

SAINT REGIS MOHAWK TRIBAL APPELLATE COURT

**IN THE MATTER OF THE ESTATE OF
THOMAS HERNE, SR.**

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**20-APP-00005
DECISION AND ORDER**

Opinion by Garabedian, *Associate Appellate Judge*

JURISDICTION

This case comes before the Saint Regis Mohawk Tribal Appellate Court on appeal from a Saint Regis Mohawk Tribe, (SRMT) Tribal Court Decision issued on May 15, 2020.

The Saint Regis Mohawk Tribal Appellate Court has jurisdiction to hear all appeals from the SRMT Tribal Court pursuant to SRMT Tribal Court and Judiciary Code, Section V(2).

PROCEDURAL HISTORY

In December of 2019, Glen Lazore and Thomas Lazore filed a petition with the SRMT Court seeking to be named as Administrators of the Estate of their great-uncle, Thomas Herne, Sr., who died on August 27, 1979.

Hearings were held before the Tribal Court on January 28, 2020; February 18, 2020; March 17, 2020; and April 28, 2020.

The Tribal Court issued an Order on May 15, 2020, finding that the “the real property held by the Estate of Thomas Herne, Sr., a one-fourth interest in the property previously owned by the Anna Waheson Tarbell Herne Estate, is conveyed to the Estate of Thomas Herne, Sr.” Glen Lazore and Thomas Lazore, the Administrators of the Estate, were also released and the case was closed. On May 15, 2020, along with the decision issued in the lower court case on which this Appeal is based, the Tribal Court Clerk provided Appellant with correspondence setting forth the SRMT “Appellate Filing Procedures” with references to relevant Tribal Court appellate provisions. The Appellate Filing Procedures letter clearly stated in paragraph 3 that the Appellant was required to serve the Notice of Appeal on the opposing party and file a proof of service with the court within time limits, referencing the SRMT Rules of Appellate Procedure, Rule III(B) and (C).

On June 17, 2020, the Appellant Raymond Herne filed a Notice of Appeal from the Tribal Court Decision of May 15, 2020, on behalf of the Estate of James Herne,¹ having mailed the Notice of Appeal on June 15, 2020. Proof of this filing by mail was also submitted to the Tribal Court Clerk.

The Notice of Appeal did not include proof of service on Appellees. No proof of service has been filed as of November 10, 2020.

¹ This Notice of Appeal was received by the Court on June 17, 2020, but was dated June 15, 2020. SRMT Rules of Civil Appellate Procedure state in Section V(B) that service by mail is complete upon mailing.

ANALYSIS

The SRMT Rules of Appellate Procedure (SRMT Rules App. Proc.), Section V(B) requires that “[c]opies of all papers filed by any party shall be served by a party or person acting for him or her, who is over the age of eighteen (18), on all other parties to the appeal at or before the time of filing.”

SRMT Rules App. Proc. Section V(C) requires that:

“[p]apers presented for filing shall contain an acknowledgment of service by the person served, or proof of service in the form of a statement of the date and manner of service and of the name of the person served, signed by the person who made service. Proof of service may appear on or be annexed to the paper filed.”

The record before this Court contains no proof that service has been filed in this case. This Court finds that the Appeal has not been perfected in a timely manner.

Section III(C) of the SRMT Rules App. Proc. states:

“Failure to follow any procedure required by these Rules, other than the timely filing of a notice of appeal, shall not affect the validity of the appeal, but is grounds only for such action as the appellate court deems appropriate, which may include dismissal of the appeal.”

This Court concludes that the Appellant had adequate notice of requirement to serve the opposing party and file proof of service with this Court. Moreover, the Appellant’s failure to serve the opposing party, and failure to file proof of service with the court, violate the requirements of SRMT Rules App. Proc. III(C), and are grounds for this Court to dismiss this Appeal as having not been perfected in a timely manner.

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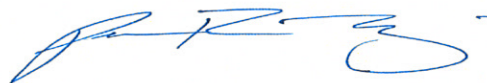
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ORDER

For the reasons stated herein, this appeal is DISMISSED with prejudice. The Tribal Court Decision and Order dated May 15, 2020, remains in full force and effect.

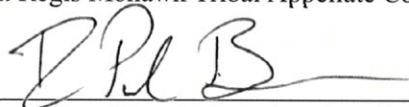
Signed this 16th day of November, 2020



Patricia R. Lenzi, Chief Appellate Judge
Saint Regis Mohawk Tribal Appellate Court



Lisa Garabedian, Associate Appellate Judge
Saint Regis Mohawk Tribal Appellate Court



Rowennakete Barnes, Associate Appellate Judge
Saint Regis Mohawk Tribal Appellate Court

Saint Regis Mohawk Tribal Appellate Court

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Chief Judge Michele Mitchell
Associate Judge Patricia Lenzi
Associate Judge Karla General
Associate Judge Lisa Garabedian
Associate Judge Patrick Solomon

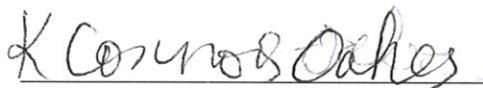
November 23, 2020

Raymond Herne
1207 State Route 37
Akwesasne, N.Y. 13655

Re: In the matter of The Estate of Thomas Herne, Sr

Please take notice that the Saint Regis Mohawk Court of Appeals issued the attached Decision and Order in this matter on November 23, 2020.

Respectfully,

A handwritten signature in cursive script, reading "K Connors-Oakes", written over a horizontal line.

Karen Connors-Oakes, Court Clerk
Saint Regis Mohawk Tribal Court