

In the matter of the ESTATE OF BEATRICE)
 A. COLE, deceased.) Case No.: 19-PROB-00020
)
) INVENTORY OBJECTION
) DECISION AND ORDER
)
)

On March 2, 2020, Joseph Doktor, Esq. filed with the Court a “First Request For Production of Documents to Karen White.”

On April 9, 2020, Joseph Doktor, Esq. filed with the Court a “Motion to Compel Discovery and For Sanctions.”

On May 14, 2020, the Court issued a Decision and Order admitting the decedent, Beatrice Cole’s, writing purported to be her Last Will and Testament dated March 18, 2010 to probate and issued Letters Testamentary to Karen A. White.

On June 18, 2020, Karen White, Executor, submitted a copy of the inventory. On July 16, 2020, the Court received a certificate of service that Karen White, Executor, mailed a copy of the inventory to Glory Cole, Cynthia Cole, Judith Laffin, Barney Cole, Jr., and Robert Cole on July 13, 2020.

On August 4, 2020, Joseph Doktor, Esq. filed with the Court an objection to the inventory submitted by Karen White on behalf of his client, Barney Cole, Jr.

On August 20, 2020, the Court held an appearance on this matter.

On September 8, 2020, Glory Cole, submitted a copy of a bank statement.

On September 10, 2020, the Court held an appearance on this matter.

On October 2, 2020, Joseph Doktor, Esq., filed with the Court a memorandum regarding his objection to the inventory.

The Court held hearings on Joseph Doktor, Esq. objection to the inventory submitted by Karen White, Executor, on December 22, 2020 and January 11, 2021. Robert Cole, Judith Laffin, Karen White, Glory Cole, Cynthia Cole, Barney Cole, Jr., Joseph Doktor, Esq., attorney for Barney Cole, Jr., and Derrick King, Deputy Clerk at the Saint Regis Mohawk Tribal Clerk’s Office attended. The Court accepted evidence and testimony.

Applicable Law

The matter is governed by the Saint Regis Mohawk Tribe Probate Law¹ and the Saint Regis Mohawk Tribe Land Laws and Land Dispute Ordinance.²

Jurisdiction

Pursuant to the Saint Regis Mohawk Tribe’s Probate Law (SRMT 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.”³

¹ SRMT Probate Law (enacted Aug. 16, 2017).

² SRMT LL&LDO (enacted Dec. 21, 2016).

³ SRMT Probate Law § 1.3. (a).

Furthermore, “[t]he Tribal Court shall have exclusive jurisdiction to probate real property located within the reservation.”⁴

In the instant matter, the documents submitted by the decedent’s heirs and land records demonstrate that Beatrice Cole, the decedent, was a tribal member, resided within the borders of the Reservation, and had an interest in real property located within the Reservation. Thus, the Court possesses the requisite jurisdiction.

Discussion

In this case, Karen White, Executor, has submitted an inventory outlining what she believes is a complete list of the assets owned by the Estate. Barney Cole, Jr., decedent’s son, submitted a timely objection and contends that the inventory is incomplete. Specifically, Mr. Cole alleges that [REDACTED] should be included in the Estate and challenges the validity of the SRMT Right to Use and Occupancy Deed issued to Karen White on or about January 21, 2014. The SRMT Probate Law notes in instances where an objection is filed the Court must consider the timely objections raised by a person with an interest in the Estate and determine what is just and proper to carry out the terms of the Estate.⁵ The Court will first provide the arguments submitted by Barney Cole, Jr. and Karen White, Executor. Next, the Court will address the issues presented to the Court.

