

Oneida Appeals Commission

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Trial Court

IN THE MATTER OF THE ESTATE OF :
Orville Webster, Deceased

Case No. 05-TC-114
Date: September 29, 2005

Intestate

Probate Petition

This petition has come before the Oneida Appeals Commission Judicial Officers. Winnifred L. Thomas, Mary Adams, Leland Wigg-Ninham presiding.

I Background

The Petitioner, Oneida Land Commission, through Staff Attorney Rebecca M. Webster, petitions the Oneida Appeals Commission for orders approving heirship, appointing a personal representative, and other orders found by the Oneida Tribal Judicial System to be necessary to settle this estate.

Present at the Probate Hearing was Rebecca Webster, Attorney for the Oneida Land Commission, Arleen J. Elm sister, Dale Webster brother, Kenneth Webster brother, Debbie Melchert, niece

The decedent, Orville Webster passed away on October 10, 2004, intestate (leaving no last will nor testament). The original death certificate is on file at Oneida Division of Land Management. A statement of Family History was prepared and signed by Arleen J. Elm, the decedent's sister. The information from the Statement of Family History and creditors is summarized on the form, Data for Heirship Finding and Family History. This document was designed by the Bureau of Indian Affairs for use with Oneida probates on trust land, and is used by the Oneida Division of

Land Management in this case to summarize the important data collected, which is necessary for probate determinations.

The decedent never married and did not have any children, adopted or natural. The decedent had four living siblings at the time of death: Donald M. Webster, Arleen J. Webster Elm, Kenneth M. Webster, and Dale A. Webster. One previously deceased brother, Joseph J. Webster, who left five surviving children: Deborah Jean Melchert, Victoria Lynn Johnson, Sandra Metoxen, Marquiete Bork, and Joseph LeRoy Webster.

II. Analysis

In this case the Oneida Land Commission petitioned for Probate, and in addition made recommendations.

At the date of death, the decedent did not possess an Individual Indian Money Account ("IIM") nor any interest in trust land. At the date of death, the decedent possessed a Residential Lease through the Oneida Tribe of Indians of Wisconsin. The decedent did not leave a last will and testament. The decedent did assign a Designation of Successor form to govern the transfer of the land assignment. Based on the Designation of Successor form, the interest in land is being offered to Donald Webster through a Residential Lease for the property.

The assets that had been listed on the Statement of Family History form are the land assignment with a Replacement Home located on the land, a checking account in the amount of \$ 10.01, a check from Time Warner of Green Bay in the amount of \$ 41.02, an Oneida Tribal Per Capita check in the amount of \$ 3,275.00, and a 1985 Mercury Grand Marquis valued at approximately \$ 3,000.00. The land assignment is held at the Division of Land Management. The checking account is held by Bank One of Green Bay. The remainder of the assets are held by the decedent's sister, Arleen J. Elm.

Pursuant to The Real Property Law of the Oneida Nation in Wisconsin Article IX. Disposition Of Estates Of Deceased Tribal Members § 67.9-9 *Parties-in-interest. The net estate of a decedent,*

not disposed of by will, passes to his/her surviving heirs or Parties-in-interest as follows: (d), "All of the estate to the brothers and sisters and children of deceased brothers or sisters by representation, divided equally. If no surviving spouse, children, or parents." In the present case, one fifth of the estate should be given equally among Joseph J. Webster's five children- each receiving one twenty-fifth of the estate.

The interests in the vehicle may be difficult to divide amongst the heirs, because the Real Property Law of the Oneida Nation in Wisconsin does not explicitly provide for the appointment of a representative or administrator to make that determination.

However, prior Appeals Commission cases acknowledge the ability of the Appeals Commission to appoint a personal representative or administrator of a decedent's estate. See In the Matter of the Estate of Helyn R. Hill, Docket 01-TC-035, 8 O. N. R. 2-1, January 3, 2002; In the Matter of the Estate of Leah King Krause, Docket 01-TC-006, 7 O.N.R.2-17, April 3, 2001; In the Matter of the Estate of Eleanora V. Cornelius, Docket 98-O H B-0006, 4 O. N. R. 2-18, May 20, 1998; In the Matter of the Estate of Mary Jourdan, Docket 98-O H B-0004, 4 O. N. R. 1-23, March 3, 1998.

Typically, these cases are initiated by a family member requesting that he/she be appointed personal representative or administrator of the estate. Considering the probate petition at issue was requested by the decedent's sister, Arleen Elm, and she holds three of the decedent's assets, the Oneida Land Commission suggested it would be in the best interest for the proper administration of this estate to be handled by Ms. Arleen Elm and further requested that Domiciliary letters be produced in favor of Ms. Arleen Elm.

III. Decision

After review of the petition and consideration of the materials submitted, this court hereby approves the petition for probate and hereby designates the heirs to the estate.

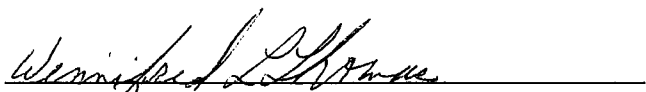
The heirs to the estate of Orville Webster are Donald M. Webster, Arleen J. Webster Elm,

Kenneth M. Webster, Dale A. Webster, and one brother Joseph J. Webster deceased, will share 1/5 interest of the estate. The deceased brother, Joseph J. Webster left five surviving children: Deborah Jean Melchert, Victoria Lynn Johnson, Sandra Metoxen, Marquiete Bork, and Joseph LeRoy Webster, each will share the 1/5 interest of Joseph J. Webster deceased.

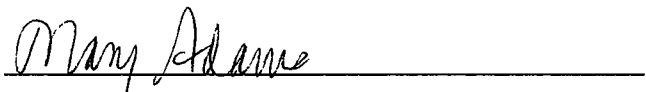
The recommendation that Arleen J. Elm be appointed as the personal representative or administrator of this estate is granted

The petition for probate is hereby held to be in order and is approved by the Oneida Appeals Commission.

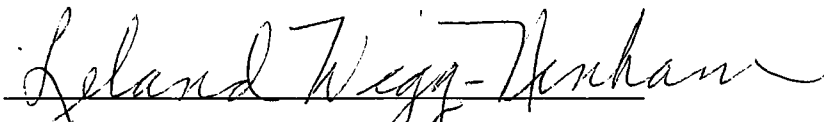
By authority vested in the Oneida Appeals Commission pursuant to Resolution 8-19-91-A, by the Oneida General Tribal Council, we so hold on this 29th day of September 2005, In The Matter Of The Estate of Orville Webster. deceased, Docket No. 05-TC-114



Winnifred L. Thomas, Judicial Officer



Mary Adams, Judicial Officer



Leland Wigg-Ninham, Judicial Officer