

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

**In the Matter of the ESTATE OF KERNEY
H. COLE, Deceased.**

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) **Case. No.: 18-PROB-00019**
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) **DECISION AND ORDER**
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Procedural Background

On November 21, 2018, Robin Lazore, daughter of the decedent, filed an intestate petition to probate the Estate of Kerney Cole and requested to be named the Administrator. On December 5, 2018, Bonnie Cole, decedent's daughter-in-law, filed with the Court a writing purported to be the Last Will and Testament of Kerney Cole, dated September 14, 2018, to probate. Notably, the writing appoints Bonnie Cole as the Executor. Following the filing of the writing, the Court contacted Bonnie Cole and requested that she contact the decedent's known heirs and beneficiaries.

On December 18, 2018, the Court held a hearing. Robin Lazore and Bonnie Cole were both in attendance and were self-represented. During the hearing, the Court was advised that following the decedent's death the locks were changed at his home. As a result, Robin Lazore has been unable to access the decedent, her father's, home. At the hearing, the Court did not make a finding as to the validity of the writing purported to be the decedent, Kerney Cole's, Last Will and Testament dated September 14, 2018. Robin Lazore agreed, with no objection raised by Bonnie Cole, to do the public notice at the Malone Telegraph, Indian Time, and Courier Observer pursuant to the requirements found in the Saint Regis Mohawk Tribe Probate Law.¹ Following the hearing, Bonnie Cole submitted a document on the behalf of Francis R. Cole, decedent's son. The document is signed by Francis Cole and appoints Bonnie Cole to act as his representative. Furthermore, Robin Lazore submitted a motion in which she asks this Court to allow her to access the decedent's house and property located at [REDACTED]
[REDACTED]

Applicable Law

The present action is governed by the Saint Regis Mohawk Tribe Probate Law (SRMT Probate Law).²

¹ SRMT Probate Law § 4.8. (c) (1).

² SRMT Probate Law (enacted August 16, 2017).

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.”³ Furthermore, “[t]he Tribal Court shall have exclusive jurisdiction to probate real property located within the reservation.”⁴

In the instant matter, the Saint Regis Mohawk Tribal Clerk’s Office certified family tree indicates that the decedent, Kerney Cole, was a Saint Regis Mohawk Tribal Member. At this time, the Court does not have land documents demonstrating that the decedent owned or possessed an interest in real property within the Saint Regis Mohawk Indian Reservation; however, the testimony provided at the December 18, 2018 hearing and documents filed indicate that the decedent’s home is located at [REDACTED] Thus, the Court possesses exclusive jurisdiction over the matter.

DISCUSSION

At this time, the Court will only address the documents filed by Robin Lazore and Bonnie Cole. The Court will start with the request for access to the decedent’s home made by Robin Lazore and then address the document filed by Bonnie Cole.

Robin Lazore Request to Gain Access to the decedent’s home [REDACTED]

Robin Lazore indicated at the hearing that she has been unable to access the decedent’s home because the locks were changed. Furthermore, she stated that she had been given a key and was able to freely access the decedent’s home prior to his death. Following the hearing, Robin Lazore submitted a motion requesting access to her father’s house and property to ensure the upkeep of his home and she stated “[m]ore importantly his cat litter and his garbage. In my father’s will I am stated as co-owner along with Francis Cole.”⁵

In the instant matter, the probate process was initiated by Robin Lazore and a writing purported to be the Last Will and Testament of the decedent, Kerney Cole, dated September 14, 2018, was subsequently filed by Bonnie Cole. It is important to understand that probate is the legal process that conveys ownership of any real or personal property owned by the decedent to the decedent’s heir and/or beneficiaries.⁶ Without going through this process, the property is owned by the Estate.⁷ Thus, all real and personal property at this time is owned by the Estate of Kerney Cole. As a result, the terms of the writing dated September 14, 2018 do not take effect until this Court determines that the writing is valid and the issuance of a distribution order by the Court. Thus, the individuals named in the writing purported to be the Last Will and Testament of

³ SRMT Probate Law § 1.3. (a).

⁴ SRMT Probate Law § 1.3. (b). (1).

⁵ Robin Lazore Motion filed on December 18, 2018.

⁶ See Sharrow v. Sharrow, 17-LND-00005, 7 (Jan. 24, 2018).

⁷ *Id.*

Kerney Cole, dated September 14, 2018, do not own the decedent's real or personal property regardless of the terms.

The motion submitted by Robin Lazore asks for access to the decedent's house in order to ensure the upkeep of his home and property. In general, the upkeep of the decedent's property while the matter is in probate falls under the responsibilities of the appointed Executor or Administrator. However, in the instant matter, the Court has not yet appointed an Executor or Administrator. As noted at the hearing, the Court cannot stop the actions of an heir or beneficiary taken outside of the Court. However, the Court notes that any actions taken by the heir or beneficiary that disturbs the decedent's property may result in later claims filed against them by the named Executor or Administrator or heir or beneficiary.