In regards to the case at bar, Barney Cole, Jr. focuses his argument on the Power of Attorney Form executed by the decedent on March 18, 2010. In the Power of Attorney Form the decedent appointed Karen White, Executor, and Glory Cole as her agents. Mr. Cole alleges that the decedent failed to initial subparagraph (h) pertaining to the optional “Statutory Major Gifts Rider” in the Power of Attorney Form as required under New York statute to convey gifts. Thus, Mr. Cole contends because the decedent failed to satisfy the requirements as stated in the applicable New York statute it renders any land transfer that was authorized by Glory Cole or Karen White acting under their authority as the decedent’s agents invalid. Based on this argument, Mr. Cole alleges that the SRMT Right to Use and Occupancy Deed issued to Karen White for [REDACTED] is invalid and that property is an Estate asset.

In response, Karen White argued that this transaction occurred years ago and based on a plan that was given years before their mother, the decedent, passed. In her testimony, Glory Cole, stated that her mother, the decedent, redid her Will years ago and that the property, including the one that is in dispute, was deeded as gifts. Specifically, Ms. Cole noted that the decedent intended to gift Gregory Cole, Cynthia Cole, and Karen White property. Ms. Cole stated that she was involved in the land transfers and signed the documents because the decedent did not want to leave her home due to the winter conditions. Ms. Cole testified that it was easier for her to get to the Tribal Clerk’s Office. Ms. Cole contended that she worked with Corleen Jacco, a former Tribal Clerk, to complete these land transactions.

Based on the arguments and the evidence presented it is clear that the issue centers on the validity of the SRMT Right to Use and Occupancy Deed issued to Karen White for [REDACTED]. In

⁴ SRMT Probate Law § 1.3. (b) (1).

⁵ SRMT Probate Law Chp. 4 § 4.8 (b) (3).

this case, the deed is challenged by Barney Cole, Jr. based on his arguments that the Power of Attorney Form was not executed properly for gift transfers by the decedent pursuant to New York statutes. The SRMT Probate Law does not provide a relevant provision to the Court for evaluating the validity of a deed; however, the Saint Regis Mohawk Tribe Land Laws and Land Dispute Ordinance (SRMT LL&LDO) notes that “[a]ll land assignments and deeds made or issued by the Council are presumptively valid”⁶ and further states that “[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 [Tribal] 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. The party challenging the deed has the burden of proof to show with clear and convincing evidence that a deed was not properly issued or recorded.”⁷ Thus, the issues before the Court are three-fold. Moreover, the burden is on Barney Cole, Jr. to show with clear and convincing evidence that a deed was not properly issued or recorded.⁸ The Court will start its analysis by addressing whether there was a substantial error committed by the Tribal Clerk or Tribal Council. Next the Court will address whether there is any evidence of fraud, coercion, or duress in the signing of the documents. Finally, the Court will address whether there is any evidence of fraud in the documents.

In this case, the record demonstrates that Beatrice Cole executed a Power of Attorney form on March 18, 2010. The heirs’ testimony indicates that land transactions were executed by Glory Cole that resulted in SRMT Right to Use and Occupancy Deeds being issued under that authority. Furthermore, the Power of Attorney form executed by the decedent lists Glory Cole and Karen White, Executor, as the decedent’s agents. All of these facts were not disputed; thus, the Court accepts the aforementioned as fact. The record demonstrates that Glory Cole worked with Corleen Jacco, the former Tribal Clerk, to facilitate the land transfers following the execution of the Power of Attorney by the decedent. It appears that the Power of Attorney form was on file at the Tribal Clerk’s Office and a SRMT Right to Use and Occupancy Deed was prepared by the Tribal Clerk and issued by the Tribal Council. The Court will assume that the applicable documents are reviewed by both the Tribal Clerk and Tribal Council prior to issuing a SRMT Right to Use and Occupancy Deed.

In regards to the case at bar, Barney Cole, Jr.’s, legal counsel did not argue there was a substantial error committed because the decedent did not initial the applicable subparagraph for a gift as required under New York statutes. The Court notes that Mr. Cole’s legal counsel failed to provide arguments that address the relevant SRMT LL&LDO provisions and chose to base his arguments primarily on New York law even after being made aware that New York law is not binding on this Court. When made aware of the applicable provisions of the Saint Regis Mohawk Tribe Civil Code, Attorney Doktor contended that the decedent availed herself to the standards

⁶ SRMT LL&LDO § IV. 6. (a).

