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FORT PECK
TRIBAL COURT OF APPEALS

**FORT PECK COURT OF APPEALS
ASSINIBOINE AND SIOUX TRIBES
FORT PECK INDIAN RESERVATION
POPLAR, MONTANA**

In the Matter of the Estate of Howard Bemer, Deceased.	CAUSE NO. AP # 2021-814 OPINION
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Appeal from the Fort Peck Tribal Court, Judge FourStar Presiding.

Appellants Bill Pritchard, Patti Murray, and Ronnie Pritchard, represented on brief by Rena K. Lambert.

Appellees Paul Bemer and Leslie Gourneau Co-Personal Representatives for the Estate of Howard Bemer, represented on brief by Laura Christoffersen.

Before B.J. Jones, and B. Desmond, Associate Justices, and G. Christensen, Alternate Associate Justice. Chief Justice E. Shanley recused.

BACKGROUND

¶ 1 This matter comes before this Court on Appellant's Notice of Appeal, filed on May 25, 2021, contesting the Trial Court's April 23, 2021 Order directing the Appellants to deliver to the tribal court: a 2016 Nissan Maxima, a 2016 Jeep Wrangler Unlimited, and a 2004 Maroon Chevy Silverado. The Appellants requested this Court to "reverse the vehicles in question to Roberta Bemer's family".

¶ 2 In their brief the Appellants also contest that it was error for the April 23, 2021 Order to appoint Paul Bemer and Leslie Gourneau as co-personal representatives of the Decedent's estate because while the Decedent's will nominated Paul Bemer as his personal representative and recognized Leslie Gourneau as his daughter, the will did not select Leslie Gourneau as the personal representative or alternate personal representative.

¶ 3 Chief Justice Erin Shanley has recused herself, and Alternate Associate Justice Grant Christensen was assigned in her place. Both parties have submitted briefs.

¶ 4 We hold that the Appellants request to reverse the trial court order related to the surrendering of the three vehicles is not ripe for consideration because no final order regarding the ownership of the vehicles has yet been determined by the trial court.

¶ 5 We further refuse to grant appellate review to the issue of whether Leslie Gourneau could have been appointed as a co-personal representative because Appellant's fail to show how their legal rights are impaired by the appointment and so any error resulting from the appointment is harmless.

STATEMENT OF JURISDICTION

¶ 6 According to CCOJ Title II, Chapter 2, §202,

The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgments of the Tribal Court, appeals of administrative decision where a provision of this Code expressly vests such jurisdiction in the Court of Appeals

STANDARD OF REVIEW

¶ 7 This Court reviews de novo all determinations of the lower court on matters of law, but shall not set aside any factual determinations of the Tribal Court if such determinations are supported by substantial evidence. 2 CCOJ §202.

ISSUE

- **Did the Tribal Court err when it issued its April 23, 2021 Order requiring that the three vehicles in question be surrendered to the tribal court to be preserved pending probate by Paul Bemer and Leslie Gourneau, acting as the personal representatives of Howard Bemer’s estate?**
- **Did the Trial Court err when it issued its April 23, 2021 order appointing Paul Bemer and Leslie Gourneau as personal representatives of the estate?**

DISCUSSION

¶ 8 The Fort Peck Court of Appeals must make a preliminary determination that it may exercise jurisdiction over every appeal before it may consider the merits of the argument. CCOJ Title II, Chapter 2, §202 is clear that this Court’s jurisdiction extends only over “all appeals from *final orders* and judgments of the Tribal Court ****” (emphasis added).

¶ 9 An order is final when there is nothing left for the trial court to do but to enforce the judgment. *Curtiss-Wright Corp. v. General Elec. Co.*, 446 U.S. 1, 7 (An order “must be ‘final’ in the sense that it is ‘an ultimate disposition of an individual claim ****”) (citing *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427 (1956)); see also *Didie v. Howes*, 988 F.2d 1097, 1103 (11th Cir. 1993) (“An order is final when ‘nothing further is left to be done by the trial court.’”) When further hearings or judicial process are necessary to determine the ownership of property, no final order

has yet been entered and appellate review of the trial court's preliminary determination is not yet ripe for appellate consideration.

¶ 10 Moreover, it is within this Court's jurisdiction to determine that an action taken by the lower court is not a final order. We agree with the Colville Tribal Court of Appeals that "the issue of whether or not an Appeal has been perfected, including whether or not the order being appealed is a 'final order,' is generally within the review of the Court of Appeals and not the Trial Court." *Justus v. Colville Confederated Tribes*, 3 CTCR 38 (Sept. 26, 2001). We locate that power in CCOJ Title II, Chapter 2, §202 which provides that this Court shall "take all necessary steps to preserve and protect the jurisdiction of the Court".

¶ 11 In this case the trial court's April 23, 2021 order is not a final order. The court's order merely required that the vehicles and their titles be delivered to the tribal court so they could be included in the inventory of Howard Bemer's estate. Under the trial court's order the vehicles and their titles may be used by Paul Bemer and Leslie Gourneau as representatives of the estate. Turning over the vehicles under the April 23rd Order does not remove any claim that the Appellants may make as to their ownership. Those claims should be made to the court as provided for in CCOJ Title XI, Chapter 1, §111. As Appellees aptly point out in their brief, the trial court "did not determine 'distribution' of the estate" and so final order has yet been made by the trial court.

¶ 12 The trial court may then, in response to a claim made under §111, issue a final order. CCOJ Title XI, Chapter 1, §112 contemplates that "The Court shall distribute all property of the decedent, over which the Court has jurisdiction" and requires that public notice be given as per §103 of that Chapter. Unlike the

court's April 23, 2021 Order, an order issued by the trial court distributing the property under its jurisdiction would be a final order from which an appeal may be taken because the final distribution of the property would necessarily have to have decided the ultimate owner of the property. From that order the only thing remaining for the trial court to do would be to see that its order was enforced.

¶ 13 This Court also recognizes that the Appellant's brief questions whether it was proper for the trial court to appoint Leslie Gourneau as a co-personal representative of the estate. Ms. Gourneau's appointment may be a final order because once appointed she is acting as a co-personal representative of the estate; however, we do not decide that question today. The Notice of Appeal sought only to "reverse the vehicles in question to Roberta Bemer's family". Appellants make no argument as to how the appointment of Ms. Gourneau injured their legal rights. While the Appellant's brief questioned Ms. Gourneau's appointment in several places we expressly refuse to consider the issue on appeal because any error that may have resulted from the appointment is harmless.

CONCLUSION

¶ 14 For the reasons stated above the Appellant's appeal seeking to reverse the April 23, 2021 Order that the vehicles in question be turned over to the tribal court is rejected because it is not based upon a final order of the trial court as required by CCOJ Title II, Chapter 2, §202. The trial court has merely required that the vehicles be turned over so that they may be included in the full inventory of the estate. The trial court has not yet made any determination as to the actual ownership of the vehicles after Howard Bemer's death and so no final order has been issued from which the Appellants may appeal.

¶ 15 The Appellant's argument that the Order should not have named Leslie Gourneau as a co-personal representative is denied review because no harm was alleged in the Appellant's brief and so any error which may have resulted is harmless.

SO ORDERED this 15th day of July 2021.

FORT PECK COURT OF APPEALS



B.J. Jones, Associate Justice



Brenda C Desmond, Associate Justice



Grant Christensen, Alternate Associate Justice

**Chief Justice Erin Shanley is Recused