

# SAINT REGIS MOHAWK TRIBAL COURT

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██████████ Cole

Petitioner

DECISION AND ORDER

Case No. 17-CIV-00007

In the matter of the Estate of

██████████ COLE

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## PROCEDURAL HISTORY

On June 2, 2017, ██████████ Cole filed a petition for probate for the ██████████ Cole Estate. ██████████ Cole had eight children at the time of ██████████ death on ██████████ 2008; ██████████ Cole, ██████████ Cole, ██████████ Cole, ██████████ Cole, ██████████ Cole, ██████████ Cole, and the Petitioner ██████████ Cole.

The Petitioner presented to the Court a self-subscribing will for ██████████ Cole, dated July 7, 2005. It was witnessed by ██████████ and the Affidavit of Subscribing Witnesses was signed by all three witnesses.

All of the children were notified of the probate petition. No one raised an objection to the validity of the will. The Court found the will was valid on September 7, 2017.

██████████ Cole raised a question as to the amount of land contained within the ██████████ Cole Estate, claiming the approximately ██████████ acres between his lot and the ██████████ were given to him by his parents. Thus, a hearing was held to determine what land was owned by ██████████ Cole upon ██████████ death. Both the Petitioner ██████████ Cole and ██████████ Cole attended the hearing on September 27, 2017 and offered evidence.

## FACTUAL FINDINGS

The Petitioner, as the Executor of the will, bears the burden of proving what property is contained within the decedent's Estate. The burden of proof is the preponderance of the evidence.<sup>1</sup> A party meets this burden "by providing superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to include a fair and impartial mind to one side of the issue rather than the other."<sup>2</sup>

The Court makes the following factual findings based on the evidence submitted by the parties.

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<sup>1</sup> SRMT Rules of Civil Procedure § XX [Rule 17].

<sup>2</sup> SRMT Rules of Civil Procedure § XX [Rule 17] B.

1. On May 17, 1950 [REDACTED] Cole, [REDACTED] Cole's [REDACTED], and [REDACTED] engaged in a land transaction. [REDACTED] Cole received [REDACTED] acres of land, bounded on the north, east and south by [REDACTED].
2. On November 25, 1976, [REDACTED] Cole inherited the late [REDACTED] Estate.
3. [REDACTED] Cole gave each of their four [REDACTED] lots approximately [REDACTED] acres and retained a little over [REDACTED] acre where their home was situated. The lots given to their [REDACTED] of their homestead. [REDACTED] Cole also retained approximately [REDACTED] acres north of the [REDACTED] lots. The remaining [REDACTED] acres was directly north of the [REDACTED] acres given to their son, [REDACTED] Cole.
4. [REDACTED] Cole's [REDACTED] acre lot is known as Lot # [REDACTED] as evidenced by a SRMT Use and Occupancy Deed.
5. [REDACTED] Cole provided evidence of ownership of the [REDACTED] acre lot north of [REDACTED] property. [REDACTED] provided a written statement dated November 13, 1989 on Saint Regis Mohawk Tribe's letterhead. The document states that [REDACTED] Cole gave their [REDACTED] a parcel of land. The description of the lot is "North the [REDACTED], on the east by [REDACTED] Estate, on the West is [REDACTED] and on the South is [REDACTED] Cole."<sup>3</sup> This is the approximately [REDACTED] acres of land in dispute. And this gift was given before [REDACTED] Cole was given the [REDACTED] acres known as Lot # [REDACTED] which is why the southern border was still [REDACTED] Cole at the time of this gift.

### ANALYSIS

The only dispute with regards to the inventory is whether the [REDACTED] acres lot of land to the north of [REDACTED] Cole's Lot # [REDACTED] was given to [REDACTED] Cole by [REDACTED] parents prior to their death or whether the lot remains in [REDACTED] Cole's Estate. [REDACTED] Cole contends it belongs in the Estate. As noted above, [REDACTED] Cole produced a written document that demonstrates the lot was given to him.

There was no evidence offered by either party to refute the written statement of [REDACTED] Cole, on SRMT letterhead and signed by the Tribal Clerk, that they gifted the property to [REDACTED] Cole. [REDACTED] Cole testified [REDACTED] parents never told [REDACTED] they gave [REDACTED] the land. [REDACTED] further testified that [REDACTED] Petitioner [REDACTED] Cole, gave [REDACTED] the written statement about a year ago. [REDACTED] Cole testified he does not remember giving the document to [REDACTED] Cole, however, he did not provide evidence to contradict its authenticity.

The SRMT Land Laws and Land Dispute Ordinance outlines various forms of evidence that may be considered as proof of land ownership.<sup>4</sup> The written document is not a deed or bill of sale. Nonetheless SRMT LL&LDO allows for "any other relevant evidence."<sup>5</sup> The written statement signed by [REDACTED] Cole is relevant evidence of [REDACTED] Cole's ownership of the approximately [REDACTED] acres. And there is no evidence refuting its authenticity. For whatever reason, the written document was not contained in [REDACTED] Cole's land file maintained by the

<sup>3</sup> Respondent's Exhibit #1.

<sup>4</sup> SRMT Land Laws and Land Dispute Ordinance § IV E. 3.

<sup>5</sup> SRMT Land Laws and Land Dispute Ordinance § IV E. 3(k).

SRMT Tribal Clerk's Office. But this does not affect its validity, as it was signed by the owners of the [redacted] acre lot, [redacted] Cole. Moreover, it is the only evidence regarding the ownership of the approximately [redacted] acre lot and it demonstrates that [redacted] Cole, along with [redacted] gave that property to their [redacted] prior to [redacted] death. Thus, the Court finds that [redacted] Cole owns the approximately [redacted] acre lot north of [redacted] Lot # [redacted] and it is not part of the [redacted] Cole Estate, therefore, it cannot be distributed to the heirs.

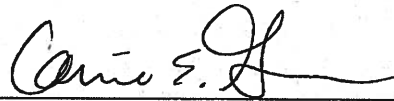
### ORDER

It is hereby ADJUDGED that the [redacted] acres located north of Lot [redacted] belongs to [redacted] Cole and is not part of the [redacted] Cole Estate.

It is hereby ORDERED that [redacted] Cole may seek a deed from the from the Saint Regis Mohawk Tribal Clerk's Office for the approximately [redacted] acre lot gifted to [redacted] on November 13, 1989.

This case shall be set for a further status conference to probate the remaining items contained in [redacted] Cole's Estate by Executor [redacted] Cole.

Signed by my hand this 30<sup>th</sup> day of October, 2017.



Carrie E. Garrow, Chief 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.