

St. Regis Mohawk Tribal Court

██████████ Smoke, Petitioner)))	DECISION AND ORDER
In the Matter of the Estate of ██████████ ██████████ Smoke))))	Case No.: 14-CIV-00019

PROCEDURAL HISTORY

On June 20th, 2014 ██████████ Smoke filed a complaint with the St. Regis Mohawk Tribal Court requesting to be named administrator of the Estate of ██████████ her parents. ██████████ filed a copy of the death certificate of her father ██████████ Smoke and he passed away on August 25th, 2002. The Court did not receive a death certificate for ██████████ Smoke. Mr. and Mrs. Smoke did not have a will. ██████████ Smoke had 7 children: ██████████
██████████

Letters of consent to appoint ██████████ the administrator of the late ██████████ Smoke's Estate were received by the Court from ██████████
██████████ ██████████ Smoke (son of ██████████ Smoke and brother of ██████████
Smoke), objected to the appointment of ██████████ Smoke as the administrator. A hearing was held on February 12th, 2015 and ██████████ Smoke placed his objections on the record, but failed to provide sufficient evidence ██████████ could not act as a capable administrator. Letters of Administration were granted on April 16th, 2015 for the estate of ██████████ Smoke to ██████████ Smoke. No creditors or other claims to the Estate were made to the Court.

██████████ Smoke also petitioned the Court to be named the only beneficiary to the Estate of ██████████
██████████ Smoke. A hearing was held and only ██████████ Smoke appeared. ██████████ Smoke never appeared for the hearing although he was served certified mail/return receipt and the Court received a return receipt with his signature on it.

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

¹ The Saint Regis Mohawk Tribal Court and Judiciary Code § V.1. (2012).

Indian Country.² Given that resolving a person's estate is a civil issue that substantially affects Mohawk Indian Country, the Court possesses jurisdiction.³

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."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 distribution⁶ and wills.⁷ This Court finds that this written Mohawk law adopted by the recognized governmental system of the Mohawk Tribe is applicable to the case at bar. The Court shall also use the LDRO as a guide in the division of personal property in an estate.

ANALYSIS

In this case, there was no signed will as defined by the LDRO, thus the Estate proceeds intestate. The only item within the Estate is the land belonging to ██████ Smoke. This parcel of land is known as Lot # ██████ and is described in a St. Regis Mohawk Tribe land ownership certification dated February 12th, 1980 as;

This lot is located on the ██████ Road and is bounded as follows, on the South by the ██████ Road for a distance of 175 feet, on the West by the ██████ Road for a distance of 225 feet, on the North by ██████ for a distance of 175 feet, and on the East by ██████ for a distance of 225 feet.

██████ Smoke requested that she be named the sole beneficiary to Lot # ██████ and testified at the hearing that this was her parents' wishes. However, the LDRO states that when a tribal member dies without a will, his real property located on the Reservation shall pass first to the surviving Tribal member spouse.⁸ If there is no surviving Tribal member spouse the property shall then pass to the surviving Tribal member children.⁹ ██████ Smokes surviving

² SRMT Civil Code § II.A. (2008).

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

⁴ SRMT Civil Code § V. 1.

⁵ LDRO Section III.

⁶ LDRO § V. E. 1-7.

⁷ LDRO § V. K. 1-5.

⁸ SRMT LDRO § V. E. 1.

⁹ SRMT LDRO § V. E. 2.

children are [REDACTED]

[REDACTED] The Court is bound by the law and despite the fact that the other siblings failed to attend the hearing, the Court cannot circumvent the law which requires that all living siblings inherit real property equally when there is no will. Thus, the Court finds that the siblings are equal heirs to Lot # [REDACTED] and shall receive and hold this property as tenants in common, which means they are free to sell, gift, or bequeath only their interest as they see fit. It also means that one sibling cannot sell or make any changes to the property without the permission of all the siblings.

The Court shall also apply this principle of intestacy to [REDACTED] Smoke's personal property. [REDACTED] Smoke did not indicate there was any remaining personal property, but out of an abundance of caution, the children of [REDACTED] Smoke now hold equal possessory interests in any remaining personal property.

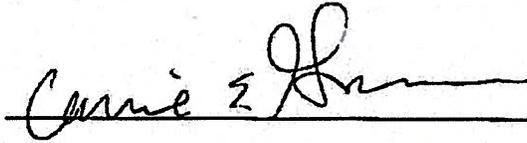
JUDGEMENT

Based on the above, the Court orders the following:

1. As surviving Tribal member children, all of [REDACTED] Smoke's personal property is hereby bequeathed to [REDACTED] and they all hold equal interests in that personal property.
2. As sole eligible heirs with an equal legal interest all of [REDACTED] Smoke's real property, Lot # [REDACTED] including the home, as described in the land ownership certification, is hereby transferred to [REDACTED] As tenants in common, each shall own an equal possessory interest in Lot # [REDACTED] and the home.
3. The deed to the property of [REDACTED] Lot # [REDACTED] is now transferred to [REDACTED] as they are the surviving Tribal member children. [REDACTED] are Ordered to seek a new deed in their names from the Tribal Clerk's Office.
4. Any interest [REDACTED] Smoke may have in any other real property is hereby preserved.
5. [REDACTED] Smoke has fulfilled her duties as administrator and is now released from this role.

6. The Estate is closed.

Signed by my hand this ^{4th} 1 day of November 2015



A handwritten signature in cursive script, appearing to read "Carrie Garrow", written over a solid horizontal line.

Carrie Garrow, St. Regis Mohawk Tribal Court Judge

The parties have 30 days from the entry of this order to file an appeal with the St. Regis Mohawk Appellate Court.

