

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

**ESTATE OF JAKE GARROW,
deceased.**

)
)
) **Case No.: 18-PROB-00016**
)
) **Decision and Order**
)
)
)
)

Procedural History

On October 5, 2018, Leonard Garrow and Patricia Garrow White filed an Intestate Probation Petition for the Estate of Jake Garrow, their father. A document purported to be the Last Will and Testament for Jake Garrow was subsequently filed by the Petitioners. The Petitioners also provided a Certificate of Death and a certified family tree from the Saint Regis Mohawk Tribal Clerk.

At a December 11, 2018 hearing, the writing purported to be the Last Will and Testament of Jake Garrow was found to be a valid will and Letters Testamentary were issued to the Petitioners. Subsequent hearings regarding the holdings of the Estate were held on February 6, 2019, February 25, 2019, March 18, 2019, and April 8, 2019.

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 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.”¹ Furthermore, “[t]he Tribal Court shall have exclusive jurisdiction to probate real property located within the reservation.”²

In the instant matter, Jake Garrow was eligible for tribal enrollment and had assets located within the reservation. Thus, the Court possesses the requisite jurisdiction in this matter.

Applicable Law

The present action is governed by the Saint Regis Mohawk Tribe Probate Law (SRMT Probate Law).³

¹ SRMT Probate Law § 1.3 (a).

² SRMT Probate Law § 1.3. (b) (1).

³ SRMT Probate Law (enacted August 16, 2017).

Discussion

The sole issue before the Court is determining the property owned by the decedent and then the distribution of the Estate's assets. According to the Last Will and Testament of Jake Garrow, he owned several acres of land. The actual acreage is unknown. There is no chain of title as there are no land records demonstrating how Jake Garrow came to own this property. However, there is a statement signed by three Saint Regis Mohawk Tribal Council Chiefs, dated September 30, 1996, that refers to the Last Will and Testament of Jake Garrow and notes that he was "first owner of Garrow lands in Frogtown."⁴ Prior Tribal Council findings are evidence of ownership.⁵ This statement was found to be a Tribal Council finding⁶ and thus, the Court finds owned real property in Frogtown.

The decedent's, Jake Garrow, Last Will and Testament gifts to his wife, Nancy Garrow, "our home and its contents and all the land surrounding in a fence enclosure, approximately [REDACTED] [REDACTED]. This is for her life use and may dispose of it, as she wishes when she no longer has need of it."⁷ Nancy Garrow died after the decedent and her Estate is pending before the Court.⁸ The SRMT Probate Law provides the rules for interpreting a Last Will and Testament. The Court is required to analyze the terms expressed in the writings. It is assumed that the terms express the intent of the decedent. The Probate Law reflects this principle by stating it is the intention of the person making the will that controls the distribution of the Estate.⁹ Mr. Garrow's language in this section of his Last Will and Testament initially describes a life estate, with the term 'for her life use.' A life estate is when a person is given a piece of real property to use throughout their life, but upon their death their possessory interest expires and it is given to a designated person.¹⁰ However, the Last Will and Testament of Jake Garrow subsequently notes that his wife, Nancy Garrow, may dispose of it when she wishes. This indicates Jake Garrow intended to bequeath more than a life estate, as disposal or selling of the property requires her to own the property, not just possess a life interest.¹¹ A life estate with the power to dispose of property can be created,¹² however the SRMT Land Laws and Land Dispute Ordinance and the

⁴ SRMT Tribal Chiefs' Memo, September 30, 1996, Estate of Charles Garrow, 18-CIV-00018.

⁵ SRMT LL&LDO § IV.E.3.(f). *See* Catherine J. Leaf v. Irving Papineau, Todd Papineau, 18-LDN-00004 (April 18, 2019.)

⁶ Estate of Charles Garrow, 18 CIV-00018 (May 13, 2019).

⁷ Last Will and Testament of Jake Garrow, April 28, 1960.

⁸ Estate of Nancy Thompson Garrow, 18-PROB-00015.

⁹ SRMT Probate Law § 4.2(a).

¹⁰ *See* In the Matter of the Estate of Ella Cole, 17-CIV-00007 (April 23, 2018).

