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IN THE COURT OF APPEALS
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD INDIAN RESERVATION

IN THE MATTER OF THE ESTATE) Cause No. AP-11-0324-P
OF SANDRA MURRAY)
Deceased.) OPINION
)
)

**Appeal from the Trial Court of the Confederated Salish and Kootenai Tribes before the
Honorable David Morigeau, Associate Judge.**

Appearances:

Isaac Kantor, Garlington, Lohn and Robinson, Missoula, MT Attorney for Appellant

Michael D Murray

Michael P Murray, Pro Se, Appellee.

**Before: Chief Justice Eldena Bear Don't Walk, Associate Justice Robert McDonald and
Associate Justice Joshua C. Morigeau. Chief Justice Bear Don't Walk delivers the Opinion
of this Court.**

INTRODUCTION

Michael D. Murray appeals the August 12, 2015 order of the lower Tribal Court denying reconsideration on the Approving Final Accounting. Determining Heirs. Distributing Assets, and Closing the Estate. We **AFFIRM** the lower court's decision.

FACTUAL AND PROCEDURAL HISTORY

Appellant Michael Dwayne Murray is the son of Sandra Murray, and Michael P. Murray, Appellee. Sandra Murray died on August 18, 2009. Sandra was an enrolled member of the

1 Confederated Salish and Kootenai Tribes. At the time of her death, Sandra was domiciled in
2 Arlee on the CSKT Reservation.

3 Prior to her death, Sandra Murray's former husband, Appellee Michael P. Murray,
4 obtained a default judgment in Tribal Court in the amount of \$53,500.00. The judgment was
5 founded upon an appraisal of Sandra's allotted Indian land, Allotment No: 203-4400. The
6 default judgment amount represented one half of the marital residence the couple had established
7 during the marriage.

8 Upon Sandra Murray's death, her son, Appellant Michael D. Murray became her sole
9 heir. In 2011, the lower Tribal Court appointed Michael D. Murray Personal Representative to
10 Sandra Murray's estate.

11 As Personal Representative of his mother's estate, Michael D. Murray disposed of her
12 assets. Sandra Murray's trust and restricted property and IIM Account monies passed through
13 U.S. Department of the Interior Office of Hearings and Appeals Probate on January 31, 2014.
14 The Administrative Law Judge ("ALJ") in Sandra Murray's federal probate action disposed of
15 her trust and restricted land in accordance with federal law and authorized her Individual Indian
16 Money ("IIM") account funds, totaling \$2.73, to be made available to Michael P. Murray in
17 satisfaction of the default judgment he held against her. At that time, Michael D. Murray
18 "indicated he had no interest in this or any other option of settling the Tribal Court judgment
19 with his father." USA, Dept. Interior Dec. 1, Jan. 31, 2014 ("DOI Dec.").

20 The ALJ determined that the lower Tribal Court had established jurisdiction over the
21 trailer home on Sandra Murray's allotment, beginning in 1988 and noted the continuing dispute
22 between Sandra and Michael P. Murray. As such, the ALJ ruled the trailer home was personal
23

1 property under the jurisdiction of the lower Tribal Court and declined to pass it with her trust and
2 restricted land.

3 As Personal Representative of the Estate of Sandra Murray, Appellant Michael D.
4 Murray undertook the process of selling or disposing of his mother's personal property. At the
5 conclusion of this process, there remained \$10,040.00. The total estate value consisted of:
6 \$5,000.00 obtained from the sale of the trailer home, \$5,000.00 in personal property, and \$40.00
7 held in a bank account.

8 On June 17, 2015, the lower Tribal Court ordered the total estate value of \$10,040.00
9 distributed. It distributed \$301.20 to Michael D. Murray as compensation for his personal
10 representation of his mother's estate. A sum of \$1,777.88 was distributed in attorney's fees. The
11 remainder, \$7,960.92 was distributed to Michael P. Murray as partial satisfaction of the default
12 judgment he had previously obtained against Sandra. Accordingly, there were no remaining
13 funds to distributed to Sandra's sole heir, Michael D. Murray.

14 The Appellant filed a Motion for Reconsideration on July 9, 2015 requesting that the
15 lower court follow Montana Code Annotated § 72-2-413 and exempt \$10,000.00 of his mother's
16 estate from creditor claims.

17 On August 10, 2015 the lower court denied Michael D. Murray's Motion for
18 Reconsideration. In its decision, the lower court noted that it had relied upon CSKT Law and
19 Order Code 3-1-107(2) in making its original determination. The denial was founded upon the
20 fact that the presence of CSKT Code 3-1-17(2) removed any legal requirement to look to
21 Montana state law for guidance. Id.

