

FEB 11 2019

TRIBAL COURT

SUPREME COURT
OF THE
ROSEBUD SIOUX TRIBE

<p>IN THE MATTER OF THE ESTATE OF: ANNA LUCY MORRISON Deceased</p> <p>and</p> <p>DONNA DUBRAY, INTERESTED PARTY, APPELLANT</p> <p>V.</p> <p>BELVA MORRISON, ADMINISTRIX, APPELLEE.</p>	<p>CA 18-03</p> <p>MEMORNADUM OPINION AND ORDER</p>
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Per Curiam (Charles Abourezk, Chief Justice and Associate Justices Frank Pommersheim and Pat Donovan)

INTRODUCTION

This appeal concerns the appointment of Belva Morrison as administratrix of the estate of Anna Lucy Morrison. Morrison filed a petition for appointment as administratrix of the estate and the clerk of courts caused a notice of hearing for the appointment by mailing notice to all interested parties of the estate by first class mail to their last known addresses. After the hearing, Morrison was appointed administratrix of the estate. Morrison, as administratrix, filed a petition for probate of the estate. The hearing on the petition was set for January 31, 2018. Notice of hearing and the and supporting documents were mailed first class to all interested parties on January 11, 2018. DuBray did not appear at the hearing.

DuBray appeals, claiming she did not receive notice of hearing until after the hearing on the petition for final distribution and requests the order for final distribution be vacated and remanded for a new hearing. Both parties filed briefs. Neither party asked for oral arguments.

Therefore, oral argument is waived and the Court declines to exercise its discretion and declines ordering oral argument. This matter is decided on the record herein and the briefs submitted.

As a preliminary matter, Morrison asks for summary disposition of the appeal in her brief. Appellate procedure allows a party to file a motion for summary disposition for affirmance with a written memorandum in support of the motion.¹ Morrison's request is not in the proper form and will therefore not be entertained.

ISSUE

The sole issue is whether DuBray received adequate notice of the hearing on petition for distribution and final accounting of the estate.

DISCUSSION

DuBray did not move the lower court for a rehearing or for relief from judgment and as a result there is no evidence on the record from DuBray surrounding her claim that she did not receive notice of hearing. DuBray brief fails to make any legal arguments or point to any error by the court. The Court then is left with the existing record to determine if the notice requirements were complied with in providing notice of hearing to DuBray.

Probates are governed by codified law.² The probate code provides that notice of hearing on any petition to any interested party can be accomplished by mailing a true copy of the notice together with any supporting documents at least 10 days before hearing by first class mail to the interested parties last known address and proof of the mailing by affidavit is filed with the Court.³

The appellate record contains a petition for probate of the estate with a notice of hearing on

¹ Rule 12 of the Rules of Procedure RST Court of Appeals.

² Rosebud Sioux Law and Order Code Title 1 Chapter 1.

³ RST Law and Order Code 1-1-6(1).

the petition scheduled for January 31, 2018 at the Courthouse in Rosebud. It also contains an affidavit from a legal advocate from Dakota Plains Legal Services reflecting that on January 11, 2018 she caused copies of the petition and notice to be mailed by first class mail to the interested parties in the estate with their last known addresses. This included DuBray at her last known address, a post office box in St. Francis. The record shows that none of the notices sent to DuBray by first class mail was ever returned as non-deliverable. The record is replete with correspondences from DuBray to the Court using the same post office box number the notice of hearing was sent to. The record even contains a 2014 letter from DuBray to a Dakota Plains Legal Services advocate who was representing Morrison, that she would act as her own attorney after receiving notice of a prior hearing. The letter is signed by DuBray with her address as the same post office box number used in all notices sent to DuBray.

The probate code only requires that notice of hearing be mailed first class to the last known address of an interested party at least 10 days prior to hearing. The record shows that this requirement was met. In fact, the notice was mailed 20 days prior to hearing. Without any further evidence in the record from the lower court, it must be presumed that notice of hearing on the petition for final distribution was mailed by first class mail to DuBray's last known address and that she received the notice well in advance of the hearing. Morrison did everything she was required to do under the law to accomplish service of notice of hearing. There is nothing in the record to indicate otherwise.

CONCLUSION

For the above stated reasons, Dubray's appeal and her request that the order for final distribution be vacated and remanded for a new hearing is denied.

Dated this 11th day of February 2019.

FOR THE COURT:

A handwritten signature in black ink, appearing to read 'Pat Donovan', with a stylized flourish at the end.

Pat Donovan, Associate Justice