

IN THE TRIBAL COURT
OF THE
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY
COUNTY OF SCOTT

FILED JUN 28 2012 *DMK*
McDONALD
CLERK OF COURT

STATE OF MINNESOTA

Estate of Tracy L. Stade-Rapasky,
Decedent

Court File No.: 698-11

**FINDINGS OF FACT AND
ORDER
FOR DISTRIBUTION**

This matter is before the Court on Jeffrey Rapasky's motion for an order authorizing the distribution to him of \$212,675.68 representing the balance of the proceeds from the sale of the house and transfer of the land assignment of the property at 14580 Mystic Lake Drive NW, Prior Lake, MN. Jeffrey Rapasky is the decedent's husband and the Estate's personal representative. By order dated April 23, 2012, the Court appointed Jody M. Alholinna as Guardian Ad Litem in this matter for [REDACTED] [REDACTED] the intended beneficiary of a devise of the land assignment and home. Ms. Alholinna submitted a very detailed report of her comprehensive investigation on May 31, 2012. Jeffrey Rapasky, filed a reply to the Guardian Ad Litem's report on June 12, 2012. As asserted by Mr. Rapasky in his reply, the underlying facts in this matter are undisputed and he relies on the facts and documents submitted to the Court at the April 13, 2012 hearing and in the Guardian Ad Litem's report.

FINDINGS OF FACT

The decedent, Tracy Lee Stade-Rapasky, died testate on May 25, 2011 at the age of forty-four due to complications associated with deep venous thrombosis. Decedent was an enrolled member of the Shakopee Mdewakanton Sioux (Dakota) Community (hereinafter "Community"). At the time of her death, she was survived by her spouse, Jeffrey Rapasky, three adult children, Kristina Stade-Rapasky, Krystal Wendland and Jonathan Stade-Rapasky. Her husband is not a Community member but all of her children are. The decedent was also survived by five grandchildren. [REDACTED] the oldest of her grandchildren, (date of birth July 21, 2004) was seven years old at the time her grandmother passed. [REDACTED] is an enrolled member of the Community. According to [REDACTED] mother, Krystal Wendland, [REDACTED] and the decedent had a special bond. They had a particularly close relationship with one another in significant part because the decedent reportedly raised [REDACTED] for the first year or more of her life.

Three months prior to her death, on February 4, 2011, decedent executed a will prepared by Attorney Leif Rasmussen. The will was admitted to probate in this Court on July 20, 2011 and on that same day, Jeffrey Rapasky accepted appointment as personal representative of his wife's estate.

At issue is Article 2.2. of Decedent's will which provides in pertinent part:

2.2. Land Assignment. In accordance with the laws of the Shakopee Mdewakanton Sioux Community, I give my land assignment and house, commonly referred to as 14580 Mystic Lake Drive NW, Prior Lake Minnesota to my granddaughter, [REDACTED] if she survives me, if she does not survive me, to my descendants who survive me per stirpes. Should my granddaughter, [REDACTED] be less than 18 years of age at the time of my death, the land assignment and house

shall be given to my trustee, in trust to be administered as provided in Article Four.

Finally, in Article 5.2 of the will, the Decedent appointed her friend, Lisa Fulton, as trustee.

CONCLUSIONS OF LAW

The Shakopee Mdewakanton Sioux Community Consolidated Land Management Ordinance (hereinafter "Ordinance"), passed by General Council Resolution No. 06-28-02-005 (and as later amended) establishes a comprehensive land management system for the Community. Section 1.2, Purpose. The Ordinance applies to the following property and all interests in such property:

- (A) Reservation and trust lands;
- (B) Lands acquired or to be acquired by the Community or the United State in trust for the Community;
- (C) When specified in this Ordinance, the lands owned in fee by the Community not yet held in trust by the United States;
- (D) All buildings and other improvements of a permanent nature now or hereafter located on tribal lands;
- (E) Any conveyance, assignment, lease, transfer, or encumbrance of Reservation or trust lands; and
- (F) The use, platting and zoning of Reservation or trust lands.

Section 1.4 Application

Pursuant to Section 2.1, the General Council has delegated its authority to the Business Council to assign available residential land in accordance with Chapter 3.

