

SAINT REGIS MOHAWK TRIBAL APPELLATE COURT

Barney Cole,)	DECISION AND ORDER
)	Case No. 19-APP-00005
Appellant,)	
v.)	
)	
Karen Cole, Glory Cole, and Cindy Cole,)	
)	
Respondents.)	

Opinion by: Barnes, R., *Associate Appellate Judge*

Summary of the Decision

Appellant Barney Cole Jr. (“Appellant”) filed a land dispute claim with the Tribal Court claiming a vested interest in parcel 285 (the “Property”) naming Karen White, Glory Cole, Cindy Cole as Respondents (“Appellees”), and Greg Cole as an interested party. Appellees answered the complaint, submitting the purported will of their father and two deeds related to the Property. The Appellees then moved to dismiss the complaint, arguing that the evidence submitted demonstrated that Appellant had no vested interest in the Property. Appellant opposed and submitted an affidavit in response. The Tribal Court granted the motion to dismiss the next day.

The Tribal Court held that Appellant lacked standing, accepting the Appellee’s evidence. The Court acknowledged a disputed power of attorney used to transfer the Property, but ignored that material issue and other evidentiary issues with the documents submitted. The Court also stated that Appellant’s claim was one contesting the validity of a will, and therefore had to be probated.

The Tribal Court erred in dismissing the complaint. First, under Rule of Civil Procedure § XVI.C., “[m]otions to dismiss the lawsuit because the Court lacks jurisdiction or because the plaintiff has not stated a legitimate basis for relief may be made at any time.” Standing is a prerequisite to jurisdiction. If Appellant has some interest in the Property as disputed, he has an injury of being denied that interest, by the named defendants, and that could be redressed through a Court ruling resolving the dispute. The Tribal Court is given authority to resolve land disputes and the type of claim here. Land Laws & Land Dispute Ordinance (“LL&LDO”), §§ VI.A.1; IV.E.6.(b). Second, while the probate of Barney Cole Sr. and Beatrice Cole’s wills could also establish the validity and right to any interest in the Property, a motion to dismiss pursuant to Rule of Civil Procedure § XVI.C may be granted “if the plaintiff has not stated a legitimate basis for relief.” If probate of the wills could also resolve this dispute as indicated by the Tribal Court, then Appellant has stated a legitimate basis for relief as the Tribal Court has jurisdiction over probate actions. SRMT Probate Code, § 1.3. Third and finally, although brought as a motion to dismiss, the Court converted the motion to dismiss into one for summary

judgment and accepted the evidence it acknowledged as disputed (and which was also incomplete in missing pages). The procedure, and acceptance of disputed, unauthenticated, and incomplete evidence was an error.

Appellant has standing for those reasons. The Tribal Court's ruling dismissing the complaint is reversed.

Jurisdiction

This case comes before the Court of Appeals from an appeal of an October 9, 2019 Decision/Order issued by the Hon. Carrie E. Garrow. This Saint Regis Mohawk Tribal Court of Appeals possesses jurisdiction to hear all appeals from the Tribal Court. SRMT Tribal Court and Judiciary Code, § V[2]. All final decisions of the Tribal Court regarding land or land disputes are appealable to the Court of Appeals. LL&LDO, § VI, I.

Appellant appeals an order dismissing his complaint. Appellant has timely appealed a final order and has timely provided notice. This Court has jurisdiction to hear this appeal.

Factual and Procedural Background

Appellant Barney Cole Jr. ("Appellant") filed a land dispute claim with the Tribal Court claiming a vested interest in parcel 285 (the "Property") naming Karen White, Glory Cole, Cindy Cole as Respondents (here "Appellees"), and Greg Cole as an interested party. (8/16/19 Complaint.) Appellees answered the complaint, submitting the purported will of their father and two deeds related to the Property. (9/10/2019 Answer.)

Five days later the Appellees filed a motion to dismiss on the grounds that evidence showed the parcel at issue was appropriately bequeathed by first their father's, then their mother's will. They argued that Appellant had no vested interest in the Property. (9/19/19 Motion to Dismiss.) Appellant submitted an affidavit in opposition, setting forth various statements regarding the Property, his parents' purported intentions, and raising issue with the deeds submitted with respect to the transfer through a Power of Attorney. (10/8/19 Affidavit of B. Cole, Jr.) Appellant's attorney Joseph R. Docket, noted his appearance the same day. (10/8/19 Notice of Appearance.)

The next day, the Tribal Court issued a ruling granting the motion to dismiss. (10/9/19 Order.) Through its own authority the Tribal Court raised and adjudicated the issue of Appellant's standing. The Tribal Court accepted the evidence as submitted and ruled that Appellant had no standing because the documents indicated that Appellant held no interest in the Property. The Tribal Court noted that a Power of Attorney indicated in each Right to Use and Occupancy Deed was disputed, and that other evidentiary documents could be absent and provide an alternative resolution, but decided that the evidentiary dispute required the will to be probated. The Court cited no authority for this proposition, other than the general principle that the validity and requirements of a will is determined through SRMT Probate Law.

Appellant filed his notice of appeal on November 1, 2019 and timely served it. (11/4/19 notice of appeal; 11/4/19 proof of service.)

Analysis

a. Standing

Does Appellant have standing to prosecute his land claim dispute? The three elements of standing are (1) “injury in fact” - an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical; (2) a causal connection between the injury and the conduct complained of - the injury has to be fairly traceable to the challenged action of the defendant, and not the result of another party’s action who is not before the court; and (3) it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *See Lujan v. Defenders of Wildlife* (1992) 504 U.S. 555, 560-561. Essentially, a plaintiff must have been injured, from an action by the defendant, that the Court can remedy.

