

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

In the Matter of the ESTATE OF THEODORE LAFRANCE, Deceased.)	Case No.: 18-CIV-00016
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)	Decision and Order
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Procedural Background

On May 22, 2018, Regis Newton LaFrance, Petitioner, filed an Intestate Probate Petition to probate the Theodore LaFrance Estate. The decedent is the Petitioner's uncle. The Petitioner filed the death certificate and a certified family tree from the Saint Regis Mohawk Tribal Clerk's Office. The decedent died on July 13, 1997. His wife, Carrie LaFrance, died on September 12, 2006. They did not have any children. The Court held numerous hearings on June 18, 2018, July 25, 2018, November 26, 2018, January 30, 2019, February 27, 2019, March 29, 2019, May 13, 2019, and May 29, 2019.

A written document which was purported to be the Last Will and Testament of Theodore LaFrance was presented to the Court on July 18, 2018. A purported Codicil to the Last Will and Testament of Theodore LaFrance was presented to the Court on November, 26, 2018. The required notice was posted in the local newspaper. Objections to the appointment of the Petitioner, Regis Newton LaFrance, were filed by Herbert Cole, Stephanie Buckshot, and Rita Cole. The Petitioner, Regis Newton LaFrance, objected to their participation in this matter. The Court found that because Rita Cole was raising an objection to the inclusion a certain plot of land in the decedent's Estate and that Stephanie Buckshot and Herbert Cole were living on that land, that they were interested parties in the Estate of Theodore LaFrance.

There were no objections raised to the document purported to be the Last Will and Testament of Theodore LaFrance and the Court found the Last Will and Testament of Theodore LaFrance to be valid. The Last Will and Testament of Theodore LaFrance named his wife, Carrie LaFrance, as the executor and in the case of her death, Charles Degges, Jr., his nephew. Carrie LaFrance died, subsequent to the decedent's death, on September 12, 2006. The Petitioner, Regis Newton LaFrance, raised an issue that Charles Degges, Jr. was not a tribal member and; thus, could not act as an executor. The Saint Regis Mohawk Tribe's Probate Code (SRMT Probate Code) states that when the Court concludes the Will is valid, "the Executor named in the Will shall be appointed to administer the estate according to the terms of this Probate Law and the deceased's Will."¹ The Court noted there is no bar on non-tribal members

¹ Saint Regis Mohawk Tribe's Probate Law § 4.6(a).

acting as an Executor in the SRMT Probate Law. Executors do not inherit property, unless the will so states. The executor merely helps facilitate the transfer of property to another, they are not conveyed an interest. In this case, Charles Degges, Jr. is not bequeathed any real property by the Last Will and Testament of Theodore LaFrance. Thus, the Court appointed Charles Degges, Jr. as the Executor and issued the Letters Testamentary.

The purported Codicil to the Last Will and Testament of Theodore LaFrance contains a reference to the land involved in the land dispute between the Petitioner and interested party, Rita Cole. The Court allowed the interested party, Rita Cole, to file a motion to reconsider the decision in the land dispute, *Newton LaFrance Jr., v. Rita Cole*, 12-LND-00005, based on the argument that the purported Codicil to the Last Will and Testament of Theodore LaFrance had not been considered by the Court. The motion was dismissed due to the Saint Regis Mohawk Tribe's Rules of Civil Procedure which require that all motions for reconsideration be filed within ten (10) days after the judgment and Rita Cole had already filed a timely motion for reconsideration.

The Court held a hearing on May 29, 2019, on the validity of the purported Codicil and on whether the Estate contains the land Theodore LaFrance inherited from his parents.

Jurisdiction

Pursuant to the SRMT 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 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."² Furthermore, "[t]he Tribal Court shall have exclusive jurisdiction to probate real property located within the reservation."³

In the instant matter, Theodore LaFrance, a tribal member, had an interest in real property. Thus, the Court possesses requisite jurisdiction.

