

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

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)	Case No.: 18-PROB-00022
ESTATE OF MARGARET M. JACOBS,)	
deceased.)	Partial Distribution Order
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Procedural History

On December 24, 2018, Joy Smith filed a Petition for Probate with a Will for the Estate of Margaret M. Jacobs, her mother. The Petitioner provided a Certificate of Death and a certified family tree from the Saint Regis Mohawk Tribal Clerk. The decedent died on March 31, 2016. Her husband, Richard Allen Jacobs, predeceased her. She was survived by their four children, Richard Brian Jacobs, Maxinne Ann Jacobs, Joy Lois Smith, and Michelle Theresa Williams.

Appearances were held on January 30, 2019, February 28, 2019, and On April 8, 2019, a hearing was held regarding the appointment of Joy Smith as Executor. Joy Smith, Michelle Williams, and Maxinne Jacobs, the decedent's daughters were present by phone. Richard Jacobs, decedent's son, was present in the Court. Maxinne Jacobs was the only heir who objected to Joy Smith's appointment was Executor. The Court appointed Joy Smith as the Executor and issued the Letters Testamentary on April 9, 2019.

At a hearing on May 1, 2019, Maxinne Smith requested that the Court remove Joy Smith as Executor. Michelle Williams and Richard Jacobs stated they have no objections to Joy Smith continuing to serve as Executor. The Court denied the request on May 13, 2019.

Hearings on whether a building, known as the [REDACTED] was part of the Margaret Jacobs Estate were held on June 14, 2019 and July 19, 2019. On August 26, 2019, the Court found that the building was owned by the Estate.

Subsequent hearings were held on March 13, 2020, and April 24, 2020, to finalize the Estate's inventory and distribution. On April 24, 2020, a hearing was held regarding a piece of property the decedent transferred to Michelle Williams on September 14, 2005. Also, at this hearing, Executor Joy Smith submitted a request to the Court for reimbursement of expenses on April 24, 2020.

The Executor has also requested a survey of the decedent's land. The survey is currently on hold due to the current coronavirus pandemic and may not be conducted until the end of the year or early next year due to the availability of a land surveyor.

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, Margaret M. Jacobs was an enrolled tribal member 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

Discussion

There are two issues currently before the Court, the reimbursement of expenses and distribution of the funds in two accounts, and whether the real property described in the September 14, 2005 SRMT Use and Occupancy Deed to Michelle Williams is part of the Estate. First, the Court will address the request for reimbursement of expenses and distribution of a portion of the funds.

In this case, Joy Smith, Executor, has requested to be reimbursed for the following expenses: [REDACTED]

The Estate currently has three (3) bank accounts, a personal checking and savings account and an account for the rental properties. The personal savings account contains [REDACTED]

Maxinne Jacobs and Michelle Williams did not object to the reimbursement of expenses. Richard Jacobs raised an objection, alleging that Joy Smith is in possession of one of his mother's [REDACTED] and that could be used to reimburse her expenses. Executor Joy Smith admitted that she has in her possession [REDACTED] that belonged to the decedent. The decedent's heirs provided testimony regarding the value of the [REDACTED] based on past appraisals. However, at this time, the [REDACTED] is an asset and has not been distributed and will be part of the distribution of personal property items. Based on the aforementioned, Richard Jacobs' objection is overruled and the Court will grant Executor Joy Smith's request for reimbursement of the requested expenses for a total of [REDACTED] to be paid out of the funds located in the decedent's personal checking account. Furthermore, the personal checking and savings account will be distributed, as requested by the parties. The remaining funds are to be divided equally between all four (4) siblings. Thus, the only bank account remaining in the Estate will be the rental property bank

¹ SRMT Probate Law § 1.3 (a).

² SRMT Probate Law § 1.3. (b) (1).

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

account, which only contains minimal funds. Thus, the parties need to be aware that if the survey exceeds the amount in the rental property bank account that they are responsible for this share of the expense and does not involve their mother's Estate. Also, if they decide to make any improvements to the real property, and that expense exceeds the funds in the rental bank account, that they are responsible for this expense.

The Court will now turn to whether the Estate owns the property described in the [REDACTED] SRMT Use and Occupancy Deed. The SRMT Use and Occupancy Deed transferred the property from Margaret Terrance to Michelle Williams. Joy Smith and Maxinne Jacobs argue that the Estate should own this property. They argue that Emma Loran's alleged Last Will and Testament, dated October 23, 1971, gifted the property to Richard Jacobs, his wife, and children, thus their mother, Margaret Jacobs, could not have transferred the property to Michelle Williams without their consent. They argue that they all owned this property together with the decedent. They also argue they were unaware of Emma Loran's purported Last Will and Testament when the transaction occurred. Michelle Williams argues the property was legally transferred from her mother to her, that she followed the procedures of the Saint Regis Mohawk Tribal Clerk's Office, and that any objection should have been raised at the time of the land transfer. Moreover, she argues that she was issued a valid SRMT Use and Occupancy Deed. Richard Jacobs did not object to the validity of the SRMT Right to Use and Occupancy Deed issued to Michelle Williams and contended he wanted to honor his mother's decision to give the property to his sister.

