

SAINT REGIS MOHAWK TRIBAL COURT

Estate of [REDACTED] White

DECISION & ORDER
17-CIV-00004

Procedural History

On February 1, 2017, [REDACTED] White filed a Petition to be named the Administrator for the Estate of [REDACTED] her father. [REDACTED] White was survived by five children; [REDACTED]. Initially a few of the siblings objected to the appointment of [REDACTED] White as the administrator, due to a disagreement about how their [REDACTED] Estate should be settled. Four of the siblings agreed to go to mediation.

[REDACTED] stated she did not want to attend mediation. She initially indicated that she would waive her interest in her [REDACTED] Estate. The Court mailed her numerous waiver forms and sent her notices for the various status conferences. She came to Court once with the waiver form, but was told she needed to have it notarized. She never returned with the form and never appeared again in Court.

The remaining four siblings attended mediation and came to an agreement regarding the division of the Estate. (See attached signed written agreement.) Upon reaching the settlement agreement, the Court worked with the Saint Regis Mohawk Tribal Clerk's Office to find documentation of [REDACTED] White's ownership of the three properties [REDACTED] children claimed he owned and, thus were part of [REDACTED] Estate. The Court thanks the parties for their patience and the Tribal Clerk's Office for its herculean efforts to find evidence of ownership of the three properties.

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 Saint 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 matter.

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).

Waiver of Interest in the Estate

As noted above, [REDACTED] did not participate in the mediation. She initially filed an objection to the appointment of [REDACTED] White as the administrator, although her objection was more directed at the requested distribution of the Estate. [REDACTED] did initially appear in Court and at the status conference on April 12, 2017 and participated in discussion of whether the parties would attend mediation. She informed the Court she did not want to attend mediation and stated she did not want anything from the Estate. The Court informed her of the process of waiving her interest in the Estate. She was provided with a form. She returned to Court at one point to file the form, but it was not notarized. She was informed it needed to be notarized. She never returned. The Court sent her at least one other request to complete the form. The Court also sent her notices for the various status conferences and she did not appear. Thus, the Court finds she waived her interest and, therefore extinguished all legal rights she possessed in the Estate.

The Estate

The White siblings informed the Court that their father owned three pieces of real property. There are no other items other than the real property contained in the Estate.

Property on Route 37

The SRMT Tribal Clerk was unable to find a deed for this property. However, the Tribal Clerk was able to locate a neighboring property's deed which contains a reference to [REDACTED] White's property. A May 3, 2010 Deed between the Tribe and [REDACTED] for Lot # [REDACTED] contains a reference to [REDACTED] White's property in its property description. It states that [REDACTED] property's borders [REDACTED] White's property, referred to as Lot # [REDACTED]

There is also an Indenture between [REDACTED] and [REDACTED] White dated September 30, 1957 in which [REDACTED] sold [REDACTED] White a one acre lot situated on Route 37. The only description of the land states it was "bounded by Route 37 on the north; by land owned by [REDACTED] on the east and south; and by land owned by [REDACTED] on the West." There is no lot number, thus it is not clear whether this is Lot # [REDACTED]. Moreover, there is a handwritten note on the bottom of the Indenture that states it was sold back to [REDACTED] according to [REDACTED] White. Thus, it is not credible evidence that it's Lot # [REDACTED]

[REDACTED] Deed is evidence of [REDACTED] White's ownership of Lot [REDACTED] and thus the Court finds he owned Lot [REDACTED] and it is part of his Estate. Unfortunately, there is no boundary description or deed on file for Lot [REDACTED]. The Saint Regis Mohawk Tribe's Land Laws and Land Dispute Ordinance requires surveys to be conducted for land transfers unless there is an existing survey of the parcel that is less than ten (10) years old; the parties and affected adjacent landowners enter into a boundary line agreement that provides an accurate description of the property and the parties agree in writing that a survey is not necessary; or the transfer is a family transfer and does not exchange the existing boundaries, unless the Tribal Clerk deems it necessary.⁴ Given that this is a family transfer, from the Estate of [REDACTED] White to [REDACTED] White (see mediated agreement), a survey may not be necessary. But the waiver of the survey requirement is within the power of the SRMT Tribal Clerk, not the Court. Moreover, given that there is no actual deed, the SRMT Tribal Clerk may require a survey. However, the Court will leave that to the decision of the Tribal Clerk.

⁴ SRMT LL&LDO § IV. E. 9.

