

# SAINT REGIS MOHAWK TRIBAL COURT

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██████████ KING,  
Petitioner

## DECISION AND ORDER

In the Matter of the Estate of

Case No: 17-CIV-00005

██████████ OAKES

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### PROCEDURAL / FACTUAL HISTORY

On April 7, 2017, ██████████ filed a Petition for Appointment as Administrator/ Executrix of the Estate of ██████████ Oakes. On April 7, 2017, ██████████ King also filed: Tribal Clerk's Verification of Information; Oath and Designation of the Tribal Clerk for process; a New York State, Department of Health Certificate of Death verifying that ██████████ died on ██████████ and ██████████ Oakes Last Will and Testament with Affidavit of Subscribing Witnesses. The Will's only bequest was that after debts are paid "...all the rest, residue, and remainder of my property, both real, personal, and mixed wherever situated to be equally divided..." among the three named grandchildren. On April 7, 2017, Petitioner also filed with the Court three Consent for Appointment of Administrator forms signed by ██████████ the named grandchildren/beneficiaries in the Will. The Will also acknowledged that ██████████ Oakes had five children; ██████████ specifically stated that she "make[s] no provision for them in this my Last Will and Testament. The Will "appoints" ██████████ King to be Executrix. <sup>1</sup>

Court status conferences were scheduled on May 10, 2017; May 30, 2017; June 27, 2017; August 1, 2017 and August 22, 2017 and a hearing was scheduled on September 20, 2017 and October 2, 2017.

At the May 10 status conference the Court informed the Petitioner of her responsibilities as Executor of the Estate, including that of publishing a Notice to creditors and filing an Inventory

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<sup>1</sup> Last Will and Testament of ██████████ Oakes

of [REDACTED] Oakes' property and assets. On that date Petitioner submitted a transcript of divorce settlement/"opting-out agreement" terms, recorded before the NYS Supreme Court in Franklin County on April 16, 1996, in the matter of [REDACTED] Oakes v [REDACTED] Oakes, (Index No.92-672).<sup>2</sup> Petitioner identified the "remainder" of [REDACTED] Oakes Estate as the house and one acre of land<sup>3</sup> conveyed to [REDACTED] Oakes through the divorce, (i.e., the "marital residence located on the [REDACTED] Road in Hogansburg, NY...").<sup>4</sup>

At the May 30 status conference Petitioner filed the Inventory and Value of Estate with the Court. Petitioner's brother, heir [REDACTED] also appeared and voiced his objection to the Court's exercise of jurisdiction over the property on [REDACTED] Road.

On June 2, 2017 the Court provided written Notice of the probate Court proceedings to all heirs, (children of [REDACTED] Oakes).

On June 26, 2017, a letter signed by three of [REDACTED] Oakes children, [REDACTED], and by [REDACTED] Oakes' ex-[REDACTED] Oakes, was filed with the Court, stating their disagreement with [REDACTED] Oakes' distribution of "the Oakes' house or property" as set forth in the Will.

On June 27, 2017, a status conference was held before the Court. Petitioner was present, as were three of [REDACTED] Oakes' other children: [REDACTED]. Heir [REDACTED] Oakes who resides out of state was also provided written notice of the proceeding but did not appear. Also present were [REDACTED] Oakes' ex-[REDACTED] Oakes. The Court initially informed all present that notice must be provided to all heirs and that the Court's first inquiry would address the validity of the Will. In clarifying the intent of the June 26 letter, the Court ascertained that no heir was challenging [REDACTED] Oakes' state of mind or the validity of the will. [REDACTED] Oakes addressed the Court to argue his position that [REDACTED] Oakes did not own the house in issue or any property which was part of Lot #

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<sup>2</sup> This stipulation of settlement was later incorporated into the parties' divorce judgment in Oakes v Oakes, Index No 92-672, dated November 6, 1996.

<sup>3</sup> Located at [REDACTED] Road, [REDACTED], Akwesasne

<sup>4</sup> Oakes v Oakes, Index No 92-672

stating that the home located on that Lot is not part of Oakes' Estate, and that Oakes "didn't own anything".

