

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

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**In the Matter of the ESTATE OF THELBERT  
J. BIGTREE, Deceased.**

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) **Case No.: 18-PROB-00006**  
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) **INTERESTED PARTY MOTION**  
) **DECISION AND ORDER**  
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**Procedural Background**

On September 13, 2018, Sharla Burns, filed a petition to probate the decedent's, her father, Estate, and requested to be named the Executor of the above mentioned Estate. Ms. Burns also filed a certified family tree from the Saint Regis Mohawk Tribal Clerk's Office. The certified family tree demonstrates that Thelbert Bigtree was an enrolled tribal member of the Saint Regis Mohawk Tribe and lists his former spouse, Marlene L. Bigtree, and states that he was survived by the following seven (7) children: Shari L. Adams; Tricia L. Benedict; Sharla L. Burns; Oren J. Bigtree; Ohontsiosta T. Bigtree; Torry C. T. Bigtree; and Brennan M. Bigtree. The certified family tree demonstrates that the decedent's children are enrolled members of the Saint Regis Mohawk Tribe. Ms. Burns also filed a copy of a writing purported to be the Last Will and Testament of Thelbert Bigtree and a copy of the decedent's death certificate.

The Court held an initial appearance on this matter on December 4, 2018. Ms. Burns and her siblings were present.

On January 7, 2019, the Court held a status conference on this matter. Ms. Burns and her siblings were present. Ms. Burns provided proof that creditor notice was posted, submitted signed copies of consent forms for the appointment of her as the Executor, submitted receipts and debts owed, and submitted a copy of the decedent's divorce judgment dissolving his marriage with Marlene L. Bigtree. The Court found the Will to be valid and issued Letters Testamentary to Sharla Burns.

On February 11, 2019, the Court held a status conference on this matter to address the debts and property owned by the Estate. Ms. Burns, Executor, and her siblings were present.

On or about March 12, 2019, Justice Montoya contacted the Court inquiring about property that was conveyed to her grandmother Lorraine Canoe by the decedent known as [REDACTED] located on [REDACTED]. Justice Montoya also noted that Lorraine Canoe conveyed the property to Monica Montoya and herself. Justice Montoya provided the Court with copies of Indentures recorded at Franklin County for [REDACTED] for those transactions. The Court sent a letter to Ms. Burns, Executor, notifying her of the possible asset. The Court made Justice Montoya aware of the next scheduled Court hearing for this matter.

On April 3, 2019, the Court held a status conference on this matter and addressed the aforementioned conveyances. Ms. Burns and her siblings were present. Justice Montoya was absent. The Court heard testimony from Summer Bero, Saint Regis Mohawk Tribal Clerk, on the issues of the land conveyances and Lorraine Canoe's membership status in the Saint Regis Mohawk Tribe.<sup>1</sup>

On June 14, 2019, the Court held a status conference on this matter. On the record, the Court found the conveyance from Thelbert Bigtree and Diane L. Jock to Lorraine Canoe described in the Indenture dated February 8, 1989 to be invalid based on the fact that Lorraine Canoe is not a tribal member nor eligible for membership in the Saint Regis Mohawk Tribe. This finding renders the subsequent Indenture dated May 11, 2005 conveying property from Lorraine Canoe to Justice Montoya and Monica Montoya invalid.<sup>2</sup>

### **Applicable Law**

The Saint Regis Mohawk Tribe Probate Law (SRMT Probate Law) governs this matter.

### **Jurisdiction**

Pursuant to the Saint Regis Mohawk Tribe Probate Law, the "Tribal Court shall have personal jurisdiction to probate an estate when, at the time of death, (1) the deceased was either a Tribal Member of a person eligible for enrollment as a Tribal Member and the deceased resided or owned real or personal property located within the Reservation or (2) the non-member spouse of a Tribal Member who resided on and owned personal property located within the Reservation or (3) anyone who consents to the Tribal Court's jurisdiction."<sup>3</sup>

In the instant matter, the decedent, Thelbert Bigtree, was an enrolled member of the Saint Regis Mohawk Tribe and possessed real property located within the Reservation. Thus, the Court possesses jurisdiction over this matter.

### **Discussion**

In probate cases, the Court must make a determination as to the real and personal property owned by the decedent at death. This finding is necessary in order to determine whether real or personal property is part of the decedent's Estate. This finding is key because it determines what property may be distributed to a decedent's heirs or beneficiaries. During this process, the Court also evaluates any claims raised by individuals in regards to real property. For example, recently in the *Estate of Charles Garrow*, the Court took testimony from an interested party that raised a claim as to the real property being alleged to be in the decedent's Estate by the Petitioners.<sup>4</sup> The Court evaluates claims by assessing the testimony and evidence submitted by

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<sup>1</sup> The SRMT Tribal Clerk duties include administering and overseeing the Tribal membership Code. See SRMT TCR 2003-115 Tribal Clerk Act. Tribal Clerk Bero's office oversees and maintains the membership records for the SRMT.