22 Michael D. Murray filed a timely appealed, briefed the issue and oral argument was held.
23 Appellant argues that the lower court committed error when it chose not to apply M.C.A. § 72-2-

1 413 and exempt \$10,000.00 of his mother's estate from Michael P. Murray's creditor claim. He
2 contends that in cases where there is an "absence" of Tribal Law covering an issue, the Tribal
3 Court may follow Montana law. We disagree.

4 STANDARD OF REVIEW

5 The applicable standard of review is not in dispute. When issues are not specifically
6 addressed by tribal or federal law, CSKT tribal code authorizes application of law from other
7 jurisdictions, including Montana law. See, Ordinance 36B, CS&K Tribal Law and Order Code,
8 Ch.11, §3. This Court has used this choice of law section to adopt applicable standards of review
9 of questions of law and fact. A trial court's conclusions of law will be reviewed to determine
10 whether the trial court's interpretation of the law is correct. See, Northwest Collections v.
11 Pichette, Cause No. CV-077-93, February 3, 1995, slip op. At 2. ("Thus we employ the fullest
12 scope of review to determine whether the trial court correctly applied the law."). The judgement
13 of a trial court will be presumed to be correct, and all legitimate inferences will be drawn to
14 support this presumption" unless clear error is present. Bick v. Pierce, CS&K Tribal Court of
15 Appeals, Cause No. AP-CV-134, May 20, 1996. Clear error is present when a review of the
16 entire record leaves this court with the definite conviction that a mistake has been committed,
17 even though there is evidence on the record to support the finding. Id. at 7. A "[mere] showing
18 [of] reasonable grounds for a different conclusion is not sufficient to reverse the trial court's
19 findings." Id.

20 ISSUE

21 The Appellant raises the following issues on appeal:
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1 1. As CSKT Law does not feature an exempt property provision in tribal code, did the
2 lower Tribal Court err when it did not rely upon and apply Montana exempt property
3 law in distributing the proceeds of the Estate of Sandra Murray?
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5 **DISCUSSION**

6 Appellant Michael D. Murray incorrectly argues that as CSKT Tribal Code does not
7 contain an exempt property statute, there is an “absence” in tribal law for exempt property which
8 required the lower Tribal Court to look to, and apply, Montana exempt property law to his
9 mother’s estate. For this reason, he contends, legal error occurred.

10 The Confederated Salish & Kootenai Tribes of the Flathead Indian Reservation retains its
11 “inherent power to determine tribal membership, to regulate domestic relations among members,
12 and to prescribe rules of inheritance for members.” Montana v. U. S., 450 U.S. 544, 564 (1981).
13 This was exactly what occurred when the Tribes enacted CSKT Laws Codified §3-1-107.

14 Section 3-1-107 covers probate, descent, and distribution. It reads:

15 “3-1-107. Probate, descent and distribution.

16 (1) When any member of the Tribes dies, leaving property other than an allotment, or
17 other trust property subject to the jurisdiction of the United States, any person
18 claiming to be an heir of the decedent may petition the Tribal Court of the
19 Confederated Salish and Kootenai Tribes to have the Court determine the heirs of the
20 decedent and to the decedent and to divide among the heirs such property of the
21 decedent. The Court may, on its own motion, initiate probate proceedings after a
22 reasonable time if the heirs and/or other interested parties have neglected to file a
23 petition with due diligence for commencement of probate. No determination of heirs
shall be made unless all possible heirs known to the Court, the Tribes, the Bureau of
Indian Affairs and the claimant shall have been notified of the suit and given full
opportunity to come before the Court and defend their interests. Possible heirs who
are not residents of the Flathead Reservation must be notified by registered mail and a
copy of the notice must be preserved in the record of the case.

1 (2) When any member of the Tribes dies, leaving a will disposing only of property other
2 than an allotment or other trust property subject to the jurisdiction of the United
3 States, the Tribal Court shall, at the request of any person named in the will,
4 determine the validity of the will after giving notice to appear in Court to all persons
5 who might be heirs of the decedent. A will shall be deemed by the Court to be valid if
6 the decedent had a sane mind and understood what he/she was doing when he/she
7 made the will and was not subject to any undue influence, and if the will was made in
8 accordance with the laws of the State of Montana. If the Court determines the will to
9 be validly executed, it shall order the property described in the will to be given to the
10 persons named in the will or their heirs.

11 (3) In under either of the two preceding Sections of this Chapter, the Tribal Court may, in
12 its discretion, appoint from among the survivors of a decedent, an administrator of the
13 estate, who will take possession and control of the property of the decedent until the
14 administration of the estate has been completed and he/she has been discharged by
15 Order of the Court.

16 (4) Prior to distribution of assets, the Court may direct that publication or other method
17 of notice to creditors be given. Creditors may file a written statement of a claim with
18 time and manner directed by the Court in its order of notification. (Rev. 4-15-03)
19 (Rev. 1-24-13).”

