

SUPREME COURT  
OF THE  
ROSEBUD SIOUX TRIBE



STEPHANIE WRIGHT, PLAINTIFF/APPELLANT  v.  BUTTE CREEK COMMUNITY, DEFENDANT/APPELLEE.	CA 14-03  MEMORNADUM OPINION AND ORDER
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Per Curiam (Charles Abourezk, Chief Justice and Associate Justices Frank Pommersheim and Pat Donovan)

**FACTS AND PROCEDURAL HISTORY**

The facts of the case are essentially uncontested. This appeal involves a transitional house located in Butte Creek community. Irene Wright was given a bill of sale for Transitional House #89 and resided in this house until she died intestate on April 3, 2006. Irene Wright's trust property was probated by the Bureau of Indian Affairs probate proceeding but no tribal court probate was initiated to distribute Irene Wright's non-trust estate including Transitional House #89.

Nobody has resided in or maintained the house since Irene Wright's passing in 2006. Butte Creek community was participating in a beautification program where it declared the house a hazard and being that it was abandoned.<sup>1</sup> The Community apparently notified Appellant or another relative to either repair and occupy the house or move it within a certain amount of time. After the time to act had expired, the Community passed a motion<sup>2</sup> to give the house to the community member who owned the land where the house is situated.

Stephanie Wright (hereinafter referred to as Appellant) brought suit against Butte Creek

<sup>1</sup> The record does not provide any details of the program.

<sup>2</sup> It is unclear from the record what the Communities authority was to transfer the house or how the house was transferred.

Community and its Chairman, Kenneth Farmer seeking money damages from the Community for illegally transferring Irene Wright's house to another community member. At the trial on the merits, the lower court dismissed the suit ruling that Appellant did not have legally protected right to the house and did not have a right to bring an enforcement of a possessory interest. The court specifically found no evidence that Appellant was appointed by a Court to act on behalf of the estate of Irene Wright and although an heir is not enough for her to bring this action.<sup>3</sup> The court further ruled that if someone wanted to bring an action on behalf of Irene Wright's estate they would have to show proof that they have been appointed the Administrator of the estate.

### ISSUES

The singular issue in this appeal is whether the Appellant had standing to bring this suit.

### DISCUSSION

In order to adjudicate the validity of any bequest, a court must have before it the parties adversely interested. The challenger must show threatened or actual injury which is a requisite for standing. *LeRoy v. Rosebud Sioux Tribe Tribal Land Enterprise*, CA 92-02, p. 4 (1993).

In this case the estate of Irene Wright has suffered the actual injury. No probate has been filed in this matter. Stephanie Wright at the present time cannot show threatened or actual injury. There is no indication Stephanie Wright would be awarded the house in probate. Stephanie Wright is one of eleven potential heirs to the estate.

The court was correct when it found that if someone wanted to bring an action on behalf of Irene Wright's estate they would have to show proof that they have been appointed the Administrator of the estate. The Administrator of Irene Wright's estate would have standing to bring this suit before the lower court.

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<sup>3</sup>A copy of Irene Wright's BIA probate of her trust estate shows she was survived by 3 children who each received 1/4 of the trust estate and was predeceased by another child whose 1/4 interest in the trust estate were distributed to his nine children (one of whom is Stephanie Wright) who each received 1/36 of the trust estate.

Stephanie Wright argues she is in possession of the bill of sale giving Irene Wright ownership of Transitional House #89 located in Butte Creek community. The bill of sale is in Irene Wright's name. There is nothing to show that Irene Wright transferred ownership of the home to Stephanie Wright or anyone else. There mere possession of a bill of sale in the name of another is not enough to give the possessor an ownership interest. An ownership interest can only be reflected by a properly executed bill of sale or a distribution in a probate proceeding.

Stephanie Wright also produced a document dated June 6, 2014 purporting that the oldest child of Irene Wright conveyed the house to Stephanie Wright. It is obvious by the date that this document was submitted to the court after the appeal was filed and this Court does not ordinarily consider evidence and documents submitted first the first time on appeal and without a determination of admissibility by the lower court. Even if we did, the document would not legally give Stephanie Wright any legal title to the house or provide her with standing to maintain a suit. Only a probate can distribute the property of an estate. One heir out of many cannot transfer the estate property with a probate and court order to do so.

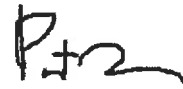
Therefore, this court affirms the lower court dismissal based on lack of standing of Stephanie Wright at the present time. Stephanie Wright or any other interested party could file a probate and have an Administrator appointed who would have authority and standing to file the suit. This Court therefore affirms the trial court's decision without prejudice to the parties filing a probate proceeding to have an Administrator appointed who would have the authority to file suit. A caution, the appointed Administrator should be aware of any applicable statute of limitations deadlines for filing found at Rosebud Sioux Tribe Law and Order code 4-2-4.

**ORDER**

IT IS ORDERED, the lower court decision dismissing the suit finding that Stephanie Wright presently does not have standing maintain the suit is affirmed and that this dismissal is without prejudice and an Administrator with standing would have the option to refile.

Dated this 16<sup>th</sup> day of December, 2014.

FOR THE COURT:



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Pat Donovan, Associate Justice