<sup>2</sup> Summer Bero, Saint Regis Mohawk Tribal Clerk, testified that Lorraine Canoe was not a tribal member of the Saint Regis Mohawk Tribe nor was she eligible for membership. Thus, the conveyance between Thelbert Bigtree and Diane L. Jock and Lorraine Canoe violates the SRMT Probate Law and is invalid. SRMT Probate Law § 5.1 (a).

<sup>3</sup> SRMT Probate Law § 1.3 (1) – (3).

<sup>4</sup> Estate of Charles Garrow, 18-CIV-00018 (May 13, 2019).

all involved parties and the land records submitted by the Saint Regis Mohawk Tribal Clerk's Office.

In the instant matter, a claim to property known as [REDACTED] has been raised by Justice Montoya. Ms. Montoya alleges that Thelbert Bigtree sold the property to her grandmother, Lorraine Canoe. Subsequently, Lorraine Canoe gave the property to Monica Montoya and Justice Montoya. Justice Montoya substantiates her claim to the property by pointing to two conveyances that are memorialized in the aforementioned Indentures recorded at Franklin County. Thus, similar as in its other probate cases, the Court is required to determine the interest held in [REDACTED] by the decedent at the time of death in order to assess whether it is part of the decedent's Estate. In the event, that property is found to be part of the decedent's Estate it is an asset and is subject to distribution. If property is not found to be part of the decedent's Estate it may not be distributed to the decedent's beneficiaries and/or heirs.

In order to determine whether real property was owned by the decedent at the time of death, the Court is tasked with evaluating the chain of title and tribal membership status of each owner. The Court conducts this analysis by reviewing the land documents and testimony provided by the decedent's heirs or beneficiaries; the individual raising the claim; and evidence submitted by the Saint Regis Mohawk Tribal Clerk's Office. The Court conducts its analysis by starting at the first noted conveyance in the records and ending with the conveyance to the decedent and evaluates the tribal membership status of each purported owner. The Court must check each and every owner in the chain. This analysis is required because a decedent may not devise real property to another that is not owned by them at their time of death nor may property that is not owned by the decedent be distributed to a decedent's heir pursuant to the SRMT Probate Law.

After a review of all testimony and land documents before it, the Court finds that the property interest held by Thelbert Bigtree in [REDACTED] is indeterminable at this time based on the defects found in the chain of title. The Court further finds the conveyances between the decedent and Diane L. Jock to Lorraine Canoe that occurred on February 8, 1989 and Lorraine Canoe and Monica Montoya and Justice Montoya that occurred on May 11, 2005 are invalid.

In this Decision and Order, the Court will first provide the relevant details from the land records to demonstrate how it reached its determination. Next, the Court will demonstrate how it determined the defects in the chain of title and evaluate the claim submitted by Justice Montoya.

#### ***Land Documents for Lot #203***

In the instant matter, the property which is the subject of this proceeding, known as [REDACTED] is within the borders of the Saint Regis Mohawk Indian Reservation and appears to have been originally owned by Margaret V. Lorraine. Margaret V. Lorraine executed a writing purported to be her Last Will and Testament on October 7, 1964. The writing is not signed by her or the subscribing witnesses and it appears that it was drawn by Maxwell Garrow, the Tribal Clerk of the Saint Regis Mohawk Tribe. The writing contains a provision which states, "I [Margaret V. Lorraine] hereby give and bequeath to my daughter Inez and granddaughter Sheldeen all of my estate and personal belongings to have and to hold forever." The writing

notes that “[t]his Estate is located on the [REDACTED]” The land records included a letter signed by Sheldeen M. Watson, dated May 13, 1987, that is not addressed to a specific person.<sup>5</sup> In the letter she stated, “I have agreed to sell this land left to me by my grandmother, Margaret Lorraine, located on [REDACTED] to Mr. Louis Hathaway. . .” The letter contains a note written on the document from an unknown source that questions whether Louis Hathaway backed out of the deal. The Court does not have the land file for Louis Hathaway before it.

The next action that occurred with regards to [REDACTED] appears to have occurred on January 10, 1989. On January 10, 1989 Sheldeen Watson wrote a letter that is not addressed to a specific person; however, she states that she has “received an agreed amount of [REDACTED] for the property left to me by my Grandmother, Mrs. Margaret Lorraine, . . . [s]aid property purchased by Mr. Thelbert Bigtree.” The letter notes that the sale of said property is final. The letter appears to have been signed by Sheldeen M. Watson and witnessed and signed by David R. Watson.