⁷ SRMT LL&LDO § IV. 6. (b).

⁸ The Court notes that the SRMT Civil Code provides the priority and precedence in which principles of law are applied. Written Mohawk laws adopted by the recognized governmental system of the Mohawk Tribe are applied before applying New York law. SRMT Civil Code § V. A. 1. – 6.

set forth in New York law because she executed this document. The Court notes that the issue at hand involves land that is located within the Saint Regis Mohawk Indian Reservation. Thus, the Saint Regis Mohawk Tribe's applicable law for governing land transactions and assessing the involved documents applies, not New York's statutes and laws. The application of another jurisdiction's laws when the Saint Regis Mohawk Tribe has written laws that address the issue would conflict with the provisions found in the Saint Regis Mohawk Tribe Civil Code (SRMT Civil Code) and directly violate principles of sovereignty.⁹ Thus, the Court will examine whether there was substantial error, as that is the test found in our laws.

In his testimony, Derrick King, noted that his involvement with Power of Attorney forms has been limited to notarizing them upon request. However, his testimony does indicate that land transactions have occurred based on a Power of Attorney form and he did not provide any testimony indicating that the issuance of a deed was improper based on the provided circumstances. Furthermore, the Court notes that Attorney Doktor chose to focus his questions for Mr. King whether there are any other Power of Attorney documents and if there are any land records missing. Attorney Doktor did not inquire as the process that the Tribal Clerk's Office reviews Power of Attorney forms for land conveyances.

In this case, the record clearly demonstrates that Glory Cole was a named agent in a Power of Attorney Form. There is no evidence demonstrating that the Tribal Clerk or Tribal Council violated provisions found in the SRMT LL&LDO and the Court assumes that the Tribal Clerk and Tribal Council reviewed the land records prior to the issuance of disputed deed because the Court has no contrary evidence proving otherwise. Moreover, based on the testimony submitted it appears that the Tribal Clerk's Office has reviewed land transactions that include Power of Attorney forms. Thus, the Court holds that a substantial error was not committed by the Tribal Council or Tribal Clerk in the issuance of a SRMT Right to Use and Occupancy Deed to Karen White for [REDACTED]. Next, the Court will address whether there is any evidence of fraud, coercion, or duress in the signing of the documents.

In regards to the case at hand, Barney Cole, Jr. did not contend that there was any form of fraud. Nonetheless, the Court holds that the record does not demonstrate that there is evidence of fraud in the documents used to substantiate the issuance of the deed or that Ms. Cole committed fraud, coerced the decedent, or that the decedent signed any document under duress. Therefore, the Court holds that Barney Cole, Jr. failed to satisfy his burden by proving by clear and convincing evidence that the SRMT Right to Use and Occupancy Deed issued to Karen White is invalid. Thus, [REDACTED] is not an Estate asset and may not be included in the inventory.

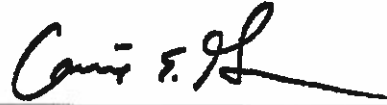
ORDER

NOW, THEREFORE, it is **ORDERED, ADJUDGED AND DECREED** that the objection to the inventory submitted on June 18, 2020 raised by Barney Cole, Jr. is hereby **DISMISSED**. The Court has received no other objection from a creditor or heir or person of interest; thus, the Court shall accept the inventory submitted by Karen White, Executor, to

⁹ SRMT Civil Code § V. B.

constitute a complete accounting of the decedent, Beatrice A. Cole's, Estate. Karen White, Executor, is **ORDERED** to appear on **February 16, 2021 at 10:00 a.m.**

Signed this 28th day of January 2021.



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.