

**SAINT REGIS MOHAWK TRIBAL COURT
IN AND FOR THE SAINT REGIS MOHAWK TRIBE**

**In the Matter of the ESTATE OF ALLAN
J. GORROW, Deceased.**

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) **Case. No.: 16-CIV-00011**
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) **DECISION AND ORDER**
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Procedural Background

On August 26, 2016, David Gorrow filed a complaint challenging a document purported to be an unsigned Last Will and Testament of Allan Joseph Gorrow, his father. On October 3, 2016, Jonathan Garrow filed an answer objecting to the Complaint. Jonathan Garrow argued all of the decedent's children had entered into a contract whereby they agreed to appoint Jonathan Garrow to serve as the Administrator and to follow the terms of an unsigned will in regards to the distribution of the decedent's Estate.

An initial status conference was held on October 4, 2016. Present in the Court, were Petitioner David Gorrow, and Peter J. Herne, attorney for Jonathan Garrow. The Court notes that Mr. Herne never filed a Notice of Appearance with the Court.

On October 5, 2016, the Court issued an Order finding that all the biological children of the decedent were parties to the Estate. The Court also issued a Cease and Desist Order stating that all of the biological children of the decedent were to refrain from making changes to the real property and buildings on [REDACTED] except for regards to the goods sold out of the [REDACTED]. The Order is still in effect.

On January 9, 2017, Mr. Thomas Wheeler filed a Notice of Appearance on behalf of Roberta Kalbfliesh, Allan Gorrow, Jr., Michelle Jones, Robert Gorrow, and David Gorrow.

At the status conference on April 25, 2017, the parties informed the Court that they were willing to enter into mediation with the Akwesasne Court Mediation Services.

On May 8, 2018, the Court held a hearing. Peter J. Herne, Esq. appeared and represented Jonathan Garrow, Lorrie Wells, and Dale Gorrow. Thomas B. Wheeler, Esq. appeared and represented Roberta Kalbfliesh, Allan Gorrow, Jr., Michelle Jones, Robert Gorrow, and David Gorrow. The parties informed the Court that mediation had been unsuccessful.

The Court denied Peter J. Herne's, Esq. Motion to Dismiss and determined that the writing purported to be the Last Will and Testament of Allan J. Gorrow is invalid, thus, the matter proceeds intestacy. As all the Gorrow biological heirs had agreed to these two individuals to serve as Co-Administrators, the Court appointed Lorrie Wells and Allan Gorrow, Jr. as Co-

Administrators. The Court reserved the question of whether the Agreement entered into by the biological children to follow the writing purported to be the Last Will and Testament of Allan J. Gorrow is a contract to which the parties are bound.

On May 21, 2018, the Court received a letter, requesting clarification regarding the payment of the house insurance and utilities, which Mr. Jonathan Garrow had been maintaining, from Peter J. Herne, counsel for Jonathan Garrow, Lorrie Wells, and Dale Gorrow. The letter was also sent to Thomas B. Wheeler, counsel for Roberta Kalbfliesh, Allan Gorrow, Jr., Michelle Jones, Robert Gorrow, and David Gorrow. The letter also included objections to the Administrator's Oath on behalf of Ms. Lorrie Wells. Mr. Herne requested the objections be made part of the record.

The Court issued an Order on May 24, 2018, requiring Jonathan Garrow to continue to make the payments for the property insurance, electricity, heat, and itemize all of his expenses and provide a list to the Co-Administrators. The Court granted Ms. Wells' request and made her objections part of the record.

On June 6, 2018, the Court received notice that Peter J. Herne, Esq. withdrew from representation of Jonathan Garrow, Lorrie Wells, and Dale Gorrow. Mr. Clair Montroy, III, Esq. contacted the Court and indicated he was going to substitute for Mr. Herne and represent Jonathan Garrow, Lorrie Wells, and Dale Gorrow. On June 7, 2018, the Court issued a scheduling order regarding the issue of whether the agreement between the parties to distribute the Estate according to an unsigned document prepared by the decedent was a contract.

On June 18, 2018, the Court received a copy of an updated family tree from the Saint Regis Mohawk Tribe Tribal Clerk's Office.

