

## SAINT REGIS MOHAWK TRIBAL APPELLATE COURT

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In re Estate of Allan J. Gorrow.

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) **DECISION AND ORDER**

) **Case No. 19-APP-00004**

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) **[Consolidated for all purposes with**  
) **19-CIV-00011, 19-APP-00003 &**  
) **20-APP-00002]**  
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Opinion by: Barnes, R., *Associate Appellate Judge*

### Summary of the Decision

Following the death of Allan J. Gorrow (the “Decedent”), David Gorrow filed a complaint in this matter for probate of the estate of the Decedent (the “Estate”). Numerous proceedings have occurred at the Saint Regis Mohawk Tribal Court (“Tribal Court”), and although this case has been pending since 2016, no final judgment has issued.

Multiple appeals have been filed, with four potentially remaining pending at this time. The first filed appeal by Lorrie Wells challenged the Tribal Court’s order finding that the Decedent’s stepdaughters were heirs of the Estate. Ms. Wells also raised issue with the length of time that has passed to complete the Tribal Court proceedings as they currently are.

While this case has been pending for a few years, no final judgment has issued. This Court is without jurisdiction. Under the Rules of Civil Appellate Procedure (Tribal Council Resolution 16-2008), Section III, A., “[a]ny aggrieved party may appeal from a *final judgment* of the tribal court. A final judgment is one that *disposes of all issues in the case.*” (Emphasis added). Since many issues remain pending and no separate grounds exist for this Court to rule on the issues presented, this appeal is dismissed.

### Jurisdiction

This case comes before the Saint Regis Mohawk Tribal Court of Appeals on appeal from a Decision/Order issued by the Tribal Court, signed by Hon. Carrie E. Garrow on March 29, 2019. This Saint Regis Mohawk Tribal Court of Appeals possesses jurisdiction to hear all appeals from the Tribal Court. SRMT Tribal Court and Judiciary Code, Section V[2].

While this Court of Appeals is afforded jurisdiction to hear all appeals from the Tribal Court, jurisdiction to hear an appeal also includes the determination of whether an appeal is procedurally proper. Since no final judgment has issued, this Court has no jurisdiction to rule on the issues presented at this time.

## Factual and Procedural Background<sup>1</sup>

On June 25, 2016, the Decedent passed away. Following his funeral, the Decedent's biological children held a meeting at the Decedent's former residence. Those individuals were David Gorrow, Jonathan Garrow, Robert Kalbfliesh, Allan Gorrow Jr., Michelle Jones, and Robert Gorrow (collectively, the "Biological Children"). During that meeting, Jonathan Garrow presented the other parties with an unsigned document labeled Last Will and Testament of Alan J. Gorrow, which also contained handwritten notes.

Discussions ensued between the parties. They held a vote by paper ballot as to how they would proceed regarding the unsigned will and agreed to be ruled by majority vote. The options voted for as to follow and implement the unsigned will were (1) "yes, I agree;" (2) "no, I don't agree"; and (3) "not today if not today I appoint \_\_\_\_\_" (*sic*) as executor of the Estate. Of the eight Biological Children who took part in the vote, five voted "not today, if not today I appoint" Jonathan Garrow. Jonathan Garrow voted "Yes I agree" and wrote his name in as appointment of executor of the Estate. Of the two remaining votes, one had no checkmark but wrote in Craig Gorrow for executor of the Estate, and the last vote was "Yes I agree."

Following the ballot vote, some of the Biological Children opened safes located in the Decedent's residence. They discovered \_\_\_\_\_, along with other documents and items. Certain \_\_\_\_\_ and personal \_\_\_\_\_. Disputes arose later whether the distribution was pursuant to the \_\_\_\_\_ will.

Shortly after, David Gorrow filed the complaint in this matter. David's complaint states: "the will - in question lacks one of the utter most importance - a signature! So called will, is invalid - at any means of justice" (*sic*) praying for judgment against defendant in the sum of "\$ ESTATE" plus filing fees and other court fees, and interest from the date of judgment." (Emphasis in original). The Tribal Court treated David Gorrow's complaint as one for distribution of the Decedent's Estate.

