

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

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**Estate of Katie Herne Swamp,  
Deceased.**

**Case No.: 17-CIV -00015**

**PARTIAL DISTRIBUTION ORDER  
AMENDED**

**Thomas Lazore/Glenn Lazore,  
Petitioner(s)**

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**Procedural History**

For a more detailed procedural history, see the Court's order on August 9, 2018.

On August 18, 2017, a probate petition was filed by Andrew Glenn Lazore, the grandson of Katie Herne Swamp.

A written request for the Court to stop an ongoing land development in the area the Petitioner claims is part of the real property of the Estate of Katie Herne Swamp, was filed with the Court on August 18, 2017 by Andrew Glenn Lazore.

The Court issued an order denying the request for preliminary injunction on August 22, 2017.

On August 25, 2017, a more detailed request seeking the same relief was filed with the Court by Andrew Glenn Lazore.

The Court denied the second request for preliminary injunction on August 31, 2017.

Public notice for the Estate of Katie Herne Swamp was published in Indian Time newspaper beginning on December 7, 2017 and concluded the week of January 4, 2018.

On January 3, 2018, the Court found the Last Will and Testament of Katie Herne was valid and appointed Thomas Lazore, the named Executor in the Last Will and Testament, as Executor.

In January 2018, the Court received fifteen (15) Notices of Appearance. The following individuals filed a Notice of Appearance: Gilbert Terrance Jr., Tammy Terrance, Albert Shenendoah, Carolyn Shenendoah Kocher, Lorraine Shenendoah, Adele Shenendoah, Patricia Shenendoah, Norman J. Tarbell, Gloria Herne, Peter J. Herne, Vicki Herne, Beulah Terrance, Adam Bigtree, Stephen N. Tarbell, and Lisabeth M. Tarbell. The Court notes the form used were not provided or created by the Court.

Status conferences were held on October 31, 2017, December 4, 2017, January 2, 2018, January 23, 2018, and March 13, 2018. A hearing on the interested parties was held on March 27, 2018.

At the scheduled hearing for interested parties on March 27, 2018, no interested parties called witnesses. Those present, Beulah Bigtree and Norman Tarbell, indicated that they just wished to observe. No finding was made as to the issue of the status of the individuals who filed Notices of Appearance.

Subsequently, a hearing was conducted on April 16, 2018, for the writing purported to be the Last Will and Testament of Anna Waheson Tarbell Herne, in which the Court found that the writing was an ancient document and, thus, may be considered as evidence of Katie Herne Swamp's ownership of land.

The Court convened again on May 7, 2018, for a hearing on the condition contained in the writing purported to be the Last Will and Testament of Anna Waheson Tarbell Herne. Notice was sent to all parties, included the individuals who filed Notices of Appearance.

On May 22, 2018, a continuation of the May 7<sup>th</sup> hearing was held to determine whether or not the condition contained within the Last Will and Testament of Anna Waheson Tarbell Herne was met.

On August 9, 2018, the Court issued an Order holding that Anna Waheson Tarbell Herne's Estate must be probated in order to determine whether the condition contained within the Last Will and Testament of Anna Waheson Tarbell Herne was met and whether the Estate owned any real property.

A hearing on September 11, 2018, was held and the Court found the decedent was eligible for tribal membership.

The Anna Waheson Tarbell Herne Estate was probated and the Court determined that Katie Herne Swamp inherited  $\frac{1}{4}$  interest in the real property owned by her mother, Anna Waheson Tarbell Herne.<sup>1</sup>

The Court issued a Partial Distribution Order on May 1, 2020. On September 16, 2021, the Saint Regis Mohawk Tribe's Tribal Clerk's Office (SRMT Tribal Clerk) notified the Court that Andrew Glenn Lazore was seeking a Saint Regis Mohawk Tribe Use and Occupancy Deed. The SRMT Tribal Clerk noted an error, that Andrew Glenn Lazore's name was incorrectly written as Glenn Swamp.

### **Jurisdiction**

Pursuant to the Saint Regis Mohawk Tribe Probate Law, the Court "shall have personal jurisdiction to probate an estate when, at the time of death, (1) the deceased was either a Tribal

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<sup>1</sup> In the matter of the Estate of Anna Waheson Tarbell Herne, 18-PROB-00014 (December 4, 2019).

