Gray under oath.

As stated earlier, although no creditors filed notice with the Court, there is a lawsuit pending regarding alleged damage to the floor where [REDACTED] Gray was living, possibly made by emergency responders when [REDACTED] Gray fell ill. There has been no claim filed against [REDACTED] Estate. Also, there does not appear to be any assets within the Estate other than personal items.

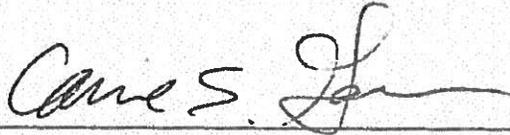
## CONCLUSION

Based on the finding of a valid will, no filed objections to contents of the will, the Court orders the following:

1. [REDACTED] Gray's Estate, shall be bequeathed to [REDACTED], the Petitioner.
2. If any financial accounts are subsequently found by the Petitioner, or he accumulates money from sale of the decedent's personal items, he is ordered to place \$50,000, or the amount found or earned, in an interest bearing savings account for his son [REDACTED] to be released on [REDACTED]

3. The Estate may be reopened upon sufficient proof there is a claim against the Estate due to the incident arising out of the claim involving damage to the floor where [REDACTED] Gray resided.
4. The Estate is now closed.

Signed by my hand this 07<sup>th</sup> day of August 2014



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Carrie Garrow, St. Regis Mohawk Tribal Court Judge