The Court then determined the Oakes' Will to be valid, noting that none of the heirs or beneficiaries had raised a challenge to the validity of the Will. The Court also granted Petitioner King's request for Letters Testamentary authorizing King to act as Executor of the Oakes Estate, as designated in the Will. The next appearance was scheduled for a status conference to explain the hearing process and how to submit proof or present witnesses to support the contention that the marital home was not part of Oakes Estate.

The next Court date of August 1, 2017, was adjourned until August 22, 2017.

At the August 22, 2017, conference the Court again explained the hearing process and the heirs' opportunity to present evidence and witnesses. Present were ,

On September 20, 2017 present in Court were . Also present was a witness for Oakes. At the onset of the hearing Presiding Judge Garrow disqualified herself from this case in accordance with the SRMT Code of Judicial Conduct, upon recognizing an uncle present in the courtroom as a witness for Oakes.<sup>5</sup> The hearing was adjourned and resumed on October 2, 2017.

On October 2, 2017, present in the courtroom were Petitioner King and heir Oakes. Oakes informed the Court that would not be appearing and that he would appear on behalf of his father Oakes. Oakes offered a "Conveyance of Land"/Deed in support of his argument that on November 25, 1976, Oakes' grandmother Oakes conveyed her rights of possession and ownership of the twenty-seven acres on . This Deed, also contained in the Tribal Clerk's file, was signed by Oakes and witnessed by two individuals. Oakes stated that there exists no deed to support any conveyance of one acre or the house to Oakes and that the one acre and house remain in Oakes possession, arguing "you can't give land without a deed".

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<sup>5</sup> See Disqualification Order dated September 21, 2017

King stated that Oakes' claims the house and one acre of land, and relies upon the terms of the Divorce agreement, made on April 16, 1996, between Oakes and Oakes.

## 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.<sup>6</sup> The Court possesses civil jurisdiction over disputes arising in, connected with, or substantially affecting Mohawk Indian Country.<sup>7</sup> Given that the probating, (or validating), 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>8</sup> the Court assumes jurisdiction of this probate case.

## APPLICABLE LAW

On August 16, 2017, the Saint Regis Mohawk Tribe, (SRMT), enacted the Saint Regis Mohawk Tribe Probate Law, (TCR#2017-52). Because this law was enacted after Oakes death and after this Petition was filed, this Court will not apply the SRMT Probate Law retroactively in this case. The Court may instead rely upon the SRMT Civil Code; the SRMT Tribal Court and Judiciary Code, the SRMT Land Laws and Land Dispute Ordinance and/or the legal precedents established by the SRMT Tribal Court.

## ANALYSIS

Oakes' will was signed on March 23, 2006, by Oakes in front of three disinterested witnesses, , each of whom swore in an attached Affidavit of Subscribing Witnesses, also dated March 23, 2006, that they witnessed Oakes declare the document to be her last will and testament; that Oakes "appeared to them of full age and of sound mind and memory [and] was in all respects competent to make a will and was not under any restraint..."<sup>9</sup>. No one having raised an objection or challenge

<sup>6</sup> The Saint Regis Mohawk Tribal Court and Judiciary Code , § V.I (2012)

<sup>7</sup> SRMT Civil Code Section II.A (2008)

<sup>8</sup> The Tribal Court and Judiciary Code , § V.I (2012)

<sup>9</sup> Affidavit of Subscribing Witnesses

to the validity of the will, this Court found on June 27, 2017, that [REDACTED] Oakes' Will is valid. [REDACTED] King was also issued Letters Testamentary on that date.

The Court has reviewed and considered the arguments offered in Court as well as documents filed and submitted by Petitioner and by [REDACTED] Oakes and [REDACTED] Oakes in support of [REDACTED] Oakes' claim that [REDACTED] Oakes did not own the house or any property which was part of Lot [REDACTED] on [REDACTED] Road, and that the property bequest in her Will should not be included in the [REDACTED] Oakes Estate..

The Court also considers all documents previously filed with the Tribal Clerk.

