

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

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**ESTATE OF MARGARET M. JACOBS,  
deceased.**

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) **Case No.: 18-PROB-00022**  
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) **Decision and Order**  
) **Motion to Remove the Executor**  
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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.

A hearing was held on April 8, 2019 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 as 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.

**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."<sup>1</sup> Furthermore, "[t]he Tribal Court shall have exclusive jurisdiction to probate real property located within the reservation."<sup>2</sup>

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.

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

<sup>2</sup> SRMT Probate Law § 1.3. (b) (1).

## **Applicable Law**

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

## **Discussion**

The Saint Regis Mohawk Tribe's Probate Law is silent as to any standard for removal of an Executor. The Probate Law does state that if the Court concludes the Will is valid, "the Executor named in the Will shall be appointed."<sup>4</sup> Thus, the Court has little discretion when an Executor is named in the Last Will and Testament, unless "the appointed Executor is unwilling or unable to serve as Executor."<sup>5</sup> The Executor is required to take an Oath that she "will faithfully and honestly administer the estate."<sup>6</sup> The Oath signed by Joy Smith states that she will "well, faithfully, and honestly discharge the duties of Fiduciary of the goods, chattels and credits of said decedent accord to law. . . and will duly account for all moneys and other property that will come into my hands."<sup>7</sup> This oath is required by the Court for administrators and executors.

The Court noted in the Estate of David L. Swamp, that an administrator is "obligated to collect assets, resolve and pay the decedent's debts and obligations, satisfy the estate's administration expenses, provide an accounting of the estate, and distribute the estate pursuant to a Court Order."<sup>8</sup> An executor is tasked with the same duties. Administrators and executors also "have a fiduciary obligation to uphold the law, follow the orders of the Court, and to take actions that are in the best interest of the estate and beneficiaries."<sup>9</sup> In the Estate of David L. Swamp, an administrator was removed because he mismanaged the decedent's funds by distributing them not pursuant to a Court order and for distributing the funds to the incorrect heirs. Thus, the administrator was removed because of failure "to manage the estate and distribute the funds in accordance with tribal law and, therefore, he has breached his fiduciary duties and obligations as defined in the Oath of the Administrator."<sup>10</sup>

Maxinne Jacobs testified that Joy Smith mismanaged assets. To substantiate her claim, she alleges that Joy Smith did not rent out one of the decedent's buildings, thus it is alleged that the Estate lost income due to the lack of rent. Maxinne Jacobs also alleges because the building was empty, damages occurred due to the lack of upkeep and oversight. She further alleges that Joy Smith has refused to respond to her or her sister Michelle Jacobs' request for information.

The Court notes that Joy Smith was originally appointed as an Executor by the Saint Regis Mohawk Tribal Council in 2016. Joy Smith testified that she has not been able to move

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<sup>3</sup> SRMT Probate Law (enacted August 16, 2017).

<sup>4</sup> SRMT Probate Law § 4.6(a).

<sup>5</sup> SRMT Probate Law § 4.6(c).

<sup>6</sup> SRMT Probate Law § 4.6(d).

<sup>7</sup> Estate of Margaret M. Jacobs, 18-PROB-00022, signed oath on file with the Court.

<sup>8</sup> Estate of David L. Swamp, 16-CIV-00017, 3 (November 9, 2017).

<sup>9</sup> *Id.* at 3-4.

<sup>10</sup> *Id.* at 4.

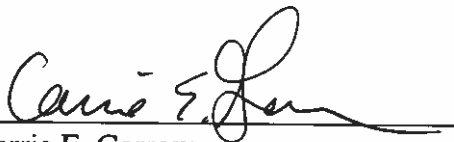
forward with probating the Estate, as the Saint Regis Mohawk Tribe's Clerk's Office has not responded to her requests.

There is insufficient evidence at this time to remove Joy Smith as the Executor. Joy Smith indicated she originally tried to move forward with the probate of the Estate, but there was confusion over whether the decedent still owned one of the buildings. Based on the foregoing, there is no evidence at this point that Joy Smith is not faithfully and honestly administering the Estate at this time.

### **ORDER**

It is hereby **ORDERED** that Maxinne Jacobs' motion to remove Joy Smith as Executor is **DENIED**.

Signed this 13<sup>th</sup> day of May 2019.

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