Member or a person eligible for enrollment as a Tribal Member and the deceased resided or owned real or personal property located within the reservation.”<sup>2</sup> Furthermore, “[t]he Tribal Court shall have exclusive jurisdiction to probate real property located within the reservation.”<sup>3</sup>

In the instant matter, the Petitioner Andrew Glenn Lazore and Executor Thomas Lazore, contend that the decedent, Katie Herne Swamp, has an interest in real property owned by her mother, Anna Waheson Tarbell Herne, as well as land referenced in the Last Will and Testament of Katie Herne Swamp. The documents provided by Glenn and Thomas Lazore and the Saint Regis Mohawk Tribe Tribal Clerk’s Office demonstrate that the real property is located within the borders of the Saint Regis Mohawk Indian Reservation. Thus, the Court possesses exclusive jurisdiction over the real property based on the aforementioned reasoning.

### **Applicable Law**

The present action is governed by the Saint Regis Mohawk Tribe Probate Law (SRMT Probate Law).<sup>4</sup>

### **DISCUSSION**

Katie Herne Swamp was the daughter of Anna Waheson Tarbell and John Peter Baptiste Tsiorakwisen Herne. The decedent died on May 31, 1982. Both of her parents predeceased the decedent. The Court held in *The Estate of Anna Waheson Tarbell Herne*, that the decedent possesses an ¼ interest of her mother’s real property.<sup>5</sup> The decedent holds her interest with her siblings Thomas Herne, Arthur Herne, and Joseph Herne. Katie Herne Swamp was married to Thomas Swamp and they had one child, Anna Waheson Swamp.<sup>6</sup> Both her daughter and her husband predeceased the decedent. Anna Waheson Swamp married Louis Lazore and they had four children, Thomas Lazore, Edward Lazore, James Lazore, and Glenn Lazore.

The Court found the Last Will and Testament of Katie Herne Swamp valid on January 3, 2018. Thus, the Last Will and Testament, and not the SRMT Probate Law’s intestate rules, controls distribution of any property that she owned. The Court is required to interpret each provision of a person’s Last Will and Testament.<sup>7</sup> The intention of the decedent, as expressed in the Last Will and Testament, controls the distribution of the Estate.<sup>8</sup> Thus, the Court will interpret each paragraph of the decedent’s Last Will and Testament that conveys a gift to a beneficiary.

The Last Will and Testament of Katie Herne Swamp contains several bequeathals. In the second paragraph of the Last Will and Testament, she gives all her interest in her house and approximately 25 acres of property to her grandsons, Thomas M. Lazore, Edward R. Lazore, and James R. Lazore, and Glenn or Glenny A. Lazore. This property was purportedly conveyed to

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<sup>2</sup> SRMT Probate Law § 1.3 (a).

<sup>3</sup> SRMT Probate Law § 1.3. (b) (1).

<sup>4</sup> SRMT Probate Law (enacted August 16, 2017).

<sup>5</sup> In the matter of the Estate of Anna Waheson Tarbell Herne, 18-PROB-00014 (December 4, 2019).

<sup>6</sup> Thomas and Anna Swamp also raised a nephew, James Herne. He was not legally adopted and thus is not an heir.

<sup>7</sup> SRMT Probate Law § 4.2.

<sup>8</sup> SRMT Probate Law § 4.2(b).

her and her brother Thomas from her father, John P. Herne's, alleged Last Will and Testament. John P. Herne was gifted this property by a condition in the Last Will and Testament of Anna Waheson Tarbell Herne.

Notably, the Court previously invalidated Anna Waheson Tarbell Herne's gift of her property to her husband, John P. Herne, and ordered that the property be distributed to her children.<sup>9</sup> Thus, John P. Herne could not gift property that he received from his wife, Anna Waheson Tarbell Herne, to his children. However, the Court also found that John P. Herne inherited an interest in this same property from his son Arthur Herne.<sup>10</sup> He could have conveyed this property by his Last Will and Testament to the decedent; however, the Court does not have John P. Herne's Last Will and Testament before it and currently his probate is not pending. The Court cannot speculate who will receive this property. Thus, any property he owned, regardless of how he obtained it, is owned by his Estate until the Estate is probated. Filing a probate action with a Court is the legal process required to transfer ownership of property from an Estate to a decedent's heirs or beneficiaries named in a Last Will and Testament. Thus, the Court reserves making a finding on the second paragraph of the Last Will and Testament of Katie Herne Swamp, until the John P. Herne Estate is probated.<sup>11</sup>