Documents offered into evidence by [REDACTED] Oakes and his representative, heir [REDACTED] Oakes, were: (1) a handwritten document entitled "[REDACTED] Oakes property [REDACTED] Akwesasne Mohawk Nation Territory", described as a deed but not expressing a conveyance and with no legible signature or date; and (2) a document entitled "Conveyance of Land" describing a November 25, 1976, conveyance by [REDACTED] Oakes of twenty-seven acres of land on [REDACTED] to [REDACTED] Oakes". Both documents are also found in the Tribal Clerk's file. The Court finds that neither document - one having no legible signature or date, and another dated November 25, 1976- has any relevance to any transaction or agreement to transfer the land which may have taken place after November 25, 1976.

Petitioner offers the terms of the Divorce agreement between [REDACTED] Oakes and [REDACTED] Oakes, entered into on April 16, 1992. This agreement formed the basis for the parties' divorce which was finalized on November 6, 1996. This agreement clearly reflect that the parties agreed that they were "owners of a marital residence located on the [REDACTED] Road in Hogansburg, New York, which contains their marital residence and approximately situate on twenty-seven acres of land."<sup>10</sup> The Divorce judgment dated November 6, 1996, incorporates terms of this agreement made between [REDACTED] Oakes and [REDACTED] Oakes on April 16, 1996. The Court finds that [REDACTED] Oakes and [REDACTED] Oakes undoubtedly agreed that [REDACTED] Oakes would have "sole use and occupancy" of the marital residence on [REDACTED] Road in Hogansburg, New York.

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<sup>10</sup> Divorce Agreement, Oakes v Oakes, Index No 92-672, p2

The Court also considers an untitled document in the Tribal Clerk's file, dated May 19, 1997, addressed "To Whom It May Concern", stating: "I give the house and about one [sic] of land surrounding the house to be surveyed at a later date. The rest of the land is to be used by family members". This document, dated approximately one year after the divorce agreement, was signed by [REDACTED] Oakes and [REDACTED] Oakes, as well as by a witness and the former Tribal Clerk.

Also of some significance are four SRMT Right to Use and Occupancy Deeds, contained in the Tribal Clerk's file, all dated July 20, 1994, which transfer portions of Lot [REDACTED] Oakes, Lot [REDACTED] Oakes, Lot [REDACTED] Oakes, Lot [REDACTED] Lot [REDACTED]. Each of these Deeds describes a conveyance between [REDACTED] Oakes' as the "party of the First Part" and the respective children, (parties of the second part), who were transferred a portion of Lot [REDACTED]. This provides additional proof that [REDACTED] Oakes and [REDACTED] Oakes owned the twenty-seven acres on [REDACTED] Road as husband and wife.

The Court finds that evidence and testimony presented to the Court proves, by a preponderance of the evidence that the marital residence located at [REDACTED] Road, Akwesasne and surrounding one acre parcel of land are included in the [REDACTED] Oakes Estate. As set forth in the Will, the rest, residue and remainder of [REDACTED] Oakes Estate including the house formerly known as the [REDACTED] Oakes Eren Oakes marital residence and the surrounding one acre parcel, shall be given to the named beneficiaries [REDACTED]

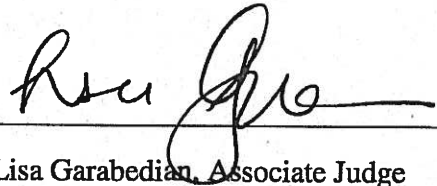
### CONCLUSION

Based on all of the foregoing, the Court Orders the following:

1. That the rest, residue and remainder of [REDACTED] Oakes Estate, is to be given to [REDACTED] [REDACTED] including real property consisting of the house known as the [REDACTED] Oakes and [REDACTED] Oakes marital residence at [REDACTED] Road, Akwesasne, and the one acre parcel of land surrounding the marital residence, all in accordance with the [REDACTED] Oakes Will and supporting documents.
2. That a SRMT Use and Occupancy Deed shall be created to reflect this transfer in ownership.

3. That Executor [REDACTED] King shall file a statement with Tribal Court stating that the Estate is fully administered and ready to be closed; and submit receipts showing that the Estate is fully distributed.

Signed by my hand this 23<sup>rd</sup> day of October, 2017



Lisa Garabedian, Associate Judge  
Saint Regis Mohawk Tribal Court

The parties have thirty (30) days from entry of this order to file an appeal with the Saint Regis Mohawk Tribal Appellate Court.