



NHBP TRIBAL COURT

NOTTAWASEPPI HURON BAND OF THE POTAWATOMI

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IN RE IW

OPINION ON PROBATING THE ESTATE OF A TRIBAL CITIZEN

At a session of said Court held in the Courthouse of the Nottawaseppi Huron Band of the Potawatomi Tribal Court on the Pine Creek Reservation on the 19th day of January 2018

Honorable Melissa L. Pope Presiding

FILED

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INTRODUCTION

This case involves the motion by a Guardian and Conservator to probate the estate of a Tribal Citizen who lived on Tribal lands applying the Michigan Probate Code in absence of a Tribal probate code.

JURISDICTION

The NHBP Constitution addresses jurisdiction, providing in pertinent part:

Article II § 1 (a)

The territory of the Band shall encompass the Band's historical land base known as the Pine Creek Potawatomi Reservation in Athens Township, Michigan and all lands now held or hereafter acquired by or for the Band, or held in trust for the Band by the United States, including lands in which rights have been reserved or never ceded by the Nottawaseppi Huron Band of the Potawatomi in previous treaties, or as may otherwise be provided under federal law.

Article II § 2 (a)

Jurisdiction. The jurisdiction and sovereign powers of the Band shall, consistent with applicable federal law, extend and be exercised to the fullest extent consistent with tribal self-determination, including without limitation, to all of the Band's territory as set forth in Section 1 of this Article, to all

natural resources located within the Band's territory, to any and all persons within the Band's territory and to all activities and matters within the Band's territory. The Band's jurisdiction shall also extend beyond its territory whenever the Band is acting pursuant to jurisdiction that is created or affirmed by rights reserved or created by treaty, statutes adopted by the Tribal Council in the exercise of the Band's inherent sovereignty, Federal statute, regulation or other federal authorization, or a compact or other agreement entered into with a state or local government under applicable law.

Article XI, Section 3(a)

The judicial power of the Nottawaseppi Huron Band of the Potawatomi shall be in the Tribal Court system. The judicial power shall extend to all civil and criminal cases arising under this Constitution, all legislative enactments of the Band, including codes, statutes, ordinances, regulations, all resolutions, agreements, and contracts to which the Band or any of its entities is a party, and the judicial decisions of the Tribal Court system.

Article XI, Section 3(b)

The judicial power of the Tribal Court system may be exercised to the fullest extent consistent with self-determination and the sovereign powers of the Band, and, as exercised, shall govern all persons and entities subject to the jurisdiction of the Band under Article II of this Constitution.

This matter arises under the exclusive jurisdiction of this Court with a Petition brought under the *Nottawaseppi Huron Band of the Potawatomi Guardianship and Conservatorship Code* of a Protected Person who is a Tribal Citizen and resides on Tribal lands. With that Protected Person having walked on, this Court is asked to determine whether probating the Protected Person's estate in this Tribal Court using Michigan law is consistent with this Nation's Constitution. This Court, therefore, has jurisdiction over this matter.

FACTUAL HISTORY

With guardianship and conservator proceedings confidential matters in the Tribal Court, the facts of this case shall be limited to protect both the Protected Person and the interested persons in this case.

A Petition for Guardianship of a Protected Person who is a Tribal Citizen and resides on Tribal lands was filed. A temporary guardianship was issued with the interested persons in the case, including those represented by counsel, extending the guardianship to also include a conservatorship. The full hearing on the guardianship and conservatorship was not held due to the Protected Person walking on prior to the hearing being held. No written objections were filed by the individuals who the Court held were interested persons in this case at the time the Guardian and Conservator was appointed. The Court extended guardianship over the Protected Person after

they walked on due to contentious relations within the family. While this *Order* was not entered by consent, many other decisions were reached by consent of all interested persons, and no *Order* issued by this Court, whether by consent or imposed, was appealed with the deadlines for filing an appeal having passed a considerable time ago.

An interested person in this case filed a Motion to Probate Estate. This individual requested that this Tribal Court probate the Protected Person's estate under the Michigan Probate Code as the Nottawaseppi Huron Band of the Potawatomi has not yet adopted a probate code. This *Opinion* addresses only this issue.

