

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Arletta J. Kurowski,
PETITIONER,

v.

CASE NO: 18-TC-007

Norma Kurowski,
DEFENDANT

ORDER

This case has come before the Oneida Trial Court, Honorable John E. Powless III presiding.

Appearing in Person: Petitioner, Arletta J. Kurowski and Daniel Hawk.
Appearance by Phone: Defendant, Norma Kurowski and Attorney Curtis Clark.

STATEMENT OF THE CASE

A complaint was filed by Petitioner February 28, 2018. On March 23, 2018, Norma Kurowski filed answer to the complaint. A Pre-Trial hearing was held on March 29, 2018. The Court allotted time for both parties to prepare a response. The Court received the Petitioner's response to the Defendant's answer. The Court received the Defendant's reply to the Petitioner's response. On April 30, 2018, the court held a Jurisdictional hearing.

The Court granted Daniel Hawk and Attorney Curtis Clark a one-time waiver to represent the Petitioner and the Defendant at the March 29, 2018 Pre-Trial hearing. Neither Mr. Hawk nor Attorney Clark is approved to practice as an Advocate or Attorney in the Judiciary. In order to continue as Advocate or Attorney, both are required to be approved to practice in the Judiciary prior to any further hearings. Attorney Clark was approved to practice within the Judiciary by the April 30, 2018 Jurisdictional hearing. Daniel Hawk did not complete the approval to practice process; therefore, he was not allowed to represent the Petitioner at the April 30, 2018 Jurisdictional hearing.

ISSUE

Does the Oneida Judiciary Trial Court possess Personal and Territorial Jurisdiction to hear this complaint?

FINDING OF FACTS

1. Notice was given to all parties entitled to notice.
2. The decedent, Kenneth H. Kurowski was domiciled in Abbeville County, in the State of South Carolina.
3. The Certificate of Death for Kenneth H. Kurowski was filed with the Department of Health and Environmental Control in the State of South Carolina.
4. The Defendant filed and opened the Estate of Kenneth H. Kurowski in Abbeville County in the State of South Carolina.
5. The Defendant has been appointed by the State of South Carolina, Abbeville County Probate Court as Personal Representative to the Estate of Kenneth H. Kurowski.
6. The Defendant is non-Native.
7. The Defendant did not consent to personal jurisdiction.

PRINCIPLES OF LAW

1. **801.5-3. Territorial Jurisdiction.** The territorial jurisdiction of the Trial Court shall extend to the Reservation and all lands held in trust by the United States for the benefit of the Tribe within the State of Wisconsin.
2. **801.5-4. Personal Jurisdiction.**
 - (a) Indians. The Trial Court shall have jurisdiction over all Indians.
 - (b) Non-Indians. The Trial Court shall have jurisdiction over non-Indians who have consented to the jurisdiction of the Tribe or Trial Court or as otherwise consistent with federal law.
 - (1) Consent to Jurisdiction. For purposes of subsection 801.5-4(b) above, a person shall have consented to the jurisdiction of the Trial Court by:
 - (A) entering into a consensual relationship with the Tribe, Tribal entities, Tribal corporations, or Tribal members, including but not limited to contracts or other agreements; or
 - (B) other facts which the Trial Court determines manifest an intent to consent to the authority of the Tribe or the jurisdiction of the Trial Court, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner.
3. **American Indian Religious Freedom Act, 42 Code § 1996 – Protection and preservation of traditional religions of Native Americans.**

On and after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

ANALYSIS

The Petitioner seeks a Trial Court ruling for the following corrective actions:

1. Return possession of husband's remains to Petitioner,
2. Return possession of military articles such as medals, flag, commendations, clothing and weapons to Petitioner,
3. Return possession of hunting and fishing articles such as commemorative rifles, hand guns, shot guns, and fishing rods and reels to Petitioner.

In summary, the Petitioner is seeking the return of human remains, military, hunting and fishing articles. However, personal jurisdiction over the Defendant must be established in order for the Court to go forward with this case. The burden is on the Petitioner to prove jurisdiction, specifically, the personal and territorial jurisdiction requirements identified in Chapter 801.5-3 and 801.5-4. As a basis for jurisdiction, the Petitioner has claimed in her complaint that:

1. The filing of the Death Certificate of Kenneth H. Kurowski created a consensual relationship with the Oneida Nation because Kenneth H. Kurowski was an enrolled Oneida Nation member.
2. The Defendant entered into illegal funeral arrangements for Kenneth H. Kurowski creating a consensual relationship with the Oneida Nation and depriving the Petitioner of Native American funerary rites in accordance with: Other Tribal Law - American Indian Religious Freedom Act, 42 U.S.C. §1996 Pub. L. 95-341; and
3. The Defendant entered into a legal executorship of the Oneida Nation citizen's estate through probate, thereby, creating a consensual relationship with the Oneida Nation.