In early September, the Court requested Mr. Clair Montroy, III, Esq. to file a notice of appearance, as the record was not clear which parties he represented. On September 10, 2018, the Court received a Notice of Appearance from Mr. Montroy, III, Esq. on behalf Jonathan Garrow. Given that Lorrie Wells and Dale Gorrow are not represented and did not have an opportunity to respond to the question regarding the validity of the agreement, the Court issued a new scheduling order on September 14, 2018, allowing Lorrie Wells and Dale Gorrow to submit a brief on the issue of the validity of the agreement. On October 9, 2018, the Court received an Amicus Statement, Amicus Brief and Amicus Answer from Lorrie Wells and Dale Gorrow. The Court notes that both Lorrie Wells and Dale Gorrow are parties to the case, as they are heirs, and thus their submissions are classified as a party Statement, Brief, and Answer.

On October 23, 2018, the Court issued a Decision and Order on Potential Heirs.

On November 1, 2018, Lorrie Wells submitted a copy of a writing purported to be the Last Will and Testament of Grace Albany Gorrow and proof of death.

On December 7, 2018, Jonathan Garrow submitted financial bank records, a copy of the Saint Regis Mohawk Tribe business license issued to Jonathan Garrow, and a financial gain/loss statement.

On December 10, 2018, Lorrie Wells and Allan Gorrow, Jr. submitted an inventory.

On December 11, 2018, Lorrie Wells submitted a request for a Letter of Administration to administer the decedent's stock at MetLife.

On December 13, 2019, the Court issued a limited Letter of Administrator to Lorrie Gorrow-Wells allowing her to take actions to administer the decedent's stock at MetLife. The letter expired on January 25, 2019.

On January 3, 2019, Allan J. Gorrow, Jr. submitted an inventory.

On January 3, 2019, Lorrie Wells resubmitted an Inventory dated June 29, 2018.

On March 4, 2019, the Court held a hearing on the matter. Carlene Lehache and Glenda Diabo, decedent's step daughters, were not in attendance. The parties' legal counsels, Clair Montroy III and Thomas Wheeler, submitted an oral motion to find that Glenda Diabo and Carlene Lehache, decedent's step-daughters, forfeited their interest by failing to appear. Lorrie Wells reminded the Court that she had previously submitted a writing purported to be the Last Will and Testament of Grace Albany Gorrow.

On March 8, 2019, the Court received confirmation from the Saint Regis Mohawk Tribal Clerk's Office that Glenda Diabo and Carlene Lehache are not enrolled members of the Saint Regis Mohawk Tribe, nor has either individual applied for tribal enrollment.

Applicable Law

The instant matter is governed by the Saint Regis Mohawk Tribe Land Dispute Resolution Ordinance (SRMT LDRO).¹

Jurisdiction

The Court has original jurisdiction over cases, matters or controversies arising under the laws, ordinances, regulations, customs and judicial decisions of the Tribe.² The Court possesses civil jurisdiction over disputes arising in, connected with, or substantially affecting Mohawk Indian Country.³ Given that the resolution of the Estate of a Tribal Member affects land on the Saint Regis Mohawk Indian Reservation and that the resolution of a Tribal Member's estate is a civil issue that substantially affects Mohawk Indian Country,⁴ the Court possesses jurisdiction over this Estate.

Discussion

In a previous Decision and Order, the Court analyzed the arguments raised by the parties in regards to the validity of a written agreement.⁵ The Court was unable to render a decision as to

¹ Estate of Allan J. Gorrow, 16-CIV-00011, 2-3 (Oct. 23, 2018).

² SRMT Tribal Court and Judiciary Code § V. 1.

³ SRMT Civ. Code § II. A.

⁴ SRMT Tribal Court and Judiciary Code § V. 1.