This is a complicated legal issue. This Estate cannot take into account other Wills from other Estates. In a probate case, the Court always looks for a chain of title to determine what the decedent owned at the time of death. Based on its face, the SRMT Use and Occupancy Deed to Michelle Williams is valid because it is signed by the SRMT Chiefs, Tribal Clerk, Margaret Jacobs, and Michelle Williams. Therefore, the property is not owned by Margaret Jacobs, as the chain of title demonstrates that Michelle Williams is the current owner. Generally, to challenge a SRMT Use and Occupancy Deed a land claim dispute is filed with the Court.⁴ It cannot be challenged in a probate case. A SRMT Use and Occupancy Deed may be challenged if there is a substantial error committed by the Council or Clerk in issuing the deed; if there is evidence of fraud in the documents used to substantiate the issuance of the deed; or evidence of fraud, deceit, coercion or duress in the signing of documents or transfer of the land.⁵ Thus, if anyone wishes to challenge Michelle Williams' deed, they may file a land dispute claim.

The parties should also be aware, that often when a land dispute case involves an alleged Last Will and Testament and an Estate that has not been probated, the parties are often required to probate the alleged Last Will and Testament. In this case, it is unclear whether Emma Loran's Estate was fully probated. Moreover, there was discussion by the parties that this may also involve Levi Jacobs' alleged Last Will and Testament. It is unclear whether this Estate was every probated by Tribal Council. Thus, it is possible that these two (2) Estates may need to be probated by the Court. But regardless of whether these two alleged Last Wills and Testaments

⁴ SRMT Land Laws and Land Dispute Ordinance § VI. (2016)

⁵ SRMT Land Laws and Land Dispute Ordinance § IV.E.6.(b). (2016)

need to be probated, if the parties wish to challenge the validity of Michelle Williams' SRMT Use and Occupancy Deed, they must do so by filing a land dispute case with the Court. Based on the aforementioned and the record, the Court finds that the property included in the [REDACTED] SRMT Right to Use and Occupancy Deed to Michelle Williams is not part of the Estate.

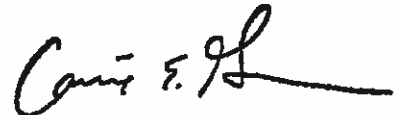
Finally, the Estate also contains personal items owned by the decedent. Joy Smith shared photos of these items with the parties. The parties must come to an agreement on how to distribute these items and submit the distribution plan to the Court. Otherwise, the Court may enter an Order dividing the assets.

ORDER

It is hereby **ORDERED** that

1. Joy Smith is to reimburse herself for [REDACTED] from the personal checking account of the decedent. Joy Smith must file a copy of the check with the Court and all of the decedent's heirs.
2. Joy Smith is to evenly distribute the remaining funds in the personal savings and checking account to herself and her three siblings. Joy Smith shall provide the Court with a copy of the checks to herself and her siblings and close the personal checking and savings account.
3. Richard Jacobs, Maxinne Jacobs, Joy Smith, and Michelle Williams are to come to an agreement about to evenly distribute the decedent's personal items and submit the written agreement to the Court by May 30, 2020. The agreement must be signed by each of the heirs and may be electronically signed or the heirs may use a conformed signature.⁶
4. The property deeded to Michelle Williams on [REDACTED] is not part of the Margaret Jacobs Estate.

Signed this 15th day of May 2020.



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.

⁶ See Administrative Order 2020-04 Amendment to 2020-03 Administrative Order Court Operations During the COVID-19 Emergency (April 20, 2020).

Saint Regis Mohawk Tribal Appellate Court

Physical Address:
Tribal Justice Building
545 State Route 37
Akwesasne, NY 13655
Phone: (518) 358-6300

Chief Judge Michele Mitchell
Associate Judge Patricia Lenzi
Associate Judge Karla General
Associate Judge Lisa Garabedian
Associate Judge Patrick Solomon

RE: Appellate Filing Procedure

Under the Saint Regis Mohawk Tribe Rules of Civil Appellate Procedure, any aggrieved party may file an appeal from a final judgement, order, or administrative decision of the Tribal Court. If you wish to file an appeal, you must follow the requirements outlined in the Saint Regis Mohawk Tribe Rules of Civil Appellate Procedure. The appeal process is governed by the Saint Regis Mohawk Tribe Rules of Civil Appellate Procedure and the United States Federal Rules of Appellate Procedure in instances the Saint Regis Mohawk Tribe Court of Appeals finds appropriate. A current version can be found on the Tribal Court's website at https://www.srmt-nsn.gov/tribal_court or may be requested by contacting the Court.

Under the Saint Regis Mohawk Tribe Rules of Civil Appellate Procedure, you must satisfy filing requirements in order for your appeal to be taken by the Saint Regis Mohawk Tribe Court of Appeals.

When you are the one filing the appeal, you are called the Appellant. The side opposing or responding to the appeal is called the Appellee.

Please note the following appellate filing procedures:

1. Everything you file must be filed with the Appellate Court Clerk.
2. Unless you request an extension of time and the request is granted, you as the Appellant, the party initiating the appeal, must file (a) a Written Notice of Appeal that conforms to the standard set forth in Saint Regis Mohawk Tribe Rules of Civil Appellate Procedure and (b) attached to the Notice must be a certified copy of the signed judgment, order, or administrative decision being appealed, (c) which all must be completed within thirty (30) calendar days of when the order, judgement, or administrative order is dated and signed by the Judge or Hearing Officer. (d) You also must pay the required fee (\$100.00) to the Appellate Court Clerk at the same time. *See SRMT Rules of Civil App. Procedure Rule(s) 6 and 7.*