Applicable Law

The present action is governed by the SRMT Probate Law.⁴

DISCUSSION

The Court is cognizant that there has been a decades long dispute over the ownership of a lot that Theodore LaFrance inherited from his parents, Noah and Louise LaFrance. The Court is also aware that the Court has issued a decision in a land dispute involving the Petitioner, Regis Newton LaFrance and interested party, Rita Cole,⁵ involving this property. Regis Newton LaFrance, argues the Court has already made a determination in *Newton LaFrance Jr. v. Rita Cole* that the Estate owned a portion of the land Theodore LaFrance inherited from his parents.⁶

² SRMT Probate Law § 1.3 (a).

³ SRMT Probate Law § 1.3. (b) (1).

⁴ SRMT Probate Law (enacted August 16, 2017).

⁵ 12-LND-00005 (unknown month, 2015.)

⁶ 12-LND-00005 (unknown month, 2015.)

The interested parties, Rita Cole, Herbert Cole, and Stephanie Buckshot argue the decedent's Codicil demonstrates Theodore LaFrance sold all the property he inherited from his parents. The Petitioner, Regis Newton LaFrance, strenuously objected, arguing the interested parties were getting another opportunity to reopen the land dispute. However, in a probate case, the Court is required to determine the validity of a will and carry out the requirements of the SRMT Probate Law,⁷ which includes evaluating the inventory of the Estate⁸ and distributing the Estate pursuant to the SRMT Probate Law.⁹ Thus, the Court must review all documents that make up a Last Will and Testament, including the Codicil in this case. And in this case the Codicil states that the property in dispute was sold by the decedent. Given that the Court must determine whether the Codicil is valid and what impact it has on the inventory, the Court must once again focus on the property the decedent inherited from his parents.

Theodore LaFrance and his three siblings each inherited a lot, from their parents Noah and Louise LaFrance, along the Racquette River measuring [REDACTED]. Subsequently, Theodore LaFrance and his brother Newton LaFrance, Sr. swapped their lots.¹⁰ As a result, Theodore LaFrance received the eastern most lot, where the northern border was also property of Theodore LaFrance, and his wife, Carrie. He also retained part of his original lot in compensation for Newton LaFrance, Sr. receiving their parents' house and barn. This portion of the lot Theodore LaFrance received measured [REDACTED], was north of Newton LaFrance, Sr.'s property or the property containing the house and the barn, and was on the western side of Theodore LaFrance's full lot which measured the [REDACTED].

The Court found at the hearing on May 29, 2019 that the Codicil to the Last Will and Testament of Theodore LaFrance was valid. The following outlines the Court's reasoning. The SRMT Probate Law does not contain a provision concerning codicils. A codicil is "simply a will that amends or supplements a prior will."¹¹ As it is a will, it is held to same the requirements to

⁷ SRMT Probate Law § 1.3(c)3-4.

⁸ SRMT Probate Law § 4.8(3).

⁹ SRMT Probate Law § 4.8(f).

¹⁰ 1973 Agreement.

¹¹ Restatement (Third) of Property § 3.1 cmt. a (1999). As the SRMT Probate Law does not define codicil, for guidance, the Court has looked to the most recent edition of the Restatement of Property. In a recent case, the Court looked to the Restatement of Property and another source of property law for guidance to resolve the issue before it. *See Francine Gray, Daniel Jacobs v. Alicia Cook* 18-CIV-00022, 4-5 (Feb. 20, 2019). As articulated in *Gray*, the SRMT Civil Code allows for the Court to utilize generally recognized principles of the law of contracts as reflected by the most recent Restatement of Contracts or in such expert treatises as the Court may choose to recognize or as the Court may otherwise determine; generally recognized principles of the law of torts, as reflected by the most recent Restatement of Torts or in such expert treatises as the Court may choose to recognize or as the Court may otherwise determine. The SRMT Civil Code allows for the Court to consult other sources on the matters of tort and contract law; however, it is silent as to the treatises or other sources it may consult as to real property. *Id.* at n. 8. In *Gray*, the Court utilized the definition found in outside sources, including the Restatement of Property, regarding right of ways. In the instant case, the definition used for a codicil comes from the Restatement (Third) of Property. The Court is aware that as related to property within the Saint Regis Mohawk Indian Reservation the concepts and principles of western property law such as adverse possession are not applicable. However, the Court is also aware that tribal members deal with issues of wills and codicils. Thus, the Court by using this definition for guidance purposes is not applying foreign concepts and will apply the definition in this decision because it does not conflict with principles of tribal sovereignty, self-government, and self-determination.