Appellant filed a land claim dispute alleging an interest in the Property once held by his father, Barney Cole Sr. Appellant alleged that he believed he had a vested interest in the land left to him, but was denied access to all documentation that could demonstrate such if true. In response, Appellees submitted an incomplete will of Barney Cole Sr., and Right to Use and Occupancy Deeds that indicated a transfer of property through a Power of Attorney. The Power of Attorney was never submitted as evidence. The Court also acknowledged in its ruling that it was “cognizant of the...disputed Power of Attorney authority and its scope,” “the fact that there may be a missing SRMT Right to Use and Occupancy Deed[,]” and that one document submitted by Appellees that was “*purported* to be the Last Will and Testament of Barney Cole, Sr.,...includes [Appellant] as a beneficiary,” yet failed to give weight to noted authentication and material fact issues present. (10/9/19 Order [italics added].) If the Power of Attorney is not valid, if a missing Right to Use and Occupancy Deed exists, if the will submitted is not that of Barney Cole Sr., and if Appellant has an interest in the land based on those evidentiary issues, relief could be provided by the Court to remedy that injury. Appellant has successfully argued the potential for relief from injury by the Appellees, should he hold a legal interest in the disputed Property.

In granting the motion to dismiss, the Court held that “Claimant has not submitted any land records demonstrating that he has an interest in [the Property]” and that “the record does not indicate that [Appellant] has an interest in [the Property].” (10/10/19 Order at p. 3) While the limited evidence submitted may indicate such, that does not establish that all evidence of the claim would generate the same ultimate result.

The issue of standing is whether a party is injured, by a defendant, and that injury can be remedied through court relief. Under the LL&LDO, “[a] deed issued and/or recorded by the Tribal Clerk may only be challenged if (i) there has been a substantial error committed by the Tribal Council or Clerk in issuing the deed; (ii) there is evidence of fraud in the documents used to substantiate the issuance of the deed; or (iii) evidence of fraud, deceit, coercion or duress in the signing of documents or in the transfer made in the deed.” LL&LDO, § IV.E.6(b). It is the

challenging party's burden to establish any error by clear and convincing evidence. *Id.* At least with respect to the Power of Attorney, Appellant has stated a potential legitimate claim for relief and has standing. The Court erred in granting the motion to dismiss on the grounds that Appellant does not have standing.

b. Motion to Dismiss/Concurrent Jurisdiction

The Court also erred in failing to acknowledge its concurrent jurisdiction. "Motions to dismiss the lawsuit because the Court lacks jurisdiction or because the plaintiff has not stated a legitimate basis for relief may be made at any time." SRMT Rules of Civil Procedure, § XVI.C. Under the LL&LDO the "Tribal Court shall have jurisdiction over land disputes." *Id.*, § VI.A.1. Under the SRMT Probate Law, the "Tribal Court shall have exclusive jurisdiction to probate real property located within the reservation." *Id.*, § 1.3(b).

As Appellant argues, "[t]he Probate Court may very well have jurisdiction over a challenge to the Inventory[, h]owever...this Court also has jurisdiction independent of any Probate proceedings to nullify or reform the Deed." (Appellant Brief at section III.) The Tribal Court dismissed Appellant's complaint because "the interest [in real property] allegedly held may be connected to a [w]ill or in other words an [e]state[, and that t]his requires a probate action to be filed." (10/9/19 Order at p. 3.) A motion to dismiss may be granted if "the plaintiff has not stated a legitimate basis for relief[.]" SRMT Rules of Civil Procedure, § XVI.C. If the matter could be characterized as a probate matter correctly, the Plaintiff has stated a legitimate basis for relief. The Tribal Court has jurisdiction over both types of claims, and the fact that Appellant may have a claim available through a probate action, indicates that he has stated a legitimate claim.

As indicated above, Appellant has standing either through a legitimate land dispute claim or potentially a probate action. The Tribal Court also erred in dismissing the claim on these grounds.

c. Denial of Discovery

Appellant also argues that he was improperly denied the right to conduct discovery because the Tribal Court converted the motion to dismiss into one of judgment on the pleadings or summary judgment.

Since the Tribal Court erred in dismissing the complaint for the reasons above, this Court need not address this argument in full. In converting the motion to dismiss into one of summary judgment, the Tribal Court erred accepting the disputed and incomplete evidence. The Tribal Court acknowledged the material issues with the evidence but disregarded them in granting the motion to dismiss. Appellant will be afforded the right conduct discovery upon remand, as the motion to dismiss should have been denied.

d. Motion to Expand Record/Appellee's filing

Appellant sought to expand the record to afford the Court of Appeal with evidence of Beatrice Cole's will and the fact that a probate action has been initiated. These requests are denied as moot.

This Court also rejects Appellees' unsubstantiated statements submitted in opposition to Appellant's brief. Unless authorized by the rules, evidence cannot be submitted for the first time on appeal. Appellees provide no authority to accept the statements they have submitted, and even if they did, Appellees' statements are not evidence. They are not submitted through an affidavit or other means of authentication and are given no weight.

Conclusion

The Tribal Court erred in dismissing Appellant's complaint. The Tribal Court's ruling should be reversed.

Order

It is hereby:

ORDERED that the Tribal Court's October 9, 2019 decision dismissing Appellant's complaint is reversed. Appellant shall be entitled to recover his costs on appeal.

Signed February 4, 2021



Patricia Lenzi, Chief Appellate Judge
SRMT Court of Appeals



Lisa Garabedian, Associate Appellate Judge
SRMT Court of Appeals



Rowennakete Barnes, Associate Appellate Judge
SRMT Court of Appeals