The basis for jurisdiction is addressed below.

CERTIFICATE OF DEATH

The Petitioner failed to show how the filing of the Death Certificate of Kenneth H. Kurowski by the Defendant would create a consensual relationship under 801.5-4 (b)(1). The decedent was domiciled in Abbeville County, in the State of South Carolina. The Certificate of Death for Kenneth H. Kurowski was filed with the Department of Health and Environmental Control in the State of South Carolina. Furthermore, the Trial Court lacks Territorial Jurisdiction under 801.5-3 which states:

The territorial jurisdiction of the Trial Court shall extend to the Reservation and all lands held in trust by the United States for the benefit of the Tribe within the State of Wisconsin.

In order for the Trial Court to have territorial jurisdiction, the complaint regarding a fraudulent death certificate requires the matter to geographically fall within the exterior boundaries of the Oneida Nation or within land held in trust by the United States for the benefit of the Tribe within the State of Wisconsin. In this case, neither exists. Here, the death certificate was filed in the State of South Carolina where the decedent was domiciled. The Oneida Judiciary's Trial Court does not possess Personal or Territorial Jurisdiction to hear this complaint.

FUNERARY RITES & ARRANGEMENTS

The Petitioner asserts the Defendant entered into illegal funeral arrangements for Kenneth H. Kurowski, depriving the Petitioner of Native American funerary rites in accordance to the American Indian Religious Freedom Act, 42 U.S.C. §1996 Pub. L. 95-341. Further, the asserted illegal actions of the Defendant translate into a consensual relationship with the Oneida Nation. This act states:

On and after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

The Petitioner has not identified how AIRFA, 42 U.S.C. §1996 Pub. L. 95-341 support the claim the Defendant entered into illegal funeral arrangements for Kenneth H. Kurowski, violating said funerary rites. Nor did the Petitioner identify how the Act would give this Court personal jurisdiction over the Defendant. But, what is clear, the Defendant is the appointed Personal Representative for the Estate of Kenneth H. Kurowski. As the Personal Representative or Executor, Norma Kurowski has the authority to make decisions on behalf of the decedent in all specified matters.

PROBATE

The Petitioner asserts the Defendant entered into a legal executorship of the Oneida Nation citizen's estate through probate. However, the duties of an executor do not amount to a consensual relationship as required in 801.5-4 (b)(1), when the probate is not administered by an Oneida Nation court or other entity and that occurs within the exterior boundaries of the Oneida

Nation reservation. The decedent was domiciled in Abbeville County, in the State of South Carolina. The Defendant filed and opened the Estate of Kenneth H. Kurowski in Abbeville County, in the State of South Carolina. The Defendant has been appointed by the State of South Carolina, Abbeville County Probate Court as Personal Representative to the Estate of Kenneth H. Kurowski. Therefore the Petitioner has not identified how this Court would have personal jurisdiction based on probate being executed in another State. Furthermore, 801.5-3 requires the following in order for the Trial Court to have Territorial Jurisdiction to hear this complaint:

The territorial jurisdiction of the Trial Court shall extend to the Reservation and all lands held in trust by the United States for the benefit of the Tribe within the State of Wisconsin.

The Petitioner is required to prove this alleged illegal action geographically falls within the exterior boundaries of the Oneida Nation or on land held into trust by the United States for the benefit of the tribe within the State of Wisconsin. Neither exists, the Trial Court does not have Territorial Jurisdiction to hear this complaint.

CONCLUSIONS OF LAW

The Petitioner did not establish the Trial Court has Personal or Territorial Jurisdiction to hear this complaint.

ORDER

1. Case no. 18-TC-007 is dismissed with prejudice.

IT IS SO ORDERED.

By the authority vested in the Oneida Judiciary pursuant to Resolution 01-07-13-B of the General Tribal Council and Order signed on 5/30/2018 in the matter of Arletta J. Kurowski v. Norma Kurowski Case #18-TC-007.

The Petitioners has the right to appeal within thirty (30) calendar days after the date this order or judgment is signed.