ANALYSIS

The Nottawaseppi Huron Band of the Potawatomi addresses jurisdiction in Article II § 2 (a) of the Constitution:

Jurisdiction. The jurisdiction and sovereign powers of the Band shall, consistent with applicable federal law, extend and be exercised to the fullest extent consistent with tribal self-determination, including without limitation, to all of the Band's territory as set forth in Section 1 of this Article, to all natural resources located within the Band's territory, to any and all persons within the Band's territory and to all activities and matters within the Band's territory. The Band's jurisdiction shall also extend beyond its territory whenever the Band is acting pursuant to jurisdiction that is created or affirmed by rights reserved or created by treaty, statutes adopted by the Tribal Council in the exercise of the Band's inherent sovereignty, Federal statute, regulation or other federal authorization, or a compact or other agreement entered into with a state or local government under applicable law.

Probating the estate of a Tribal Citizen who lived on Tribal lands until they walked on in this Tribal Court, applying the Michigan Probate Code until a probate code is enacted by the Tribe, is the exercise of jurisdiction "to the fullest extent consistent with tribal self-determination" and, thus, permitted by the Constitution. The exercise of jurisdiction in a manner that expands the jurisdiction of the Tribe is also supported by the precedent of this Court. (See *In Re K*, Tribal Court Case No. 13-123-GM, decided July 11, 2013). Further, probating the estate of a Tribal Citizen who lived on Tribal lands until they walked on reflects the values of this Nation.

This Native Nation establishes its values in Article II § 2 (b):

Article II § 2 (b)

Guiding Principles. In exercising the jurisdiction and sovereign powers of the Band, the Tribal Council and other institutions of the Band's government shall be guided by the following principles:

1. Promote the preservation and revitalization of Bode'wadmimen and Bode'wadmi culture;
2. Promote sustainable development strategies and practices to ensure the health and balance of the next seven generations of Tribal Members;
3. Promote the health, educational and economic interests of all Tribal Members, especially our elders and children;
4. Promote efforts that ensure the perpetual preservation and revitalization of the Band's sovereignty and self-determination; and
5. Promote open and transparent governance by providing Tribal Members, and where appropriate, other persons subject to Tribal jurisdiction, with notice and opportunity to comment on financial, policy or legislative business under consideration.

The Nottawaseppi Huron Band of the Potawatomi has, in the operation of this Nation's government, established the promotion of the Seven Grandfather Teachings as an important avenue for the "preservation and revitalization of Bode'wadmimen and Bode'wadmi culture". The Seven Grandfather Teachings are as follows:

Bwakawen – Wisdom
Debanawen – Love
Kejitwawenindowen – Respect
Wedasewen – Bravery
Gwekwadzewen – Honesty
Edbesindowen - Humility
Debwewin - Truth

The Judicial Branch, including this Court, has affirmed the critical importance of the Seven Grandfather Teachings and committed to the incorporation of the Seven Grandfather Teachings into all aspects of the Judicial Branch, from its day-to-day operation to inclusion in precedent of this Court. It is in the spirit of the Guiding Principles articulated in Article II § 2 (b) and the Seven Grandfather Teachings that this Court approaches cases in this Tribal Justice System, including the present case.

A foundational approach to conflict resolution in Tribal Justice Systems is consensus. Working towards consensus in a civil matter is a critical component of traditional Indigenous approaches to conflict resolution with the focus of reaching consensus rooted in healing; healing of the individuals involved and the community.

Although this Tribal Justice System does not yet have a formal Peacekeeping program or court, this Court exercises traditional approaches to conflict resolution. To utilize this avenue of conflict resolution, the Court must be patient, provide opportunities for every interested person to be heard, and carefully listen for the underlying concerns of

each individual involved, even when the individuals themselves cannot fully articulate – or perhaps do not know – their underlying concerns, to collectively create solutions they are all willing to accept. The individuals involved reaching an agreement does not necessarily mean that every interested person is happy with the outcome; compromise often involves being willing to let go of something desired for an outcome that meets the needs of all involved. With the individuals involved in the conflict on the path towards healing and the conflict itself resolved, the community as a whole may also begin to heal and strengthen both the community generally and the government of the Tribe.

The principles involved with the traditional Indigenous approach to conflict resolution may also be utilized in cases where individuals have violated the law to promote the healing of the victim, the defendant, and the community. Although most Tribal Justice Systems are not punishment-focused like the American legal system, accountability of the defendant is a foundational requirement for healing to begin.

The American legal system is realizing the long-term value to all involved, including the community, of these traditional Indigenous principles of striving towards accountability, consensus, and healing in justice systems, with these principles frequently referred to as “restorative justice”.