Throughout that time and the following months, Jonathan Garrow distributed \_\_\_\_\_ to the Biological Children and documented those distributions, obtained a business license to operate the Decedent's former business, paid certain expenses of the Estate, and obtained access to the Decedent's bank account with Community Bank in Fort Covington, New York (the "Community Bank Account"). A dispute arose between the parties as to the breadth of their agreement regarding access to the Community Bank Account, and whether that agreement had any other purpose. Some Parties claimed they were misled as to its purpose, one reported it being falsely notarized, and some had claimed to rescind their signature after the fact.

Through the proceedings at the Tribal Court, it was determined that the draft will of the Decedent was invalid and that the case would proceed intestate. The Court appointed Lorrie Wells and Allan Gorrow Jr. as co-administrators of the Estate and indicated that it would later rule on the issue of whether the Biological Children had entered into an agreement initially for distribution of the Estate.

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<sup>1</sup> This Court recites the facts as presented through the filings and proceedings below. Because no findings of fact are ruled upon here, no facts should be considered established on appeal.

Following those rulings, the parties submitted various inventories and expense reports, the Tribal Court received a copy of the family tree of the Decedent, and an order was issued for the co-administrators to provide contact information for the Decedent's step-daughters, Carlene LaHache and Glenda Diabo (the "Stepdaughters").

On March 4, 2019, the Tribal Court held a hearing. At that hearing, the Biological Children's attorneys orally moved the Tribal Court for an order holding that the Stepdaughters forfeited any interests in the Estate for failing to appear. Shortly thereafter the Tribal Court received confirmation that the Stepdaughters were neither enrolled members of the Tribe nor eligible for enrollment. At the end of the month, the Tribal Court issued an order holding that the Stepdaughters were heirs to the Estate entitled to inherit certain property.

A motion to reconsider was filed and denied. Ms. Lorrie Wells filed an appeal of the Tribal Court's March 29, 2019 order challenging the determination that the Stepdaughters were heirs.

About a month later, the Tribal Court held hearings regarding whether an agreement was entered into between the Biological Children for distribution of the Estate. The Court heard testimony from Lorrie Wells, Dale Gorrow, Allan Gorrow Jr., Michelle Gorrow Wells, Jonathan Garrow, Robert Gorrow, Roberta Gorrow Kalbfliesh, and Carlene LaHache. On September 25, 2019, the Court issued an order finding no agreement between the Biological Children. Jonathan Garrow appealed that decision. Lorrie Wells also appealed that decision.

On January 27, 2020, Lorrie Wells was the only party to file a brief in this proceeding. Counsel for Jonathan Garrow, Lorrie Wells, and Dale Gorrow filed a motion for extension of time in this Court, requesting more time to submit appellate transcripts and/or briefs. This Court issued an order on February 14, 2020 extending time for the parties to submit transcripts and briefs.

The next month, the Tribal Court appointed Cecelia Mitchell as administrator of the Estate. Lorrie Wells and Jonathan Garrow appealed that order and challenged the Tribal Court's inaction as to the parties' Motion to Forgo a Formal Audit. The appeal also requested this Court stay further action by the Tribal Court pending the resolution of the appeals. On March 18, 2020, Cecelia Mitchell filed a motion to be relieved as administrator, which the Tribal Court granted.

During the time these appeals were pending, the Biological Children individually submitted agreements with the Tribal Court "as to the land and property" of the Estate. Included in that agreement was a representation that Jonathan Garrow would "withdraw" his appeal. No notice of abandonment or request for dismissal has been filed by Jonathan Garrow with this Court.

### **Analysis**

#### **a. Lorrie Wells' Appeal is Premature and Improper.**

For this Court to rule upon an issue appealed, it must first determine whether the appellant has a right to appeal. Under SRMT Rules of Civil Appellate Procedure ("SRMT Rules CAP"), Section III, A. "[a]ny aggrieved party may appeal from a *final judgment of the tribal court. A final judgment is one that disposes of all issues in the case.*" (Emphasis added). It is clear from Ms.

Wells' appeal that no final judgment has been issued. One of the two issues raised in Ms. Wells' brief is "[w]hether the Tribal Court erred in taking an inordinate amount of time - three and one-half years have passed to date *with no final judgment* - in its proceedings to the damage and detriment of the parties." (Emphasis added.) Ms. Wells' request is an admission itself that her appeal is premature.