⁵ Estate of Allan J. Gorrow, 16-CIV-00011 (Oct. 23, 2018).

the validity of the agreement because of a remaining issue involving the decedent, Allan J. Gorrow's, two (2) step-children, Glenda Diabo and Carlene LeHache, membership status in the Saint Regis Mohawk Tribe.⁶ The Court set a hearing on the matter of the decedent's step-children eligibility for membership.⁷

At the hearing on March 4, 2019, Glenda Diabo and Carlene LeHache, decedent's step-daughters, were not in attendance. The parties' legal counsels, Clair Montroy III and Thomas Wheeler, and the self-represented parties requested that the Court find that the decedent's two (2) step-children defaulted by failing to appear and, as a result, may not inherit from the decedent's Estate. The Court has made no finding regarding Glenda Diabo and Carlene LeHache's membership or eligibility status in the Saint Regis Mohawk Tribe. However, in its previous Decision and Order, the Court analyzed the relevant tribal law and noted that the SRMT LDRO's definition of "children" includes step-children, "as long as the child *is a Tribal Member*."⁸ The Court later noted in that Decision and Order that it is "unclear at this point whether Glenda Diabo and Carlene LeHache are *eligible* for membership."⁹ Tribal membership and eligibility for membership possess different meanings and are key concepts in assessing the ability of an individual to hold land within the Saint Regis Mohawk Indian Reservation.¹⁰

After further review of the SRMT LDRO and the record, the Court finds it necessary to first clarify the applicable law. Next, the Court will pick up where it left off in the previous Decision and Order and apply its findings to the determine the decedent's heirs.¹¹ Finally, the Court will address the parties' oral motion.

Analysis

In the instant case, the Court record indicates that the decedent had ten (10) surviving children at the time of his death pursuant to the SRMT LDRO. The SRMT LDRO defines "children" as "natural born, legally adopted, step or grandchild, as long as the child is a Tribal member."¹² The certified family tree provided by the Saint Regis Mohawk Tribal Clerk's Office indicates that the decedent has eight (8) surviving biological SRMT Tribal member children. The eight (8) surviving Tribal member children are Allan J. Gorrow's Estate are Allan Joseph Gorrow, Jr.; Michelle Gorrow-Jones; Lorrie Gorrow-Wells; David Gorrow; Dale Gorrow; Jonathan Garrow; Robert Gorrow; and Roberta Kalbflesh. Thus, the Court holds the aforementioned individuals are the decedent's heirs and may take from the Decedent, Allan J. Gorrow's Estate. However, the record also indicates that the decedent has two (2) surviving step-

⁶ Estate of Allan J. Gorrow, 16-CIV-00011, 6 (Oct. 23, 2018).

⁷ *Id.* at 8.

⁸ *Id.* at 5.

⁹ *Id.* at 6.

¹⁰ See generally, SRMT et. al. v. John Bero, 14-LND-00006 (June 27, 2017).

¹¹ The Court notes it addressed in a previous Decision and Order in this matter, that the decedent's grandson Dane Gorrow is not entitled to inherit from his grandfather, Allan J. Gorrow's, Estate because his father did not survive the decedent/his grandfather. Estate of Allan J. Gorrow, 16-CIV-00011, 6-7 (Oct. 23, 2018).

¹² SRMT LDRO § IV, B.

daughters that are not enrolled at the Saint Regis Mohawk Tribe.¹³ In turn, this raises the issue of whether a step-child that is a non-member of the Saint Regis Mohawk Tribe may inherit real property located within the Saint Regis Mohawk Indian Reservation under the SRMT LDRO.

To address this question, the Court will review and apply the provisions of the SRMT LDRO. The SRMT LDRO provides in relevant part: “[o]nly Tribally enrolled members shall be permitted to possess a use and occupancy deed or to otherwise own land on the Reservation”¹⁴ and that “[r]eservation land may not be sold to, held by or in any way relinquished to a non-Member of the St. Regis Mohawk Tribe.”¹⁵ Moreover, the SRMT LDRO has a section that addresses intestate distribution.¹⁶ The intestate distribution section clearly states that only surviving Tribal member spouses, children, and descendants may inherit interests in tribal land.¹⁷ Under the SRMT LDRO, the only manner a non-enrolled individual may hold land is in cases where a non-member spouse is conveyed a life estate.¹⁸ The Court record indicates that there is a substantial likelihood that Glenda Diabo and Carlene Lehache are members of the Mohawks of Kahnawake. Therefore, it is entirely possible they may be eligible for membership in the Saint Regis Mohawk Tribe. However, the SRMT LDRO has no language suggesting that individuals that are eligible or individuals that are non-member Mohawks may inherit real property. Thus, as non-members of the Saint Regis Mohawk Tribe, the Court holds that Carlene Lehache and Glenda Diabo, are unable to inherit real property from the decedent’s Estate. However, as indicated by the parties’ submissions, the decedent’s Estate also consists of personal property. This in turn, raises the question of whether Glenda Diabo and Carlene Lehache, as non-members, are eligible to inherit personal property from the Estate pursuant to the SRMT LDRO.