In its review of the limited record, there are no facts that indicate to the Court that Robin Lazore would take any actions that would harm the Estate. However, the decedent's other known living child, Francis Cole, was not present at the hearing and, at this time, the motion for access was not served on him. Due to the Court's interest in protecting the Estate and the fact that an Executor has not been appointed and as such provided an accounting of the decedent's assets, the Court finds that a show cause hearing is necessary in order to address Robin Lazore's request for access. At the hearing, the Court will assess Robin Lazore's request and the known beneficiaries and heirs may attend.

Francis Cole's Request to Appoint Bonnie Cole to act on his behalf

Following the hearing, Bonnie Cole submitted a document on the behalf of Francis R. Cole, decedent's son. The document is signed by Francis Cole and states Bonnie Cole may serve as his representative and "act on his behalf in another proceedings related to the administration of his father's Estate."⁸ The Saint Regis Mohawk Tribe Civil Code (SRMT Civil Code) allows for any party to represent themselves, so long as they are reasonably competent to comprehend and participate effectively in the proceedings.⁹ Furthermore, the SRMT Civil Code allows for individuals to represent clients if the person meets the requirements set forth by the Court for practice.¹⁰ It has also been the Court's practice to allow individuals to represent a party in a case under Power of Attorney authority. In its review of the Saint Regis Mohawk Tribe Rules of Civil Appellate Procedure, the Court notes that a personal representative may appeal a decision on behalf of a deceased person.¹¹ In its review of the Saint Regis Mohawk Tribe written law that is relevant to Court procedures, the Court finds no other provision that allows an individual to represent another or act on the behalf of another before the Court. Thus, the Court holds the only means in which an individual may act on another's behalf, or in other words represent another, before the Court is as their legal counsel or under Power of Attorney authority. The document

⁸ Bonnie Cole Document filed on December 18, 2018.

⁹ SRMT Civil Code § VI. C.

¹⁰ *Id.*

¹¹ SRMT Rules of Civil Appellate Procedure § XXII. A. The Court further notes that its case law demonstrates at the trial level in order for individual to pursue an action or request any relief an individual must possess the requisite standing. *See Tarbell v. Hillyard*, 18-LND-00008, 1 (Oct. 9, 2018) (citing to *Hathaway v. Thomas*, 12-LND-00007 (July 18, 2014)).

submitted by Bonnie Cole does not conform to either requirement. Thus, the Court holds the document signed by Francis Cole appointing Bonnie Cole has no legal effect.

In closing the Court will take up a remaining issue raised by the underlying circumstances of the instant case. The writing purported to be the Last Will and Testament of Kerney Cole, dated September 14, 2018, notably appoints Bonnie Cole to act as the decedent's Executor. Bonnie Cole is also the wife of Francis Cole. A reading of the provisions of the writing demonstrates that the decedent, Kerney Cole, conveyed real property to Francis Cole. Consequently, this means if the writing is determined to be valid Francis Cole will be conveyed ownership in a portion of the decedent's real property. Moreover, in the event, Bonnie Cole is appointed to serve as the Executor she is obligated to "act honestly and in good faith, expeditiously and efficiently, and consistent with the best interests of the estate."¹² As a result, even in the instance that the Francis Cole executes a Power of Attorney granting Bonnie Cole that authority or Ms. Cole becomes a member of the Saint Regis Mohawk Tribal Court Bar, the Court holds that she still may not act on his behalf *and* serve as the Executor. Such representation rises to a conflict of interest because her husband would inherit from the decedent's Estate and it is not clear that Bonnie Cole would make decisions and take actions that were in the best interest of the Estate and all beneficiaries and heirs. The Court notes that Bonnie Cole may choose to decline to serve as the Executor and Francis Cole may file the necessary paperwork in order to allow Ms. Cole to act his behalf.

ORDER

Based on the foregoing, it is:

ADJUDGED AND DECREED that any real or personal property owned by the decedent, Kerney Cole, is owned by the decedent's Estate, it is further;

ORDERED, ADJUDGED AND DECREED that the heirs and beneficiaries of Kerney Cole are prohibited from distributing, selling, changing, disturbing, destroying or giving away, any of the property in the decedent's Estate, it is further;

ORDERED that the heirs and beneficiaries of Kerney Cole appear on January 2, 2019 at 10 am for a show cause hearing on Robin Lazore's motion requesting access to the decedent's home at [REDACTED] it is further;

ADJUDGED AND DECREED that the document appointing Bonnie Cole to act on the behalf of Francis Cole has no legal effect.

¹² SRMT Probate Law § 1.6. (a).

Signed this 20th day of December, 2018.

A handwritten signature in blue ink, reading "Carrie E. Garrow", written over a horizontal line.

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