██████████ Road Property

The SRMT Tribal Clerk was not able to locate a deed for the decedent's property on ██████████ Road. However, the Clerk was able to locate a deed between ██████████ which refers to his property. The June 26, 1987 Deed between ██████████ White and ██████████ includes a boundary description that states the southern border of the property in ██████████ White's Lot ██████████. Thus, this Deed is evidence of ██████████ White's ownership of property on ██████████ road and the property is part of his Estate.

However, as noted above, a survey may be needed prior to the transfer of the property. And similar to the property discussed above, the waiver of the survey requirement is within the power of the SRMT Tribal Clerk, not the Court.

Campsite

There is a deed for ██████████ White's campsite property along the St. Regis River. A Saint Regis Mohawk Tribe Use and Occupancy Deed was signed on September 15, 1996 between ██████████ White, where ██████████ White purchased .46 acre known as ██████████. The Deed also contains a description of the property. This Deed is evidence of ██████████ White's ownership and thus it is part of his Estate.

The Mediated Agreement

Four of the siblings entered into the agreement transcribed below. The signed copy is attached as the Order.

The following Memorandum of Understanding was entered in to by: ██████████ ██████████ on May 10, 2017. The people whose signatures appear below met with the Mediators, and with their assistance reached the following agreement: The parties agree that: the following three (3) parcels of property belonging to the Estate of ██████████ White, notably the house located at ██████████ Route 37, Hogansburg, NY; the campsite situated on a 1/2 acre parcel on Cook Rd; and the vacant plot of land approximately 10-12 acres which is located on ██████████ Rd., shall remain in the name of ██████████ White, and the other siblings, namely, ██████████ will make no claims on these three (3) above parcels any time in the future. There are no other representatives that are part of the instant agreement. It should also be noted that the vacant plot on ██████████ Rd referenced above shall remain in the White family and that each of the four parties above shall have equal claim to this plot. The land located on ██████████ Rd shall remain in ██████████ White's name, but the other siblings (i.e. ██████████ and their children and grandchildren) shall have use of the ██████████ Rd plot.

The parties signing this agreement are aware of the fact that a copy of this agreement will be sent to the referral source in this case. The referral source in this case is the Saint Regis Mohawk Tribal Court. The parties also understand that, with the exception, all information gathered during this mediation process shall be held in strict confidence by all parties. The decision is in full and final settlement of all claims and counterclaims submitted by the parties in this matter. Both parties agree to release each other from any further matters regarding this claim. The persons whose signatures appear below have read and acknowledged understanding this document. Each of the persons whose signatures appear below read and acknowledged understanding this document.

Creditors of the Estate

On April 14, 2017, The Tsi ion kwa nonh so:te Long Term Care Facility submitted a letter to the Court, seeking application as a potential creditor. The letter stated that at the time of [REDACTED] White's death there was an outstanding co-payment balance of \$ [REDACTED]. The letter also noted that since his death a number of payments had been made and that the current outstanding balance was \$ [REDACTED].

The Court subsequently contacted the Tsi ion kwa nonh so:te Long Term Care Facility and asked for a copy of their contract and a statement demonstrating the current outstanding balance. They complied and submitted a copy. A hearing will be set to determine whether the Estate owes the remaining balance or whether the contract was signed by one of [REDACTED] White's children and thus would not be part of the Estate. Copies of the above noted documents will be supplied to [REDACTED] White's children. The Long Term Care Facility and [REDACTED] White's children will be sent notice of the hearing.

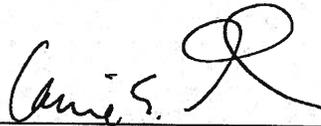
Order

It is hereby ORDERED that the Settlement Agreement entered into by the heirs has the full force and effect of a Court Order.

It is hereby ORDERED that [REDACTED] White is to obtain deeds for the three properties from the SRMT Tribal Clerk. The Tribal Clerk shall determine whether surveys are needed for the State Route 37 property and the [REDACTED] Road property. Upon receipt of the three deeds, [REDACTED] White is ORDERED to provide the Court with copies of the deeds.

A date shall be set for a hearing on whether Tsi ion kwa nonh so:te Long Term Care Facility had a contract with the decedent and is thus a creditor.

Signed by my hand this 19th day of December, 2017.



Carrie E. Garrow, Chief Judge
Saint Regis Mohawk Tribal Court