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

IN THE MATTER OF THE ESTATE OF
FLORENCE W. KING,

APPEAL No. 203

Deceased Tribal Member

ORDER AFFIRMING TRIBAL COURTS DECISION

A Petition for Review having been filed by James A. Bighorn, by and through counsel, Arnie A. Hove, from Tribal Court orders entered on June 2, 1993 and November 10, 1993; briefs having been filed and oral arguments conducted, the Fort Peck Tribal Court of Appeals now makes the following:

ISSUE

Whether the Tribal Court erred in its Findings of Fact, Conclusions of Law and Decree of Distribution upholding the will of Florence W. King and providing for a distribution of ten (10) head of cattle to each James A. Bighorn and Michael H. Thomas?

The applicable rule of law here is found in Title I Section 202 of the Comprehensive Code of Justice for the Fort Peck Assiniboine and Sioux Tribes. Section 202 states that the Court of Appeals shall not set aside any factual determinations of the Tribal Court if such determinations are supported by substantial evidence. This court finds that the tribal court had before it substantial evidence in order to determine the issue. The will itself and the testimony- at trial supports the courts determination. The testimonial provision of the will is clear and unambiguous:

"I give, devise, and bequeath to my son James Allen Bighorn, 206-U06493, and to my grandson Michael H. Thomas, 206-U10491, each to receive 10 head of cattle apiece. And the balance of my cattle to my husband Willis (Bill) King. My cattle are branded Z Bar Lazy B on the Right Rib."

Eleventh paragraph of Florence W. King's will.

The tribal court had the testimony of Michael Thomas and the testimony of James A. Bighorn. Michael

Thomas testified that he did not know the age of the cows given to him and both of these witnesses testified that at least 80% of the cattle subsequent to the time of the gift calved out. The testimony of Willis King indicates that he distributed the cattle to the devices by a rational means of selection. Giving roan-colored animals to Michael and black/white-faced cows to James and reserving the red cattle for himself. There is no evidence in the record supporting the contention that cattle distributed to the appellants were "old"; no expert testimony or veterinary records adding weight to the appellants contentions.

The weight of the evidence and the determination of fact is left to the trier of fact, in this case, to the Tribal Court judge. This court will not overturn a determination of fact supported by substantial evidence.

ISSUE

Whether the writing of January 27, 1993 of Willis King effectively renounces the testamentary gift received by him under the will of Florence W. King?

In this case the Tribal Court heard testimony from Willis King, James Bighorn and Alda Small. The transcript at page 124 indicates that the parties Willis King and James Bighorn contrived a bargain. In exchange for the subject property James Bighorn testified, he had promised to "provide for Willis King." Incidentally, he had provided nothing for Willis King as of April 28, 1993, the date of the Tribal Court hearing. Willis King testified that on February 16, 1993 he revoked in writing the letter of January 27, 1993. On June 2, 1993 the honorable Chief Judge A.T. Stafne declared in his Findings of Fact and Conclusion of Law that:

"The Court finds that the preponderance of evidence would support the conclusion that Willis King did not intend to renounce the bequest of cattle and machinery and that, therefore, the provisions of the will should be enforce. "

Section 202 of the C.C.O.J. directs this Court to not set aside the factual determinations of the Tribal Court supported by substantial evidence. Here, the Tribal Court made its factual determination based on the testimony and admissions of the parties, the documents presented at hearing and the testimony of witnesses. In the event that this Court of Appeals would find the intent of Willis King to be other than that of the interpretation of the Tribal Court, under section 202 it would be compelled to uphold the Tribal - Court-s decision. It is not this Courts position to reach factual determinations. The question of intent, is a question of fact left to the trier of fact.

The question before the court now is: Whether the renunciation of Willis King of January 27, 1993 is to be given legal effect?

The Fort Peck Tribal Code of Justice is silent as to a procedure or determination of effective disclaimer or renunciation. In accordance with Title IV CCOJ 501 (d) we turn to the Uniform Probate Code as adopted by the State of Montana. Section 72-2-101, M.C.A. (1991) states in pertinent part:

" (1) A person...or any incident of ownership therein may renounce, in whole or in part, the right of succession to any property or interest therein, including a future interest, by filing a written renunciation under this section. The instrument shall:

- a. describe the property or interest renounced;
- b. be signed by the person renouncing; and
- c. declare the renunciation and the extent thereof."

In the case before the court today Mr. Willis King in his attempt to renounce the testamentary gift to be taken under the will of Florence King complied with the requirements (a), (b) and (c) in his January 27th writing. However, the threshold requirement of filing the renunciation with the court was not met. The statute relied on here must be read as a whole and the filing and notice requirements of the statute preclude any distribution outside of full compliance with the statute. The court is guided by the reasoning set forth in *In the Matter of the Estate of Robert D. Griffin. Deceased.* 248 Mont. 472, 812 P.2d 156 (1991) wherein the court stated:

" [1] In particular, the statute provides that " [i] f the circumstances that establish the right of a person to renounce an interest arise as a result of the death of an individual, the instrument must also be filed in the court of the county where proceedings concerning the decedent's estate are pending or where they would be pending if commenced." Section 72-2-101(3), MCA. The plain language of the statute requires that the disclaimer be filed, thus filing of the disclaimer is a condition precedent to an effective renunciation. (citation omitted) Furthermore, there can be no waiver of a right to 'succession where there is no intent to waive, (citation omitted) Here xthe "Disclaimer" of the surviving spouse's interest was filed simultaneously with the second instrument [canceling, revoking, rescinding, and withdrawing] the renunciation. Thus, at the time the alleged "Disclaimer" was to be given legal effect the surviving spouse did not intend to renounce her interest .

Griffin @ 517.

In this case as well as in Griffin the undisputed facts show that neither the disclaimer nor the revocation of disclaimer were filed prior to the court hearing and at the time the documents were given to the court the court found that the testator's spouse did not intended to renounce any testamentary gift and that there was no formation of contract between the remaining spouse and another.

We find that the Tribal Courts' orders as pertaining to the distribution of the ten head of cattle to Michael H. Thomas and the distribution of the ten head of cattle to James A. Bighorn are supported by substantial evidence; and that the Tribal Courts finding of fact that Willis King did not intend to renounce the bequest of cattle and machinery is supported by substantial evidence; and'Tthat: the Tribalgpourt ' s conclusions of law, applying the Uniform" Probate Code and following the reasoning in Griffin is correct. We therefore hold that the Tribal Court's orders appealed herein AFFIRMED.

DATED this 6th day of March, 1994.

BY THE COURT OF APPEALS:

Gary M. Beaudry, Chief Justice

Gary J. Melbourne, Associate Justice