Utilizing traditional Indigenous approaches to conflict resolution in the American legal system is not new; most state courts have methods for alternative dispute resolution or mediation. What is changing, however, is the adoption of traditional Indigenous principles and actual traditional Indigenous methods by state courts within these alternative dispute resolution processes, as well as in family law cases. State courts have also begun to realize the long-term value to the victim, defendant, and community as a whole of utilizing traditional Indigenous approaches to addressing behavior that violates the law.

It is in the spirit of the Guiding Principles of Article II § 2 (b) of the Constitution and the Seven Grandfather Teachings, and honoring the Protected Person, that this Court has approached the present case. While any Tribal Citizen deserves this commitment, this Court has always been mindful of the fact that the Protected Person is a respected Elder. To ensure that this Protected Person was honored by being provided the care they required and desired, including going through the Western Door from the place they wanted – their Tribal homeland, this Court appointed an Legal Guardian Ad Litem and Case Worker to conduct investigations independent of the family members. Independent investigations were important in this case, not only because of the provisions in the *NHBP Guardianship and Conservatorship Code*, but because the family was in significant dispute about the care of the Protected Person with numerous factors, including other legal actions and documents, compounding the conflict.

In looking at the facts of this case in the spirit of the Guiding Principles articulated in Article II § 2 (b) and the Seven Grandfather Teachings, this Court finds that it would be in the best interests of all interested persons for this Tribal Court to probate the estate of the Protected Person as this Court had exclusive jurisdiction over the Guardianship and Conservatorship case with the Protected Person being an enrolled Citizen of the Tribe who resided in Tribal Housing on Tribal lands, it is familiar with the background of the estate

and the family of the Protected Person, and this Court would approach probating the Protected Person's estate in the spirit of the Guiding Principles of Article II § 2 (b) of the Constitution and the Seven Grandfather Teachings which would honor the Protected Person's profound commitment to their Nation. If all interested persons consented, the motion would be granted. One interested person, however, objected.

While this Court is not holding that an objection by an interested person prevents this Court from exercising jurisdiction by probating a Tribal Citizen's estate in this Tribal Court under Michigan law, it is the totality of the circumstances surrounding the interested person who has objected that results in this Court denying the Motion. It has become clear that the outside influences in this case, likely from an individual or individuals who fail to conduct themselves pursuant to the Guiding Principles of this Nation and in the spirit of the Seven Grandfather Teachings, will result in the continuation of issues that have recently frustrated resolution of matters before the Court and recently delayed the progress of this case through this interested person failing to fully comply with Court *Orders*, submitting documents that do not comply with Tribal Court Rules, and engaging in actions that ignore the agreements previously reached by all interested persons in this case - including the agreements to which this objecting individual consented.

With this Court focused on proceeding in a manner consistent with the values of the Native Nation, the Court shall permit the interested person who has objected to probating the Protected Person's estate in the Tribal Court under the Michigan Probate Code to withdraw their objections in writing within twenty-one (21) days after entry of this *Order*. This Court shall presume that a withdrawal of their objection means that they are committing to participate in the probating of the Protected Person's estate in the spirit of the Guiding Principles of the Constitution, the Seven Grandfather Teachings, in cooperation with their retained Attorney of Record, and without interference from individuals who have not been declared interested persons in this case by this Court.

CONCLUSION

Probating the estate of a Tribal Citizen who lived on Tribal lands until they walked on in this Tribal Court, applying the Michigan Probate Code until a probate code is enacted by the Tribe, is an exercise of jurisdiction that is consistent with Article II § 2 (a) of the Constitution with exercising jurisdiction "to the fullest extent consistent with tribal self-determination" and, thus, permitted by the Constitution. Probating the estate of a Tribal Citizen who lived on Tribal lands until they walked on also reflects the values of this Nation as specified as this Nation's Guiding Principles in Article II § 2 (b) and the Seven Grandfather Teachings.

Probating the estate of a Tribal Citizen who lived on Tribal lands in this Court, under the Michigan Probate Code until a probate code is enacted by the Nottawaseppi Huron Band of the Potawatomi, may be done by consent. The Court must look to the totality of the circumstances to determine whether an objection by an interested person is sufficient grounds to deny a request for this Tribal Court to probate the estate of a Tribal

Citizen who lived on Tribal lands. One factor for the Court to consider is whether the circumstances surrounding the objection or the person who objects are so significant that it would frustrate the ability of the Court to probate the estate or significantly frustrate the progress of the case.

IT IS HEREBY ORDERED:

January 19, 2018

Date

Melissa L. Pope

Hon. Melissa L. Pope, Chief Judge

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