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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

<p>Kathryn and Harold Hamilton Appellants v. Fort Peck Tribes, Appellees.</p>	<p>CASE NO. AP # 851 ORDER REVERSING AND REMANDING</p>
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Appeal from the Fort Peck Tribal Court, Imogene Lilley, Presiding Judge.
Appellants Kathryn and Harold Hamilton appear by and through Counsel Robert Welch.
Before Justices Shanley, Jones, and Grijalva

PROCEDURAL HISTORY

¶ 1 This matter comes before the Fort Peck Court of Appeals (FPCOA) on a Notice of Appeal filed on April 10, 2023 requesting review of the Tribal Court's Probate Order issued on April 12, 2023. In their request for review, Appellants allege the Tribal Court erred in admitting a 2013 Will of the decedent when one of the witnesses to the will denies signing the document. This Court accepted review and issued a briefing schedule on April 17, 2023. Appellants requested a Stay from the Tribal Court, which was granted.

¶ 2 Appellants filed a supplemental brief on May 15, 2023, in which they raise various other issues for consideration on appeal. This Court does not address these additional issues, as it finds a sufficient basis to reverse and remand this matter based on the validity of the 2013 Will. Appellees did not file a responsive brief.

STATEMENT OF JURISDICTION

¶ 3 Pursuant 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. The Tribal Court's Probate Order is a final order subject to appellate review.

STANDARD OF REVIEW

¶ 4 This Court reviews de novo all determinations of the Tribal 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 PRESENTED

1. Whether the Tribal Court erred in finding the 2013 will valid in accordance with the requirements of 12 CCOJ § 113 when one of the witnesses to the will testified under oath that she did not sign the will as a witness?

FACTS

¶ 5 Caroline Baker passed away on January 6, 2023. Probate Order, ¶ 1. Ms. Baker was a member of the Fort Peck Assiniboine and Sioux Tribes and lived on the Fort Peck Indian Reservation at the time of her passing. *Id.* ¶ 7. Ms. Baker is survived by her son, Harold Hamilton, and daughters Kathryn and Taffy Hamilton and grandchildren Jaylin Feurherm, Myltin Bighorn, and Davie Hamilton. *Id.* ¶ 6. Ms. Baker was not married at the time of her death. *Id.* ¶ 1.

¶ 6 Her son Harold Hamilton filed a Petition for Probate of Will on January 6, 2023. Her daughter, Taffy Hamilton, also filed a Petition for Probate of Will on January 9, 2023. The Court held a hearing on March 13, 2023. Probate Order, ¶ 2. The Court was presented with a 2013 Last Will and Testament submitted by Taffy Hamilton. *Id.* ¶ 8. The Court was also presented with a 2003 Last Will and Testament submitted by Harold Hamilton. *Id.* At the hearing on March 13, 2023, the Court accepted testimony to determine the validity of the 2013 will.

¶ 7 Deborah Ricker provided testimony acknowledging that her name is on the will dated August 30, 2013. *Id.* ¶ 12a. Although her signature and address appear to be her handwriting, she testified that she did not sign the 2013 will as a witness and did not witness the decedent execute the will in question. *Id.* ¶ 12b,c. She further denied knowing the other witness or the notary who signed the will. *Id.* ¶ 12d.

¶ 8 Willa Gray Hawk, the individual who notarized the will, also testified. She indicated that she recalls the decedent, who she knew personally, coming into her office by herself and signing the will in Gray Hawk's presence. *Id.* ¶ 13a-d. However, Gray Hawk acknowledges that the witnesses did not sign in front of her, although she knows them both. *Id.* ¶ 13e.

¶ 9 Despite this testimony, the Tribal Court declared the 2013 will to be valid and ordered that the estate of decedent be distributed in accordance with the 2013 will. Probate Order, p.3-4.

DISCUSSION

I. THE TRIBAL COURT ERRED IN FINDING THE 2013 WILL VALID IN ACCORDANCE WITH THE REQUIREMENTS OF 12 CCOJ § 13 WHEN ONE OF THE WITNESSES TO THE WILL TESTIFIED UNDER OATH THAT SHE DID NOT SIGN THE WILL AS A WITNESS.

¶ 10 Title 12 of the Comprehensive Code of Justice contains the tribal law applicable to probate cases. Section 113, Wills, states:

When any Indian dies, leaving a will disposing of property subject to the jurisdiction of the Court, the Court, at the request of any person named in the will or any other interested party, shall determine the validity of the will after giving notice as provided by Section 104 hereof. **A will shall be deemed valid if it was made in writing and signed by the decedent in the presence of two (2) witnesses who then and there signed the will as witnesses**, and if, at the time the decedent made the will, the decedent was of sound and sane mind, understood what he/she was doing and was not subject to undue influence or duress of any kind from another person....

12 CCOJ §113 (emphasis added).

¶ 11 In *Re the Matter of the Estate of Lucille Lulu Davis Snell*, APP 348 (Apr. 10 2022), this Court reversed the Tribal Court's determination that the decedent's will was invalid. In that matter, decedent executed the will in the Bureau of Indian Affairs (BIA) agency office in Billings, MT in the presence of two BIA employees who served as witnesses to the will. A third BIA employee served as the notary and testified in a deposition that he witnessed the two witnesses and the decedent sign the will in his presence. The Court found that the will met the statutory requirements of 12 CCOJ § 113, and the Tribal Court erred in finding it invalid. *Id* at 4.

¶ 12 Here, Deborah Ricker, an individual whose signature was contained in the decedent's 2013 will as a witness, testified that she did not sign the will and did not know the other witness or the notary who signed the will. See Probate Order, ¶ 12.

Furthermore, the notary public, Willa Gray Hawk, testified that she notarized the will at decedent's request and the decedent signed the will in front of her; however, Gray Hawk did not see the witnesses execute the will and they were not present when she notarized it. *Id.*, ¶ 13.

¶ 13 Given the sworn testimony of the two witnesses, it is clear the will did not meet the statutory requirements set forth in 12 CCOJ § 113. The decedent did not sign the will "in the presence of two (2) witnesses who then and there signed the will as witnesses." Both Deborah Ricker and Willa Gray Hawk provided sworn testimony that this did not occur. Therefore, the Court erred when it declared the 2013 Will valid.

CONCLUSION

¶ 14 For the reasons stated above, the Tribal Court's Order is REVERSED, in part, and this matter is REMANDED back to the Tribal Court.

SO ORDERED this 17th day of October 2023.

FORT PECK COURT OF APPEALS



Erin Shanley, Chief Justice



B.J. Jones, Associate Justice



James, Grijalva, Associate Justice