Paragraph three found in the Last Will and Testament includes a provision for the decedent's interest in the land that she owned with her husband, Thomas Swamp. The decedent's Last Will and Testament refers to this property as the hay meadows and it includes a wood lot and is located in an area described as "down the hill." Pursuant to paragraph three of the Last Will and Testament of Katie Herne Swamp, any and all interest in this real property is transferred to the decedent's grandsons, Thomas M. Lazore, Edward R. Lazore, James R. Lazore, and Glenny or Glenn A. Lazore.

Paragraph four of the Last Will and Testament transfers all the rest, residue and remainder of her property to the decedent's grandson, Glenny or Glenn Lazore. As noted in the Estate of Anna Waheson Tarbell Herne, each child received a  $\frac{1}{4}$  interest in the real property owned by Anna Waheson Tarbell Herne.<sup>12</sup> Thus, Katie Herne Swamp owns a  $\frac{1}{4}$  interest of the real property previously owned by the Anna Waheson Tarbell Herne Estate. Paragraph Four of the decedent's Last and Will and Testament addresses any of the other property she owned, for which she did not make a specific gift in her Last Will and Testament. This includes the  $\frac{1}{4}$  interest of the Anna Waheson Tarbell Herne Estate because it is not included in Paragraph two or Paragraph three. Thus, Glenn Lazore shall receive the decedent's  $\frac{1}{4}$  real property interest of the real property previously owned by the Anna Waheson Tarbell Estate, as set out in the Last Will and Testament.

Although the decedent's grandsons now own a property interest in the land surveyed in the Anna Waheson Tarbell Herne Estate, at this time they cannot receive a SRMT Use and Occupancy Deed for two reasons. First, the survey indicates a land dispute exists which has yet

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<sup>9</sup> In the matter of the Estate of Anna Waheson Tarbell Herne, 18-PROB-00014 (December 4, 2019).

<sup>10</sup> In the matter of the Estate of Arthur S. Herne, 19-PROB-00018.

<sup>11</sup> The Court notes in order to probate the Estate of John P. Herne, a petition must be completed and the required documentation must be filed with this Court.

<sup>12</sup> In the matter of the Estate of Anna Waheson Tarbell Herne, 18-PROB-00014 (December 4, 2019)


to be resolved; thus, it is unclear how many acres were owned by the Anna Waheson Tarbell Herne Estate and were transferred to her children and subsequently Katie Herne Swamp's grandchildren. Second, the remaining Estates for Anna Waheson Tarbell Herne's children and their heirs have not completed probate. Thomas and Glenn Lazore have begun the process for several of them, but estates are still pending and living heirs or beneficiaries must still be identified by the Petitioners. Once all of the Estates have been probated and all the heirs or beneficiaries identified, then the heirs and/or beneficiaries can determine how to divide up the property based on their interests or consent to giving up their interests. At that point, SRMT Use and Occupancy Deeds may be issued.

### **ORDER**

Based on the foregoing, it is **ORDERED, ADJUDGED, AND DECREED** that

1. The Court reserves making a decision on Paragraph Two of the Last Will and Testament of Kate Herne Swamp;
2. Any property inherited from the John P. Herne Estate shall not be distributed until the John P. Herne Estate is probated.
3. The property received by the decedent, the  $\frac{1}{4}$  of the real property in the Anna Waheson Tarbell Herne Estate, is transferred to Andrew Glenn Lazore;
4. The property held by the decedent and her husband, Thomas Swamp, is transferred to Thomas M. Lazore, Edward R. Lazore, James R. Lazore, and Andrew Glenn Lazore.

Signed this 17<sup>th</sup> day of September 2021.

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

*No later than ten (10) days after a judgment is final, a party may ask the Judge for a rehearing, reconsideration, correction vacation, or modification of the judgment. The parties have thirty (30) days from the entry of this Order to file an appeal with the Saint Regis Mohawk Court of Appeals. Due to the coronavirus pandemic, please consult the Administrative Orders found on the Court's webpage for information on how to submit a motion for reconsideration or appeal at this time.*