¹¹ In prior cases where the Court found a life estate to exist, definitive language was used to denote the person only possessed an interest in the land during their lifetime. *See* In the Matter of the Estate of Ella E. Cole, 17-CIV-00007 (April 23, 2018); Saint Regis Mohawk Tribal Council, et al. v. John Bero, 14-LND-00006 (June 27, 2017).

¹² Restatement (Third) of Property §18.1.c. (2011). In regards to the instant case, the matter is governed by the SRMT Probate Law. The SRMT Probate Law does not include guidance as to a life estate that includes the power to dispose of property. 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 treaties as the Court may choose to recognize or

SRMT Probate Law do not address this form of a life estate. Moreover, when the language is ambiguous as to whether a life estate with the power to dispose or a fee simple is created, the language that creates the power to dispose of the language tends to indicate that a fee simple is intended.¹³ A fee simple is the broadest property interest allowed by law and endures until the holder's death.¹⁴ Given that the SRMT Probate Law governs this Estate and it does not include a definition of a life estate with the power to dispose of it, Jake Garrow's gift to Nancy Garrow was not a life estate, but a fee simple interest and [REDACTED] surrounding their home, and including [REDACTED] is inherited by the Estate of Nancy Garrow, which is pending before the Court.

The remaining property is distributed according to Jake Garrow's Last Will and Testament as follows:

1. His son Leonard Garrow, one of the Executors, is to receive a lot described as "the lot on which his home is built on- approximately [REDACTED]." ¹⁵ Thus, Leonard Garrow receives the [REDACTED] where his house is located.
2. Alex Garrow, Jake Garrow's son, is to receive the "parcel of land surrounding his home, including a strip on the [REDACTED] boundary line, in equal share, after it has been measured and divided among the other heirs." ¹⁶ Alex Garrow has since died. The Court makes no finding as to who the actual owners of this land are, as the Alex Garrow Estate is not before the Court.
3. Charles Garrow, Jake Garrow's son, was bequeathed "a strip of land on the south side of the Frog Town road, where his home is located." ¹⁷ Charles Garrow has also since died. The Estate of Charles Garrow, 18-CIV-00018, is currently pending before the Court. That case will determine who is the owner of this lot.
4. The remaining parcel of land located on the [REDACTED] "divided equally among the rest of my heirs, Katherine will be next to Charlie's lot, Annie May will be next to Katherine and than Peter will be next to Alex." ¹⁸ Katherine, Annie May and Peter Garrow died subsequent to their father, Jake Garrow.

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 this form of life estates 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 life estates and are conveyed life estates by and through SRMT Right to Use and Occupancy Deeds and other written conveyance documents. 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.

¹³ Restatement (Third) of Property §18.1.c. (2011).

¹⁴ Black's Law Dictionary (10th ed. 2014)

¹⁵ Last Will and Testament of Jake Garrow, April 28, 1968.

¹⁶ *Id.*

¹⁷ Last Will and Testament of Jake Garrow, April 28, 1968.

¹⁸ Last Will and Testament of Jake Garrow, April 28, 1968.

The Court makes no finding as to who the actual owners of these lots are, as the Estates are not pending before the Court.

Other than the gifts to Nancy Garrow, Jake Garrow's wife, and Leonard Garrow, Jake Garrow's son, there are no dimensions describing the [REDACTED]. The Last Will and Testament of Jake Garrow states that the land given to Katherine, Annie May and Peter Garrow is to be divided equally. There is other language in Jake Garrow's Last Will and Testament that indicate the lots to the children are to be equal in size. The gift to Alex Garrow notes that he is given an additional strip on the [REDACTED] "in equal share, after it has been measured and divided among other heirs."¹⁹

ORDER

Based on the above, the Court hereby **ORDERS** the following:

1. Jake Garrow's interest in his home, its contents and all the land surrounding in a fence enclosure, approximately [REDACTED] is transferred to the Estate of Nancy Garrow, which is pending before the Court.
2. Jake Garrow's interest in the [REDACTED] where Leonard Garrow's home is built is transferred to Leonard Garrow.
3. Leonard Garrow is to obtain a deed for [REDACTED] and file a copy with the Court.

Signed this 13th day of May 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.

¹⁹ Last Will and Testament of Jake Garrow, April 28, 1968.