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In re Est. of Dorothy McGillis Gopher, 2013 MT 264

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In re Est. of Dorothy McGillis Gopher, 2013 MT 264, --- Mont. ---, --- P.3d ---.

The district court's assertion of subject matter jurisdiction over the estate of a tribal member, domiciled outside of tribal boundaries, did not interfere with the Blackfeet Tribe's right to self-govern.

Decedent Dorothy McGillis Gopher was an enrolled member of the Blackfeet Tribe, but was domiciled in Cascade County, Montana at the time of her death. Dorothy is survived by seven children. Dorothy died intestate in 2008, with an estate comprised of a single asset: a thirteen-star flag known as the "Ojibwe Peace Flag." The earliest known holder of the flag was an Indian named Ah-On-Te-Ways. In 1946, the Gopher family came into possession of the flag, which was eventually passed on to Dorothy's husband Robert. After Robert's death in 1998, the flag was to pass on to one of Robert and Dorothy's sons, per Robert's will. However, this never occurred, and the flag remained in Dorothy's possession until her death. Possession then transferred to her estate.

In 2010, one of Dorothy and Robert's sons, Mike, filed an application for informal probate in Cascade County District Court, which heard the family's dispute over the estate for the following two years. In August 2012, several Gopher siblings filed a petition to name two of the siblings as personal representatives of the estate in Blackfeet Tribal Court and then filed a motion to dismiss for lack of subject matter jurisdiction in district court. In October 2012, the Blackfeet Tribal Court issued an order asserting exclusive jurisdiction over the estate. In November 2012, the district court denied the motion to dismiss and issued its findings of fact and conclusions of law. The district court found Ah-On-Te-Ways was the trustor and first trustee of a charitable trust, the flag was trust property, and all following possessors were successor trustees. Additionally, the district court held if the estate retained possession of the flag, it would be unjustly enriched because the flag was for the benefit of the charitable trust and ordered the

estate to relinquish possession of the flag to the trust. Further, the district court held venue and jurisdiction over the parties were proper as a matter of law because Dorothy died while domiciled in Cascade County.

In February 2013, Blackfeet Tribal Court issued an order stating the matter involved a dispute over personal property, and the tribal court would not assert jurisdiction over the flag because the dispute had always remained outside of tribal jurisdiction. The Gopher siblings appealed, arguing the flag is trust property belonging to a tribal member and the Blackfeet Tribe has exclusive jurisdiction over tribal members' probate proceedings regardless of whether they lived on the reservation. The siblings further argued the district court's assertion of jurisdiction infringed on the tribe's right to self-govern. Conversely, Mike argued the flag holds no religious or other significance to the Blackfeet Tribe, and the Blackfeet Tribal Court explicitly held it lacked jurisdiction over the property in dispute.

Pursuant to Montana Code Annotated § 26–10–202(b)(6), the Court can take judicial notice of any records of any court in the state, court of record of the United States, or court of record in any of the states within the United States. The Court held, though tribal orders are not explicitly included in the Code provision, the February 2013 Blackfeet Tribal Court order fell within the provision. Additionally, the appellant-siblings did not take issue with the legitimacy of the February order. Therefore, under § 26–10–202(b)(6) the Court took judicial notice of the tribal court order.

The Montana practitioner should note the Court applied the previously-established jurisdictional test and determined the February tribal court order (though not specifically listed in the statute) qualified under § 26–10–202(b)(6). By taking judicial notice of the Blackfeet Tribal

Court's order relinquishing jurisdiction to the state court, the Montana Supreme Court found the district court's exercise of jurisdiction did not infringe on the tribe's right to self-govern.

Honorable Thomas M. McKittrick, District Court for the Eighth Judicial District

For Appellants: Melinda Gopher (pro se), Missoula, Montana | Blair Gopher (pro se), Missoula, Montana | Glenn Robert Gopher (pro se), Great Falls, Montana | Miranda Gopher (pro se), Great Falls, Montana | Mary Gopher-Parenteau (pro se), Great Falls, Montana.

For Appellee: Neal P. DuBois of Sutton & DuBois, PLLC, Great Falls, Montana.

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