In its review of its case law, the Court found no instance of where it has addressed whether a non-member may inherit a decedent’s personal property that is located within the Saint Regis Mohawk Indian Reservation.¹⁹ This is an issue of first impression to the Court. In order to reach a determination on that issue, the Court will again look to the provisions found within the SRMT LDRO. The purpose of the SRMT LDRO, was to provide “a fair and equitable procedure for resolving land disputes within the St. Regis Mohawk Tribe’s jurisdiction.”²⁰ However, the law does not include provisions that provides guidance as to whether a non-member may inherit a decedent’s personal property.

¹³ The Court received a document on March 8, 2019 from Derrick King, SRMT Deputy Clerk, indicating that Glenda Diabo and Carlene Lehache are not enrolled members of the Saint Regis Mohawk Tribe, nor has either individual applied for tribal membership. The document is part of the Court record herein and is available to all parties.

¹⁴ SRMT LDRO § V. B.

¹⁵ SRMT LDRO § V. C.

¹⁶ SRMT LDRO § V. E. 1. – 7.

¹⁷ SRMT LDRO § V. E. 1. – 7.

¹⁸ SRMT LDRO § VI. A. 3.

¹⁹ In the matter of the *Estate of David L. Swamp*, the decedent’s step-son was an enrolled Tribal member of the Saint Regis Mohawk Tribe. Thus, the Court did not take up this issue in that case. *Estate of David L. Swamp*, 16-CIV-00017 (Jan. 31, 2018).

²⁰ SRMT LDRO § III.

It is clear by the language found within the provisions of the SRMT LDRO that it was solely intended to address matters involving land disputes. This is evidenced by title of the law, the provisions that establish the composition of the Land Dispute Tribunal, and provisions that establish the jurisdictional authority of the Tribunal and the Tribal Court to review and decide land disputes. Furthermore, the SRMT LDRO includes provisions that address the documents that can be put forth by parties to prove land ownership. The language found in the provisions demonstrates a clear intention that it is the policy of the Saint Regis Mohawk Tribe that tribal lands always remain in the hands of enrolled Tribal members. Subsequent written tribal law has also included such provisions.²¹ Thus, as a result, the provisions of the SRMT LDRO was written with the issue of enrollment in mind. The SRMT LDRO clearly demonstrates by the language found in its provisions and the absence of provisions addressing the matter of the personal property that it was never intended to be used for the purpose of distributing personal property. Prior to the enactment of the SRMT Probate Law, the Court did not have a law on point that addressed Will and intestate distribution and, as a result, the applicable provisions of the SRMT LDRO and its successor the SRMT LL&LDO were utilized to address these matters by the Court. However, it is has been limited in its application to only Tribal member heirs.²²

The issue of the distribution of personal property located within the reservation does not involve or impact real property and is outside the parameters of the SRMT LDRO.²³ Thus, there is no just or logical reason for the Court to impose the membership requirement as a prerequisite for an heir to inherit personal property. The Court finds it significant that the SRMT LDRO definition of "child" includes step-children in the same line to inherit as a decedent's natural or legally adopted children. Thus, based on the fact that the SRMT LDRO includes step-child in its definition of children and absent tribal written law barring non-member step-children from inheriting personal property located within the reservation, the Court holds that Carlene Lehache and Glenda Diabo are entitled to inherit personal property from the decedent's Estate. In turn, this brings the Court to the final issue raised by the parties' oral motion.

