

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

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Kenneth Sharrow	)	
	)	
Complainant	)	Case. No.: 17-LND-00005
	)	
v.	)	DECISION AND ORDER
	)	
Cecelia Sharrow	)	
Respondent	)	

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**Procedural Background**

This action is part of a consolidated litigation. On November 4, 2015, Lorraine S. Oakes filed a land dispute complaint with the Saint Regis Mohawk Land Dispute Tribunal naming Kenneth Sharrow as the Respondent (Oakes v. Sharrow).<sup>1</sup> The complaint filed contested the sale of four (4) acres of land owned by their father, John Sharrow, by Kenneth Sharrow.<sup>2</sup>

On March 26, 2016, Kenneth Sharrow filed a land dispute complaint with the Saint Regis Mohawk Land Dispute Tribunal naming Cecelia Sharrow as the Respondent (Sharrow v. Sharrow). The complaint filed alleged the “will” in her possession “is not legal.”<sup>3</sup>

Pursuant to the implementation of the Saint Regis Mohawk Tribe Land Laws and Land Dispute Ordinance, the case was transferred to the Saint Regis Mohawk Tribal Court in December 2016 and was not taken into consideration by the Saint Regis Mohawk Land Dispute Tribunal.

On March 3, 2017, the Court held a status conference in the matter of Oakes v. Sharrow. All parties were in attendance.

On March 30, 2017, the Court received a request to be named an interested party to the case of Oakes v. Sharrow by Fred Lazore. The Court did not grant or deny the motion made from Fred Lazore to be named as an interested party in the matter.

The Court, on its own motion, consolidated Oakes v. Sharrow and Sharrow v. Sharrow as it involved the same land. On April 4, 2017, a status conference was held. Kenneth Sharrow and Cecelia Sharrow were in attendance. Lorraine Oakes was absent. Kenneth Sharrow moved the Court to dismiss Lorraine Oakes’ complaint with prejudice through a written motion. The Court denied the motion on April 4, 2017.

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<sup>1</sup> The Court notes Lorraine S. Oakes also uses the last name, Buckshot. In this decision, the Court uses the last name she used in her initial land dispute complaint.

<sup>2</sup> Lorraine Oakes Complaint (filed with the Land Dispute Tribunal) (Nov. 4, 2015).

<sup>3</sup> Kenneth Sharrow Complaint (filed with the Land Dispute Tribunal) (March 16, 2016).

A trial was commenced on June 6, 2017. All the parties were in attendance and self-represented. During the trial proceedings, Lorraine Oakes asked to withdraw her complaint (Oakes v. Sharrow) from the present matter and the Court heard no objection entered by Cecelia Sharrow or Kenneth Sharrow.<sup>4</sup> The Court granted Lorraine Oakes' motion through written order.<sup>5</sup>

On July 31, 2017, the Court reconvened and granted a request for a continuance by the Respondent, Cecelia Sharrow.

On August 15, 2017, the Court reconvened and concluded on the matter of Sharrow v. Sharrow.

The Court heard testimony from: Kenneth Sharrow; Cecelia Sharrow; Lorraine Oakes; Wanda Sharrow;<sup>6</sup> Marilyn Sharrow; Fred Lazore; William "Billy" Sunday; and Betty Roundpoint, SRMT Tribal Clerk.

On November 1, 2017, the Court issued a written decision. The Court reopened the matter for a hearing on the alleged June Will. The Court received no written objection by the parties.

On November 21, 2017, the Court heard the matter regarding the alleged June Will. All parties were in attendance and self-represented.

The Court heard testimony from: Kenneth Sharrow, the Complainant; Wanda Sharrow; and Cecelia Sharrow, the Respondent.

### **Applicable Law**

On December 3, 2009 the Tribal Council enacted SRMT TCR 2009-69, Land Dispute Resolution Ordinance, amended in 2011, (SRMT TCR 2011-20).<sup>7</sup> A new land law, the Land Laws and Land Dispute Ordinance, was enacted on December 21, 2016.

Under the new ordinance, "[a]ll cases filed with but **not finally resolved** by the Land Dispute Tribunal under the prior Ordinance [LDRO] shall be transferred to the Tribal Court to be heard under this Ordinance."<sup>8</sup> The Ordinance draws a distinction between cases "not" finally resolved and those that have been finally resolved by the Tribunal.

In regards to the case at bar, the case was not taken under consideration by the Land Dispute Tribunal. The case was transferred to the Saint Regis Mohawk Tribal Court. Thus, this case must be heard under the Saint Regis Mohawk Tribe's Land Laws and Land Dispute Ordinance.

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<sup>4</sup> Transcript in the Matter of Sharrow v. Sharrow, 7 – 8 (June 6, 2017).