Disposition of available parcels of land for assignment are governed by Chapter 3, Section 3.1, Land Assignment Priorities. In general, “[e]nrolled members of the Community by order of birth shall have priority to receive assignments of land for residential uses” Id. at Section 3.1.1. An exception is made in the situation of an enrolled Community member who is terminally ill, gravely ill or at an advanced age. Id. Such a member may request relinquishment of his or her land assignment. Id. The holder of a valid assignment and lease may relinquish her or his right in assignment and lease to another enrolled member or to the Community—“regardless of the priority lists.” Ch., 4.14., Relinquishment. The holder of the assignment must file a request for relinquishment with the Business Council, who must in turn approve the request by a unanimous vote. Id. Thus, had the decedent been aware that she was gravely or terminally ill, she could have submitted a request for relinquishment.

Section 4.12.1, Law Governing Probate Land Transfer, provides that, “When a holder of an assignment and/or Residential Land Lease dies, any proposed transfer of the use interest in the assignment and/or lease, whether by devise pursuant to a valid will, intestate succession or otherwise, shall be subject to Community government approval, as provided in this Ordinance, and governed exclusively by Community law.” Section 4.12.4, Posthumous Transfer of Land Assignment, elaborates that, “A posthumous transfer of residential land assignment to an enrolled Community member may be authorized by the General Council regardless of the receiving enrolled Community member’s priority on any residential land assignment list” In order for such a transfer to be proper, certain conditions must be met. Relevant to the case at bar, a written document executed by the decedent and witnessed by two or more competent and

disinterested persons must state the decedent's desire to transfer the land and must name the person to whom the land is to pass. Section 4.12.4.2., Form of Writing. A last will and testament that conforms to the requirements of State of Minnesota law making the request is deemed to be a proper writing as required by Section 4.12.4.2. Id.

In the situation where a decedent's writing or will requests transfer of a residential land assignment and the accompanying improvements to more than one person, "the Business Council may approve recoupment to the decedent's estate for the improvements and disposition of the assignment may be given effect by the General Council provided that reimbursement of the recoupment amount be paid to the Community . . . Recoupment paid to the estate in this manner shall be the property of the estate for dispersal according to the decedent's writing." Section 4.12.4.4, Recoupment. Thus, a decedent's interest in the land assignment and the improvements may be liquidated into cash for distribution to the intended heirs.

Relinquishment is also a method by which an enrolled tribal member may make an inter vivos transfer of his or her assignment and lease to another enrolled Community member. Section 4.14, Relinquishment. This transfer, subject to Business Council approval, may be made without regard to the priority lists. Id. Section 4.14.1 of the Ordinance permits the enrolled living member to request that his or her interest be transferred to an adult biological child who is not enrolled but otherwise eligible for adoption except for the lack of a land assignment from the Community. Id.

Generally, most states, including Minnesota, permit a minor to hold title to real estate. However, state law usually restricts the child's ability to deal with the property. A minor is usually incompetent to sell, rent or mortgage the property and transactions

with a minor are voidable at the election of the minor. Carmina Y. D'Aversa ed., Tax, Estate and Lifetime Planning for Minors 296, ABA Publishing (2006); see M.S.A. § 501B.47, Tomlinson v. Simpson, 23 N.W. 864 (Minn. 1885.) The Ordinance does not explicitly state that only adult Community members are eligible to receive a land assignment. The Ordinance does mention children, but all references relate to “biological *adult* child[ren].” See e.g. Section 4.14.1, Relinquishment by Member to Adult Biological Child Not Enrolled. (Emphasis supplied.) The Court finds that it is implicit in the Ordinance that only adult Community members may hold a land assignment. The Ordinance does not contemplate the devise of a land assignment to a minor Community member either directly or in trust. See Section 4.12.4 (“A posthumous transfer of residential land assignment to an enrolled Community member may be authorized by the General Council”)

