

Oneida Appeals Commission

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Trial Court

In the Matter of the Estate of
David "Joker" Moore

Docket No. 06-TC-092

Date: November 14, 2006

Probate Decision

This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers, Gerald Cornelius, Mary Adams, and Robert Christjohn, presiding.

I Background

On September 28, 2006, the Land Commission, through its Attorney Rebecca M. Webster, petitioned the court for appointing a personal representative and issuing domiciliary letters in order to settle the estate of David Moore.

On May 18, 2006, the decedent, David "Joker" Moore passed away. The original death certificate is on file at the Land Management office. The petition included: The Statement of Family History, Data for Family Heirship Finding, copy of notice of probate from the Division of Land Management and a copies of the legal notice for the local newspaper. The Petition contained no Last Will and Testament.

The decedent did not possess an Individual Indian Money Account nor any interest in trust land. At the time of death, decedent did not own any interest in real estate. The decedent possessed a lawn tractor/John Deere riding mower estimated value between \$1,500.00 and \$2,500.00 and a

bank account at Bay Bank with an unknown value. According to the request, the decedent's fourteen surviving children should receive one-fourteenth of the proceeds from the lawn mower and bank account.

Notices were sent to the Appleton Post-Crescent, Green Bay Press Gazette and Kalihwisaks setting a deadline for August 7, 2006 for Creditors to submit claims for debt. No claims were received.

On November 14, 2006, a hearing was held. The following were present; Land Commission Attorney - Rebecca Webster, Paralegal - Sandy Egbert and Probate Clerk - Tina Figueroa, family members included: Neil Moore, Rory Moore, Blaine Moore, Terry Skenandore, and Keith Moore. Without any objection, Neil was appointed the decedent's Personal Representative by this court.

II Analysis

We are granting the request for an appointment of a personal representative because the panel does not wish to disrupt the settling of the decedent's affairs. However, we now take a few moments to share some concerns and questions with the Land Commission.

Our concerns and questions stem from the differences between the procedure being used by the Land Commission in probate matters and the procedure described in Section 67.9 of the Real Property Ordinance. We do not find support in Chapter 67 for the procedure being used by the Land Commission. We have three areas of concerns: 1) The lack of a declaratory ruling and hearing by the Land Commission, 2) The authority to petition the Appeals Commission, and 3) The authority to appoint a personal representative.

The first of area concern is with the lack of a declaratory ruling and hearing. Section 67.9 requires the Land Commission to issue a declaratory ruling and hold a hearing. However, the Land Commission apparently does neither. No declaratory ruling was included in its filing and

there is no evidence a hearing was held. At the hearing in this matter before the Appeals Commission, the Land Commission's attorney explained that the Land Commission's interpretation of Section 67.9 was that the Land Commission has the "option" to hold the hearing or have the Appeals Commission hold a hearing. Unfortunately there is no provision in Section 67.9 to support such an interpretation. The closest thing to support the Land Commission's interpretation is Section 67.9-6 which requires the Land Commission or "its designated sub-committee" to make a declaratory ruling. The Oneida Appeals Commission is not a sub-committee of the Land Commission. Section 67.9-10 states the Land Commission shall schedule a hearing once the probate file is complete. Section 67.9-10(b) specifies the format for the Land Commission's hearing.

Section 67.9-16 further supports our view that it is the Land Commission, not the Appeals Commission, which must issue the declaratory ruling. That section states that "all probate Declaratory Rulings of the Land Commission ... shall be recorded in the Division of Land Management." Our reading of the ordinance does find an option for the Land Commission.

The Land Commission stated that it relies on its Standard Operating Procedure (SOP) for the current probate process. This reliance appears to be misplaced. An SOP does not have the force of law. Rather it is an internal procedure used by an entity to implement the law. An SOP cannot change the law. When an SOP is inconsistent with the law, as appears to be the case here, the law supercedes the SOP.

The second area of concern is the Land Commission's submission of a petition to the Oneida Appeals Commission. There are no provisions in Section 67.9 for the Land Commission to file a petition. Rather, under section 67.9-13, after the Land Commission has issued its declaratory ruling, the declaratory ruling may be appealed to the Oneida Appeals Commission. The ordinance does not involve the Appeals Commission unless an appeal is filed. We are concerned about our authority to respond or even hear the petitions when they have no basis in the ordinance.

The third area of concern is the appointment of a personal representative. There is no mention of appointment of a personal representative anywhere in Section 67.9. The Appeals Commission is concerned about its authority to make such an appointment when it is not provided for by law.

As we stated earlier, we are granting the request for a personal representative so that the decedent's estate may be settled. However, the Land Commission is on notice that the Appeals Commission may not grant the Land Commission's requests in the future due to the concerns raised in this decision. This Court strongly recommends that the Land Commission provide sufficient written legal justification with its next filing and answer the concerns raised in this opinion. Short of a change in the law, it is difficult for this panel to see how the current process is supported by the ordinance.

III. Decision

The Court appoints Neil Moore as decedent's Personal Representative. The Court shall issue a Domiciliary Letter within ten days.

It is so ordered.