<sup>5</sup> See *Oakes v. Sharrow*, 17-LND-00001, 1 (June 6, 2017) ("The Claimant's [Lorraine Oakes] request to withdraw the complaint in this matter is hereby granted. The case is dismissed without prejudice.").

<sup>6</sup> In its previous decision to reopen the matter, the Court incorrectly referred to Mrs. Sharrow as "Melinda Sharrow" instead of Wanda Sharrow. The correction was made for the Court's Order to Dismiss.

<sup>7</sup> See *Herne v. Herne*, 11-LND-00007, 11 (Nov. 28, 2012) (citing to SRMT Civ. Code § V (A) (1-6)).

<sup>8</sup> LL&LDO § VI(H)(1).

### **Jurisdiction**

The SRMT LL&LDO states that the “Saint Regis Mohawk Tribal Court shall have jurisdiction over land disputes.”<sup>9</sup> The present matter comes to the Court as a land dispute, thus the Court exercises its jurisdictional authority over the present dispute pursuant to the SRMT LL&LDO.

### **Factual Background**

Due to the ultimate ruling in this case, the Court makes no factual findings. However, the Court notes the following relevant facts that are related to the writings and procedural background for purposes of its decision in this matter.

1. John Sharrow passed away on December 16, 2008.
2. Fred Lazore provided testimony as to a land transaction between him and the Complainant, Kenneth Sharrow, for land allegedly owned by the decedent, John Sharrow.
3. The Complainant, Kenneth Sharrow, testified that he is the son of the decedent, John Sharrow.
4. The Complainant, Kenneth Sharrow, admitted into evidence the writing dated June 22, 1995.
5. The writing, dated June 22, 1995, purports to be the “Last Will and Testament of John Sharrow.” The writing is signed by the decedent, John Sharrow, and witnessed by Mamie David and Elizabeth Nanticoke. The writing includes an Affidavit of Execution signed by Mamie David and dated on August 1, 1995.
6. The Affidavit of Execution submitted by the Complainant, Kenneth Sharrow, states that “on or about 31st day of July 1995” Ms. David was “present and saw the paper writing annexed and marked as Exhibit “A.””
7. The writing dated June 22, 1995 contains no language and/or provision stating it is “Exhibit A.”
8. The Complainant, Kenneth Sharrow, testified that the writing dated June 22, 1995 contains two (2) witness signatures and “speaks for itself.”
9. On November 1, 2017, the Court reopened the matter for a hearing on the alleged June Will through a written Order.

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<sup>9</sup> SRMT LL&LDO § VI A.

10. The November 1, 2017 Order stated that the case is “only reopened to allow an opportunity for the Complainant, Kenneth Sharrow, to provide the necessary evidence in order for the Court to make a determination as to whether the alleged will dated June 23, 1995 was validly created and executed in accordance with tribal law.”
11. At the hearing on the alleged June Will,<sup>10</sup> the Complainant, Kenneth Sharrow, testified that Mamie David and Elizabeth Nanticoke “both confirmed the role they played in the witnessing of the Will.” Furthermore, Kenneth Sharrow, testified “Elizabeth Nanticoke is willing to testify if need be.”
12. The Respondent, Cecelia Sharrow, contended the Complainant, Kenneth Sharrow, did not satisfy his obligations pursuant to the terms of the June 22, 1995 writing.
13. The Respondent, Cecelia Sharrow, testified she is the granddaughter of the decedent, John Sharrow.
14. The Respondent, Cecelia Sharrow, admitted into evidence the writing dated December 23, 1995.
15. The writing, dated December 23, 1995, purports to be the “Last Will and Testament of John Sharrow.” The writing is signed by the decedent, John Sharrow, and witnessed by William “Billy” Sunday. Mr. Sunday is the only witness to the writing.
16. Mr. Sunday testified he wrote the writing dated December 23, 1995.
17. Both the writings have not been probated by a Court.
18. Betty Roundpoint, SRMT Clerk, could not locate a file for the decedent, John Sharrow. Her testimony indicates the property at issue is located within the Saint Regis Mohawk Indian Reservation.

## DISCUSSION

The present matter before the Court was commenced by the Complaint dated March 26, 2016. The Complainant, Kenneth Sharrow, alleges the “will” in the Respondent, Cecelia Sharrow’s, possession “is not legal.”<sup>11</sup>

In all cases, the Court must start with assessing the Complaint in order to assess the claims brought forth and the relief requested by the party initiating the action. In his Complaint,

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<sup>10</sup> The Court notes in making its final decision on this matter, the Court referred to the Complainant, Kenneth Sharrow’s, writing as the “alleged July Will.” The Court did so because the Affidavit refers to the execution of the attached Exhibit B as July 31, 1995. In this decision, it refers to the Complainant’s writing as the alleged June Will and/or writing. The writing admitted into evidence by the Complainant is dated June 22, 1995.