The concept of “ademption by extinction” refers to the situation in which the testator’s will makes a bequest of property that no longer exists in the testator’s estate at death. James A. Casner & Jeffrey N. Pennell, Estate Planning, Vol. 1, 3062 §3.2.5.2. (7th ed. 2006). At common law, if the bequeathed property did not exist at the time of the decedent’s death, the gift was “adeemed” and void. Wayne M. Gazur and Robert M. Phillips, Estate Planning: Principles and Problems, 60 (3rd ed. 2012). By General Council Resolution 05-12-90-022, the General Council “authorizes the Tribal Court to apply the Uniform Probate Code (“UPC”) to all probate matters filed before it.” Section 2-606 of the UPC is a modification of the doctrine of ademption by extinction intended to avoid harsh and unintentional consequences. Casner at 3062. Ademption is meant to be avoided to the fullest extent possible under § 2-606(a)(1), which provides that the

recipient of a specific bequest is entitled to any proceeds from the sale of the subject property: "(a) A specific devisee has a right to specifically devised property in the testator's estate at the testator's death and to: (1) any balance of the purchase price, together with any security agreement, owed by a purchaser at the testator's death by reason of sale of the property . . ." Id.; UPC § 2-606(a)(1). A pecuniary award equal to the value of otherwise adeemed property, applicable "to the extent it is established that ademption would be inconsistent with the testator's manifested plan of distribution or that . . . the testator did not intend ademption . . ." is made available under § 2-606(a)(6). UPC § 2-606(a)(6). One probate authority noted that, "Local law may specify that sale by a personal representative rather than by the testator . . . works no ademption and the proceeds therefore would pass to the beneficiary . . ." Casner citing 84 A.L.R.4th 462 (1991). In this situation, it is operation of the Community's law, effectuated by the directive of the Business Council, which forced the personal representative to sell decedent's land assignment and improvements and cause the property to be removed from the probate estate.

The existence of a special and close relationship between the decedent and Adriana is undisputed. It is clear from the express terms of the will and the evidence presented that the decedent wished for the assignment and the home to be passed to [REDACTED]. This interest, seemingly unbeknownst to the testator, was not hers alone to give, but rather subject to the Business Council's approval. Moreover, it may have been impermissible under the Ordinance's land distribution scheme. The Court finds that the land assignment and the home were removed from the probate estate by operation of tribal law. Based on the evidence presented of the uniquely close relationship between

the decedent and the intended beneficiary, this Court finds that the testator did not intend the ademption of the devise of the land assignment and home. Therefore, under U.P.C. § 2-606(a)(6), [REDACTED] is entitled to receive the net proceeds from the sale of the land assignment and the home.

For the above-mentioned reasons, the motion for an order authorizing distribution of the proceeds from the sale of the land assignment and home located at 14580 Mystic Lake Drive NW, Prior Lake, MN to Jeffrey Rapasky is DENIED. The Court ORDERS that the proceeds at issue are to be distributed to the benefit of [REDACTED] the intended beneficiary.

Given that [REDACTED] is only seven years old, she needs an adult to safeguard and oversee expenditure of these funds. The decedent nominated her friend, Lisa Fulton, to be trustee if the land assignment and house could have been put into trust during [REDACTED] minority.¹ Therefore, if Ms. Fulton is willing to serve as custodian of the funds, Ms. Fulton shall establish an interest earning account at a local federally insured financial institution to deposit the proceeds in. The account funds shall be administered in the manner set forth in Article Four of the decedent's will until [REDACTED] reaches the age of eighteen. If Ms. Fulton declines to serve as custodian, the Guardian Ad Litem shall establish for [REDACTED] benefit a custodial account with a local reputable federally insured trust company or equivalent financial institution to receive and administer the

¹ Under the Shakopee Mdewakanton Sioux Community Enrollment Ordinance, 6-08-93-001, "Adult Member" is defined as "Any member of the Tribe 18 years of age or older."; see also Shakopee Mdewakanton Sioux (Dakota) Community Domestic Relations Code, Ch. VIII, Adoption, Section 2(a) "A minor means a person less than 18 years of age." The language of Article Four terminating the trust at age eighteen is consistent with the Community's decision that age eighteen is the age of majority.

proceeds in a manner consistent with the provisions of Article Four of the decedent's will.

Dated: June 27, 2012



Jill E. Tompkins, Judge *Pro Tempore*
Shakopee Mdewakanton Sioux (Dakota)
Community Tribal Court