The land records provided also include a Saint Regis Mohawk Right to Occupancy Deed dated January 18, 1989 between Sheldeen Marie (Lorraine) Watson, Brad, Adam, and Peter Bigtree parties of the first part and Thelbert Bigtree party of the second part. The Right to Occupancy Deed was signed by the decedent, Thelbert Bigtree, Adam Bigtree, Brad Bigtree, and Peter Bigtree. Notably, the Occupancy Deed was not signed by the Tribal Chiefs or the Tribal Clerk nor was it signed by Sheldeen Watson.

The next formal action in regards to the disputed property occurred on February 8, 1989. The Indenture provided, which is recorded at the Franklin County Clerk’s Office and dated February 8, 1989, states that Thelbert Bigtree, decedent, and Diane L. Jock conveyed property known as the Inez Bigtree property known as [REDACTED] to Lorraine Canoe. In a letter, dated April 3, 1995, to Chief(s) John S. Loran, Norman J. Tarbell, and Philip H. Tarbell from Marlene Bigtree Jacobs, decedent’s former spouse, Thelbert Bigtree, decedent, and other members of the decedent’s family mentions the Inez Bigtree estate/property and states that it is presently occupied by Lorraine Canoe.

The Indentures submitted by Justice Montoya demonstrate that on May 11, 2005, Lorraine Canoe conveyed property known as the Lorraine Canoe property and described as [REDACTED] to Justice Montoya and Monica Montoya. The Indenture is recorded at Franklin County. There is no evidence of these conveyances at the Saint Regis Mohawk Tribal Clerk’s Office. The Court will now address the aforementioned property transactions in chronological order to demonstrate the defects in the chain of title.

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<sup>5</sup> The Court notes that the writing purported to be the Last Will and Testament of Margaret V. Lorraine does not provide a last name for Sheldeen and just states that said individual is her granddaughter. The subsequent documents are signed by a Sheldeen Watson and in a letter she refers to herself as the daughter of Inez Bigtree. The writing purported to be the Last Will and Testament of Margaret V. Lorraine refers to Inez Bigtree as her daughter. Based on the terms of the documents provided, the Court assumes that the Sheldeen listed in the writing purported to be a Will is Sheldeen Watson.

### *Land Transactions Analysis*

As previously noted, Margaret V. Lorraine appears to be first owner of the property known as [REDACTED]. During her lifetime, she executed a writing purported to be her Last Will and Testament devising the property equally to her daughter, Inez Bigtree, and granddaughter, Sheldeen Watson. However, the document provided is not signed by the witnesses or the testator, Margaret Lorraine. The document also appears to have been highlighted and has handwritten notes in the property description by an unknown person. There is no evidence demonstrating that the writing has undergone probate. This means that there has been no finding as to the writing's validity.<sup>6</sup>

In its cases, the Court has demonstrated that it is required to start with the first document on record dealing with the property at issue.<sup>7</sup> In absence of a probate process, all property owned by a decedent at the time of death is held by and remains in the decedent's Estate. It does not matter if there is presently no dispute or the decedent's heirs/beneficiaries are honoring the decedent's wishes by distributing the property to the named individual in the writing. This also applies to circumstances in cases where the decedent passed many years ago and the land file demonstrates that the person named in a Will or one of the decedent's legal heirs ended up with the property in the end. Probate is required to transfer legal ownership or interest a decedent possessed in property to another.

In this matter, a probate action for the Estate of Margaret V. Lorraine is necessary because a finding as to validity of the writing purported to be her Last Will and Testament is key. In the event, the writing is found to be invalid pursuant to the SRMT Probate Law that consequently means her property, including [REDACTED] is distributed to her surviving heirs equally.<sup>8</sup> Here, it is unknown if the surviving heirs would include the decedent based on the certified family tree. On the other hand, if the writing is found to be valid the provisions found in the writing would control the distribution of the property. This would likely mean that Margaret V. Lorraine's granddaughter Sheldeen Watson and Inez Bigtree inherited an equal interest in the property based on the terms of the writing. At this time, in order to pursue the property known as [REDACTED] this requires a probate action for the Estate of Margaret V. Lorraine to be filed by Ms. Burns or the decedent's heirs and/or beneficiaries. Once a finding as to the validity of the writing dated October 7, 1964 is determined the Court may proceed in determining the decedent's interest in [REDACTED] based on its finding. Thus, the Court finds that the decedent, Thelbert Bigtree's, interest in [REDACTED] is indeterminable at this time.

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<sup>6</sup> The Court notes in assessing the validity of a writing purported to be the Last Will and Testament of a decedent it must apply the SRMT Probate Law in cases filed following the enactment of the law.