While this Court is only expressly afforded jurisdiction for "final judgments" of the Tribal Court, appeals may also be permissible as interlocutory orders or collateral orders. Lorrie Wells' appeal does not fall under either of these categories and this Court remains without jurisdiction. This Court provides further explanation of these principles below.

On July 17, 2019, after this appeal was filed, the SRMT Court of Appeals issued an "Administrative Order" which permitted interlocutory appeals. An interlocutory appeal is one that is interim or temporary and which does not constitute a final resolution of the "whole controversy." Black's Law Dictionary, 8<sup>th</sup> Ed. However, as indicated by the administrative order, only those certain appeals constitute a permissible interlocutory appeal as indicated in 28 U.S.C. § 1292. Ms. Wells' appeal is not a permissible interlocutory appeal.

Under the "Collateral Order Doctrine," certain orders that are neither final judgments nor permissible interlocutory appeals, may still be proper for appeal because such orders are conclusive, resolve important questions completely separate from the merits of the case, and are of a nature that they would be rendered effectively unreviewable by an appeal court from a final judgment in the underlying action. *Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 867 (1994). Ms. Wells' issues on appeal do not resolve important questions completely separate from the merits of the case, and with respect to the issue of inheritance rights afforded to the Stepdaughters, is reviewable from a final judgment. There simply are no grounds for this Court to review the order regarding the Stepdaughters now.

The refusal to hear this appeal now, "emphasizes the deference that appellate courts owe to the trial judge as the individual initially called upon to decide the many questions of law and fact that occur in the course of a trial." *Firestone Tire and Rubber Co. v. Risjord*, 449 U.S. 368, 374 (1981). This also avoids piecemeal appeals that "undermine the independence of the [trial court] judge, as well as the special role that individual plays in [the] judicial system." *Id.* "The rule is [also] in accordance with the sensible policy of 'avoiding the obstruction to just claims that would come from permitting the harassment and cost of a succession of separate appeals from the various rulings to which a litigation may give rise, from its initiation to entry of judgment.'" *Id.*

As demonstrated by the various appeals filed in this action and consolidated by the Court with Ms. Wells' briefed appeal, orders that have since been mooted and other issues that have since been submitted to the Tribal Court also affect the validity of those appeals. Appeals should be limited to final orders, permissible interlocutory orders, or collateral orders that substantially affect the rights of the parties and that cannot either wait to be resolved after a final judgment or would be unreviewable on a final judgment.

It is possible that some of the confusion of the appealability of Tribal Court's orders arise from the language on the Tribal Court's orders indicating the time to file a notice of appeal or

motion for reconsideration. That language, however, is irrelevant for determining whether an order may be appealed. This Court takes no position on any general language of the Tribal Court's orders, but expresses that only final judgments, permissible interlocutory appeals, and collateral orders may be appealed.

As to Ms. Wells' remaining issue - the longevity of this case in Tribal Court proceedings - this Court only has jurisdiction to review issues of fact and law as decided by the Tribal Court. This Court does not control the administration of the Tribal Court's calendar, unless otherwise contrary to applicable law.

This Court dismisses Ms. Wells' appeal and the appeals consolidated here for these reasons.

### **Conclusion**

Ms. Wells' appeals (19-APP-00004 and 19-CIV-00011) and appeals 19-APP-00003 and 20-APP-00002 are premature and improper. This Court has no jurisdiction to rule upon the Tribal Court's decisions appealed until a final judgment is issued. The appeals are dismissed.

### **Order**

It is hereby:

**ORDERED** that, Lorrie Wells' appeals 19-APP-0004 and 19-CIV-00011, and appeals 19-APP-00003 and 20-APP-00002, are dismissed without prejudice.

Signed this 11th day of August 2020.



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Patricia Lenzi, Chief Appellate Judge  
SRMT Court of Appeals



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Kyle Montour, Associate Appellate Judge  
SRMT Court of Appeals



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Rowennakete Barnes, Associate Appellate Judge  
SRMT Court of Appeals