<sup>11</sup> Kenneth Sharrow Complaint (filed with the Land Dispute Tribunal) (March 16, 2016).

Kenneth Sharrow alleged that the writing in the Respondent's possession "is not legal." A strict reading of his Complaint would suggest that the only relief sought by the Complainant, Kenneth Sharrow, is for the Court to determine the legality of the will in the Respondent, Cecelia Sharrow's, possession. However, during the trial, both parties admitted into evidence a writing purporting to be the last will and testament of the decedent, John Sharrow. Thus, the Court has two (2) writings before it purporting to be a last will and testament. Furthermore, the parties have provided the Court with evidence and testimony as to why each respective writing should be determined valid under tribal law. It has been undisputed by the parties that the Complainant, Kenneth Sharrow, and the Respondent, Cecelia Sharrow, are related to the decedent, John Sharrow, and none of the writings at issue have been probated by a Court.<sup>12</sup>

The testimony and evidence before the Court demonstrates that the relief sought by the Complainant, Kenneth Sharrow, does not only include reaching a decision as to the writing submitted by the Respondent, Cecelia Sharrow. Rather, the Complainant, Kenneth Sharrow, asks this Court to also determine the validity of his writing he admitted into evidence during the trial proceedings. Furthermore, the Respondent, Cecelia Sharrow, has also provided testimony as to why she believes the June writing is not valid.

The issues presented to the Court are: (1) whether the June 22, 1995 will is valid under tribal law and (2) whether the December 23, 1995 will is valid under tribal law. The Court will start with the June 22, 1995 writing.

### *The Alleged June 22, 1995 Will*

As previously indicated, this action is governed by the provisions of the SRMT LL&LDO. The SRMT LL&LDO sets forth the requirements for wills and non-conforming wills.<sup>13</sup> For purposes of addressing the alleged June Will, the Court notes, pursuant to the SRMT LL&LDO, a valid will must be typed or printed, must be signed by the person making the will, it must be signed by two witnesses who were present to witness the execution of the document by the maker, each witness must sign the will in the testator's presence within thirty (30) days of the testator's signing and each should place his/her address of residence with her/her signature, witnesses should be "disinterested," and any gift by will is void unless there are at least two other disinterested witnesses to the Will. Further, the testator must have the capacity to sign a will, the testator cannot be unduly influenced into signing a will, and the will cannot be procured by fraud.<sup>14</sup>

This Court has noted in another decision, "proving a will" requires a party to demonstrate the writing is valid in its creation and execution.<sup>15</sup> This means that proving a will has two components. First, an heir must prove that the will was created in the manner as required by law. Second, an heir must demonstrate that the will was executed by the testator in the manner that is

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<sup>12</sup> Transcript in the matter of Sharrow v. Sharrow, 9 - 10 (C.J. Garrow asked the Complainant, Kenneth Sharrow, "Now did – to your knowledge, did you ever take this will to another court and ask them to go through . . . no.") (June 6, 2017).

<sup>13</sup> "Will Requirements." SRMT LL&LDO § V. B. 1. (a) – (f). "Non-conforming Wills." SRMT LL&LDO § V. 4.

<sup>14</sup> SRMT LL&LDO § V. B. 1. (a) – (f).

<sup>15</sup> *Estate of Swamp*, 16-CIV-00012, 10 (Aug. 17, 2017).

free of coercion, fraud, and that the testator possessed the requisite capacity. In order to successfully prove a will, the party wishing to admit the will must provide the Court with evidence to prove these two components in order for a will to be determined to be valid. Otherwise, a Court may determine that a writing is invalid. These components help ensure that the will before the Court is in fact the last will and testament of the decedent. The person asking to admit a will bears the burden of proof to prove the validity of the will to the Court.<sup>16</sup>

During the trial proceedings that took place on June 6, July 31, and August 15, 2017, the Complainant, Kenneth Sharrow, admitted into evidence the June writing, however, he provided the Court with no further evidence to support its validity. In its review of the record, the Court found justification to reopen the matter for a hearing on the alleged June will in order to ensure that the Complainant, Kenneth Sharrow, had the opportunity to provide the Court with evidence to prove the will.<sup>17</sup> As the Court noted in its decision, “it is no fault to the Complainant, Kenneth Sharrow, that at the time of proceeding he did not provide the adequate evidence to prove the alleged will he submitted as evidence. The SRMT LL&LDO does not state the applicable procedures being utilized by the Court.”<sup>18</sup> The Court also provided guidance as to the appropriate procedure to prove a will by pointing to the trial proceedings in this case. This Court noted the arguments put forth challenging the December writing mirrored the process of a probate proceeding. This Court wrote “[d]uring the trial proceedings, the Respondent, Cecilia Sharrow, had William “Billy” Sunday and Marilyn Sharrow testify to provide support for her case. Mr. Sunday testified as to his role in drafting the alleged December 23, 1995 will and Ms. Sharrow provided testimony as to the reasons and circumstances why the document has only one (1) witness signature.”<sup>19</sup>