<sup>7</sup> In the matter of the *Estate of Katie Herne Swamp*, the Petitioners submitted Katie Herne Swamp's mother, Anna Waheson Tarbell Herne's Will from the 1800s. In order to reach a determination as to the property owned by Katie Herne Swamp, it required the Court to start with the Will, land documents, and testimony provided in the *Estate of Anna Waheson Tarbell Herne*.

<sup>8</sup> The Court notes that the definition of a surviving heir is determined by examining who survived the decedent at time of death. It is not based on who is living at the time the action is filed at the Court. *See e.g.* Estate of George Ransom 16-CIV-00013, 3 (May 14, 2019).

In regards to the case at bar, Justice Montoya has submitted a claim to the Court regarding [REDACTED]. To support her claim, Justice Montoya submitted copies of two Indentures that are filed at Franklin County. The first Indenture dated February 8, 1989 memorializes a transaction in which Thelbert Bigtree and Diane L. Jock sold [REDACTED] to Lorraine Canoe. The second Indenture dated May 11, 2005 memorializes a land conveyance between Lorraine Canoe and Justice and Monica Montoya regarding [REDACTED]. Essentially, Ms. Montoya is requesting the Court to recognize and accept two Indentures that are recorded at Franklin County. This finding would mean that [REDACTED] is not an asset of the decedent, Thelbert Bigtree's Estate and; therefore, is not subject to distribution. Thus, the issue before the Court is [REDACTED] an Estate asset?

An asset is defined as "an item that is owned and has value."<sup>9</sup> In other words an asset of an Estate is property that a decedent owned at the time of death. At this time, the Court cannot determine the interest held by the decedent, Thelbert Bigtree, without a finding on the validity of the writing purported to be the Last Will and Testament of Margaret V. Lorraine dated October 7, 1964. Therefore, the Court finds that [REDACTED] is not at this time an asset of the Estate. Thus, the Court cannot assess and make a determination on the claim submitted by Justice Montoya.

### Conclusion

The aforementioned analysis demonstrates that the decedent, Thelbert Bigtree's, interest in [REDACTED] is indeterminable without a finding as to the validity of the writing purported to be the Last Will and Testament of Margaret V. Lorraine dated October 7, 1964. At this time, Ms. Burns or an heir/beneficiary may choose to pursue their father's interest in [REDACTED] by filing a probate action for Margaret V. Lorraine. However, the filing Petitioner(s) must recognize that if the writing dated October 7, 1964 is determined to be valid it is likely that an interest in [REDACTED] is also held by the Estate of Inez Bigtree. This means any interest held by the decedent, Thelbert Bigtree's, heirs will likely be held together with the Estate of Inez Bigtree. A probate action would have to be filed in order to determine the heirs or beneficiaries of the Estate of Inez Bigtree that hold the property with the decedent, Thelbert Bigtree's, heirs. Consequently, this may result in the decedent, Thelbert Bigtree's, heirs holding the property together with a large number of people. At that time, Ms. Burns and the other heirs of the decedent may attempt to purchase the property or come to an agreement as to how they all hold the property together with the heirs/beneficiaries of the Estate of Inez Bigtree. There also remains a question as to the interest held by Diane L. Jock and the alleged transaction between Louis Hathaway and Sheldeen Watson.

In the event that Ms. Burns and the remaining heirs wish to not pursue this property, the option to renounce all interest held by the decedent in [REDACTED] is available. This would require all of the decedent's children to submit a written notarized statement to the Court renouncing their interest in [REDACTED].<sup>10</sup> This in effect would remove the decedent, Thelbert Bigtree, from the chain of title and the remaining Estates that have an interest in the property would absorb his

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<sup>9</sup> *Black's Law Dictionary* (11th ed. 2019), available at Westlaw BLACKS.

<sup>10</sup> The Court notes a form is available at the Court for this purpose and it will be made available.

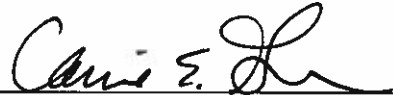
interest. If Ms. Burns and the decedent's children wish to gift their interest in this property to Justice Montoya and/or Monica Montoya or another Saint Regis Mohawk tribal member they may do so. However, this requires that Ms. Burns and the decedent, Thelbert Bigtree's, heirs submit a document to the Court stating that they want to gift the property and list the specific individual(s) receiving the gift and renounce all of their interest in [REDACTED]<sup>11</sup> At that time, the individual(s) obtaining the gift must go through the aforementioned process of probating the Estates of Margaret V. Lorraine and Inez Bigtree in order to pursue [REDACTED]

### ORDER

Based on the foregoing, it is:

**ORDERED, ADJUDGED AND DECREED** that the claim put forth by Justice Montoya is hereby **DISMISSED**.

Signed this 2<sup>nd</sup> day of July, 2019.



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.*

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<sup>11</sup> The Court notes a form is available at the Court for this purpose and it will be made available.