prove its validity. Under the SRMT Probate Law, the requirements for a valid will are it must be in writing, signed by the decedent and signed by two witnesses.¹² Wills may be self-proven with an attached acknowledgement stating that the witnesses declare that the testator/decedent declared it was their last will, signed it willingly in front of the witnesses, the witnesses signed the will in the presence of the decedent, and that to the best of their knowledge the decedent was eighteen (18) or more years of age, of sound mind, and was under no constraint or undue influence.¹³

The document presented to the Court as a Codicil to the Last Will and Testament of Theodore LaFrance is labelled, Codicil to the Last Will and Testament. It is dated September 23, 1983, signed by Theodore LaFrance, and signed by two witnesses. It states that the decedent signed the Codicil in the presence of the witnesses and declared it to be a Codicil to his Last Will and Testament, and that they signed it in presence of the decedent and each other. The Codicil states that the decedent was of sound mind. For the foregoing reasons, the Court found the Codicil to be valid. Thus, it is a part of the Last Will and Testament of Theodore LaFrance.

The remaining issue is determining the inventory of the Estate. The only item listed in the inventory was the land which Theodore LaFrance inherited from his parents. The Codicil states, "I direct that the portion of my Last Will and Testament under paragraph "Third" subdivision "(c)", "1&2" be deleted inasmuch as I have already disposed of said property."¹⁴ Thus, it is clear as of September 23, 1983, Theodore LaFrance sold the property described in that section of his Last Will and Testament. The third paragraph of the Last Will and Testament includes the lot inherited from his parents, Noah and Louise LaFrance, and directed how the property should be distributed. The third paragraph of the Last Will and Testament of Theodore LaFrance states:

(c) I direct that my real property located on Racquette Point, St. Regis Indian Reservation, which I inherited from my parents, be disposed of as follows:

(1) The portion I have reserved as a family burial plot shall remain in the name of the LaFrance family.

(2) The rest of the lot shall be offered to a member of the LaFrance family for sale; in the event there is no purchaser it shall be offered to any member of the tribe. The proceeds of said sale shall become part of my estate.¹⁵

The Codicil deletes this language from the Last Will and Testament. But it does more than delete the language, the Codicil explains why the deletion is necessary. As of September 23, 1983, Theodore LaFrance had sold the property he inherited from his parents. The best person to know what the decedent owned was the decedent. Given the foregoing, he no longer

¹² SRMT Probate Code § 4.1(c).

¹³ SRMT Probate Code § 4.1(e)(2).

¹⁴ Codicil to the Last Will and Testament of Theodore LaFrance.

¹⁵ Last Will and Testament of Theodore LaFrance.

owned it and his Estate does not own any of this land and it cannot be contained in the inventory of the Estate or distributed as an asset.

ORDER

It is **ADJUDGED** and **ORDERED** that the property inherited by Theodore LaFrance from his parents, Noah and Louise LaFrance, is not part of his Estate. If the Executor, Charles Degges, Jr., believes Theodore LaFrance owned any other real property, he is **ORDERED** to submit a revised inventory by July 31, 2019. Otherwise this case will be closed, and Charles Degges Jr. will be released as the Executor, as there are no other items listed on the decedent's inventory.

Signed this 21st day of June, 2019.



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

Pursuant to the Saint Regis Mohawk Tribe's Rules of Civil Procedure a party may ask the Judge for a rehearing, reconsideration, correction, vacation, or modification of the judgment. Pursuant to the Saint Regis Mohawk Tribe's Rules of Appellate Procedure this Order may be appealed within thirty (30) days after the entry of judgment.