20 CSKT Laws Codified §3-1-107.

21 Appellant relies heavily upon subsection 2 and both the lack of any exempt property
22 provision as well as the presence of the mandate that property described in a will is to be
23 distributed to the persons named in a will or their heirs.

Appellant neglects to award subsection 4 similar weight. Subsection 4 provides that prior
to the distribution of the assets of an estate, the Court may direct that notice to creditors be
provided. Michael P. Murray is such a creditor, who received notice and filed a claim with the
court.

The provision that creditors are authorized to attach the assets of an estate prior to the
distribution of assets eliminates Appellant’s claim that there is simply an absence in tribal law
for exempt property. On the contrary, subsection 4 establishes that the Tribal Council, in crafting

1 §3-1-107 contemplated creditors being paid prior to the distribution of assets. Presumably, the
2 CSKT Tribal Council legislated with full knowledge that creditor claims may diminish an
3 estate's assets until they are gone.

4 Appellant further argues that “[t]he CKST laws indicate that the Tribal Court should
5 apply Montana law where Tribal and federal laws and regulations do not cover an issue.”

6 Appellant Brief at 5. In support of this notion, Appellant cites CSKT Laws Codified § 4-1-104(1)
7 (2003), the full text of which reads:

8 “4-1-104. Laws applicable in civil actions.

9 (1) In all civil actions, the Tribal Court shall first apply the applicable laws, Ordinances,
10 customs and usages of the Confederated Salish and Kootenai Tribes and then shall apply
11 applicable laws of the United States and authorized regulations of the Department of the
12 Interior. Where doubt arises as to customs and usages of the Tribes, the Tribal Court may
13 request the advice of the appropriate committee which is recognized in the community as
14 being familiar with such customs and usages. Any matter not covered by Ordinances,
15 customs and usages of the Tribes or by applicable federal laws and regulations may be
16 decided by the Court according to the laws of the State of Montana.

17 CSKT Laws Codified § 4-1-104(1) (2003).

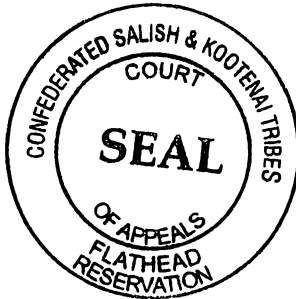
18 This provision within tribal code provides a tribal court with a framework of laws to
19 apply as it works to achieve resolution. Section 4-1-104(1) initially mandates, in all civil actions,
20 that the Tribal Court must first apply the applicable laws, Ordinances, customs and usages of the
21 CSKT Tribes. Next, the Tribal Court must then apply applicable federal law and authorized
22 regulations of the U.S. Department of the Interior. If at any time doubt creeps in as to what tribal
23 customs and usages apply, the Tribal Court may seek guidance from the appropriate community-
recognized committee familiar with the particular issue at hand. Finally, if a matter is not
covered by any Ordinance, custom, usage, federal law, or Department of the Interior regulation,
then the Tribal Court may, at its discretion, decide the matter using a relevant Montana law.

1 Appellant erroneously argues that this section of tribal code "indicat[es]" that the lower
2 Tribal Court here should have applied M.C.A. § 72-2-413 to the matter at hand. Such is not the
3 case. The lower Tribal Court, in accordance with CSKT Laws Codified § 4-1-104(1) relied first
4 upon tribal law, namely CSKT Laws Codified §3-1-107, to resolve the matter. Even were there
5 no relevant section of tribal code present, the choice to rely upon Montana law remained the very
6 last option, and even then, a wholly discretionary option the Tribal Court was not required to
7 choose.

8 **CONCLUSION**

9 For the aforementioned reasons we **AFFIRM** the trial court in all issues presented in this
10 Appeal.

11 Dated this 24th day of May, 2016.



Eldena Bear Don't Walk, LL.M.
ELDENA BEAR DON'T WALK
Chief Justice

Joshua C. Morigeau
JOSHUA C. MORIGEAU
Associate Justice

Robert S. McDonald
ROBERT MCDONALD
Associate Justice

Certificate of Mailing

I, Abigail Dupuis, Appellate Court Administrator, do hereby certify that I mailed a true and correct copy of the Opinion to the persons first named therein at the addresses shown below by depositing same in the U.S. Mail, postage prepaid at Pablo, Montana, this 1st day of June, 2016.

**Isaac Kantor
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**Michael Patrick Murray
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**Cara Croft
Clerk of the Tribal Court
PO Box 278
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A handwritten signature in black ink that reads "Abigail Dupuis". The signature is written in a cursive style with a horizontal line underneath the name.

**Abigail Dupuis
Appellate Court Administrator**