In order to successfully admit a writing and it be determined a will, an heir or party wishing to admit the writing must prove it. As indicated, under certain circumstances, a writing requires more evidence than the mere fact it seems to satisfy the applicable law. Having notice of this through a written order, during the hearing on the June writing held on November 21, 2017, rather than provide the Court with the necessary evidence, the Complainant, Kenneth Sharrow, chose to contend that the “will speaks for itself” and stated Elizabeth Nanticoke is available to testify if needed.<sup>20</sup>

In the instant case, due to discrepancies found within the alleged June Will and the Affidavit, dated August 1, 1995, the Court cannot make a finding as to the validity of the writing.

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<sup>16</sup> A “will” is the legal expression of an individual’s wishes about the disposition of her or her property after death; a document by which a person directs his or her estate to be distributed upon death. Also termed as testament, testamentary instrument.” *Black’s Law Dictionary* (10th ed. 2014), available at Westlaw BLACKS. The Court notes in referring to the parties’ wills at issue it interchangeably uses the following terms: “alleged will”, “document”, or “writing”.

<sup>17</sup> *Sharrow v. Sharrow Court Order to Reopen for Further Proceeding on Alleged June Will*, 17-LND-00005 (Nov. 1, 2017).

<sup>18</sup> *Id.* at 6.

<sup>19</sup> *Id.*

<sup>20</sup> *Sharrow v. Sharrow* (Kenneth Sharrow testimony) (Nov. 21, 2017) (The Court notes the Complainant, Kenneth Sharrow, provided the Court with a copy of his written testimony.).

Under the circumstances, there is simply insufficient evidence offered by the Complainant, Kenneth Sharrow, from which the Court could conclude and make a determination as to the validity of the alleged June Will. The Complainant, Kenneth Sharrow, has failed to satisfy his burden of proving the alleged June Will. The Court makes no finding as to the validity of the alleged June Will admitted into evidence by the Complainant, Kenneth Sharrow due to insufficiency of the evidence. The last issue the Court must address is whether it may make a finding as to the validity of the December writing.

As indicated by the factual background, this case involves two (2) writings purporting to be the “Last Will and Testament of John Sharrow.” Notably, the alleged June Will came into existence before the alleged December Will. As noted in the order to reopen this matter for a hearing on the alleged June Will, it is nonsensical for the Court to evaluate the alleged wills out of chronological order.<sup>21</sup> Therefore, at this time, the Court cannot make a finding as to the validity of the alleged December Will admitted into evidence by the Respondent, Cecelia Sharrow.

At this point, the Court makes no determination as to the validity of either of the writings dated June 22, 1995 and December 23, 1995. As previously indicated, the dispute stems from a land transaction between the Complainant, Kenneth Sharrow, and Fred Lazore. In order for a person to gain ownership of the property at issue the writings must be probated. That requires an heir to initiate a probate action.<sup>22</sup> At that time, an heir may admit a will or codicil in their possession to probate. During the probate process, the Court will hold a hearing on the writings admitted to probate. The Court based on the evidence presented, will make a determination as to the writings validity. After determining the writing is valid, the Court will through a written decision order the distribution of the assets of the estate pursuant to the terms of the writing.

It is important to understand that the property ownership of any real property or personal property of the decedent, John Sharrow, is not conveyed until the completion of that process. The terms of a will does not take effect until the testator dies and the will has been probated. Without a will going through a probate process, the property remains and is owned by the Estate. Any property owned by the decedent is owned and remains in his Estate.

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<sup>21</sup> *Sharrow v. Sharrow Court Order to Reopen for Further Proceeding on Alleged June Will*, 17-LND-00005, 7 (Nov. 1, 2017).

<sup>22</sup> The Court notes for guidance on the process consult the Saint Regis Mohawk Tribe Probate Law. It is available by request or the Saint Regis Mohawk Tribe's website. Furthermore, redacted versions of other probate decisions made by this Court are available upon request.

**ACCORDINGLY, IT IS HEREBY ADJUDGED AND DECREED:**

The case is dismissed based on insufficient evidence offered by the Complainant, Kenneth Sharrow, without prejudice.

Signed by my hand this 24<sup>th</sup> day of January, 2018.



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

*The parties have thirty (30) days from the entry of this Order to file an appeal with the Saint Regis Mohawk Court of Appeals.*