At the hearing on March 4, 2019, the parties requested that the Court find that by failing to appear, Glenda Diabo and Carlene Lehache, forfeit their interest and, as a result, may not inherit from the decedent's Estate. The SRMT LDRO is silent as to this matter; therefore, in order to address this matter, the Court will look to the SRMT Probate Law for guidance. However, the Court notes that the SRMT Probate Law is not binding on this matter because it was enacted after this case was filed.²⁴

The SRMT Probate Law does not include a provision on point; however, in relevant part it includes a provision that states a person may renounce a share of an Estate through filing an affidavit with the Court no later than three (3) months after the deceased's death or at the time at which it is determined that the person is entitled to take property.²⁵ In the instant matter, Carlene

²¹ See SRMT Probate Law, *see also*, SRMT LL&LDO.

²² See *e.g.* Estate of Alec A. Cook, 11-LND-00003 (July 14, 2015).

²³ The Court notes by personal property this does not include fixtures that are attached to the decedent's real property.

²⁴ The SRMT Probate Law was adopted August 16, 2017, by Tribal Council Resolution 2017-52.

²⁵ SRMT Probate Law § 2.1 (e) 1.

Lehache and Glenda Diabo, have failed to appear in Court and submit documents. The SRMT Probate Law indicates that it takes an action such as renouncing an interest in order for an individual to sever their interest in an Estate. Furthermore, the Court's case law demonstrates instances where parties did not participate in proceedings and the Court still assessed their interests and found that the interest was held by the individual or an Estate. Therefore, the Court finds that Glenda Diabo and Carlene Lehache, did not forfeit the interest they possess in the decedent's Estate by simply not showing up to Court.²⁶ Thus, the parties' motion is denied.

In the instant case, the crux of the case centers on whether the disputed agreement constitutes a legally binding and enforceable contract. In regards to the disputed agreement, the record indicates that the some of the decedent's heirs signed the disputed agreement and by doing so it is alleged that they agreed to distribute and administer their father's Estate pursuant to the terms of the draft Will. However, the documents submitted demonstrates that the agreement was not signed by all the decedent's heirs. It is alleged that the heirs that did not sign the agreement accepted property from the Estate. The Court has received a copy of a receipt signed by various Gorrow siblings, including Glenda Diabo and Carlene Lehache. An issue before the Court is whether by signing and accepting property constitutes performance and acceptance. At this time, the parties have submitted briefs on the issue of the agreement. However, the Court does not have the required evidence before it to address the issue regarding the agreement before it and will take this up at the scheduled hearing on April 4, 2019.

Legal Conclusions

1. As enrolled Tribal members of the Saint Regis Mohawk Tribe, Michelle Gorrow-Jones; Lorrie Gorrow-Wells; David Gorrow; Dale Gorrow; Jonathon Garrow; Robert Gorrow; and Roberta Kalbflesh possess an interest in Allan J. Gorrow, the decedent's, real and personal property portions of his Estate.
2. As non-members of the Saint Regis Mohawk Tribe, Glenda Diabo and Carlene Lehache are barred from inheriting an interest in the decedent's real property pursuant to the SRMT LDRO.
3. As the decedent, Allan J. Gorrow's step-children, Glenda Diabo and Carlene Lehache, may inherit personal property from the decedent's Estate.
4. The failure of an heir to appear in Court for a hearing does not in operation forfeit, sever, or otherwise negatively impact an interest held by an heir in a decedent's Estate.

²⁶ See *Rose Marie Sunday v. Paul C. Cree*, 17-LND-00006 (April 23, 2018). Doris Cree, Clyde Cree, and Debbie Cree never participated in any proceedings before the Court. The Court found that the parties, the aforementioned individuals, and the Estate of Cynthia Ann Cree Cook all have equal possessory interest in the disputed property lots.

ORDER

Based on the foregoing, the parties' motion is **DENIED**.

Signed this 27th day of March, 2019.



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

The parties have ten (10) days to file a motion of reconsideration with this Court and the parties have thirty (30) days from the entry of this Order to file an appeal with the Saint Regis Mohawk Court of Appeals.

This is to certify that this is a true copy
of the original that is on file with the
Saint Regis Mohawk Tribal Court.

Date: April 29, 2019
Signed: Karen Connors Oke
Name: Karen Connors Oke

