

SUPREME COURT
OF THE
ROSEBUD SIOUX TRIBE



<p>IN THE MATTER OF THE GUARDIANSHIP OF: CALVIN DESERSA, An Adult</p> <p>And Concerning: Darrell Desersa, Appellee,</p> <p>and</p> <p>Darlene Meyers, Appellant.</p>	<p>CA 13-03</p> <p>MEMORNADUM OPINION AND ORDER</p>
--	---

Per Curiam (Pat Donovan, Chief Justice and Associate Justices Frank Pommersheim and Charles Abourezk)

FACTS AND PROCEDURAL HISTORY

This matter came before this Court on appeal from an adult guardianship case initiated in Rosebud Sioux Tribal court. There has been an ongoing dispute between two family members of Calvin Desersa (hereinafter referred to as Mr. Desersa) over who should be his guardian. Appellee, Darrell Desersa, is the son of Mr. Desersa. Appellant, Darlene Meyers, is the sister of Mr. Desersa.

The Rosebud Sioux Tribal court held a hearing on the appointment of guardian. The court found Mr. Desersa was in need of guardianship due to dementia and other health issues. The court further found Rosebud Sioux Tribal law on guardianship provides that in appointing a guardian preference shall be given to those persons named in a Will, next preference shall be given to relatives in the order of closeness of the relationship and the court shall be guided by the best interest of the person needing a guardian. The court then found that it would be in the best interest of Mr. Desersa that Appellee, Darrell Desersa be appointed guardian of Mr. Desersa.

Appellee now appeals those findings. She alleges the court erred by finding that tribal law

gives preference in appointing a guardian to those persons named in a will because Mr. Desersa is not deceased and that there was no will submitted into evidence to show Appellant is named as such a person in the will.

Appellee filed a designation of record identifying only July 7, 2013 order of guardianship for review. The Appellee failed to designate the transcript of the guardianship hearing or any exhibits introduced at the hearing as evidence and are not made part of the appeal for Appellant's failure to designate these items for review.

STANDARD OF REVIEW

We review findings of fact for clear error and conclusions of law de novo.

DISCUSSION

Title One Probate and Guardianship section of the Rosebud Sioux Tribe Law and Order Code controls the qualifications and priorities in the appointment of guardians for tribal members.

Title One Chapter Two of Guardianship Code gives guidance on the qualifications and preferences in appointing a guardian.

1-2-5 QUALIFICATIONS OF GUARDIANSHIP-- Any adult person of the age of 21 years or older and subject to the jurisdiction of the Tribal Court may serve as a guardian. In appointment of the guardian, the first preference shall be given to those persons named in a Will of a deceased parent. Next preference shall be, to relatives of the ward in the order of closeness of the relationship with due consideration being given to any person with whom a minor shall have been living at the time of the guardianship hearing. Due consideration should also be given to any person preferred by a minor if he is old enough to make an intelligent decision in that regard. In all cases the Court shall be finally guided by the best interests of the minor or incompetent in selecting a guardian.¹ (Emphasis added).

In appointment of the guardian, the first preference shall be given to those persons named in a Will of a deceased parent. Mr. Desersa is not deceased although he is a parent. This section is reserved for when a minor child's parent dies and nominates someone in their will to be appointed the guardian of their minor children. There is nothing in the record before us to

¹ Title One, Chapter Two, Section Five of the Rosebud Sioux Law and Order Code.

indicate the court relied on a will to make the guardianship appointment.

Title One Chapter One of the Probate Code gives guidance in appointments of relatives in the order of closeness of the relationship. 1-1-11 sets out priorities in appointment:

The following persons, legally competent, shall be afforded priority in order of their listing for appointment as Administrator or Executor.

- (1) Any person nominated in the Last Will and Testament of the deceased.
- (2) The surviving spouse.
- (3) Children in descending order of age.
- (4) Other blood relatives in the order of their closeness of relationship.
- (5) Any other adult Tribal member who is a creditor of the deceased.
- (6) Any other adult Tribal member.²

Although this section is contained in the probate code, it gives the court guidance in appointment of relatives in closeness of relationships. The Guardianship chapter is silent on the issue of which relative has priority in the appointment of a guardian. Probate and Guardianship are intertwined and related in the law and lumped together in the same Title of the code.³

As between, Appellee and Appellant, Appellee, as son, is more closely related than Appellant, as sister, to Mr. Desersa. Appellee then would have priority in appointment as guardian of Mr. Desersa.

But our inquiry does not end there. Besides preference given to relatives of the ward in order of closeness of the relationship, 1-2-5 requires in all cases the Court shall be finally guided by the best interests of the incompetent in selecting a guardian. Appellant failed to designate the transcript of the hearing and any exhibits introduced at the hearing when she filed this appeal and are not part of the record. This makes it impossible for the Court to determine which documents

² Title One, Chapter One, Section Eleven of the Rosebud Sioux Law and Order Code.

³ Title One is captioned Probate and Guardianship and contains 2 chapters, Chapter One Probate and Chapter Two Guardianship.

Appellant has attached to her briefs were introduced and accepted into evidence at the guardianship hearing and reviewable by the Court. There is nothing in the record before us that would indicate that the appointment of Appellee is not in the best interest of Mr. Desersa. Therefore, the lower court did not err in finding that it was in Mr. Desersa's best interest that Appellee be appointed his guardian.

For all the above-stated reasons, the trial court's order appointing Appellee guardian of Mr. Desersa is affirmed.

IT IS SO ORDERED.

Dated this 5th day of February, 2014.

FOR THE COURT:

A handwritten signature in black ink, appearing to read "Pat Donovan", with a horizontal line extending to the right from the end of the signature.

Pat Donovan, Chief Justice