

FILED

**SISSETON-WAHPETON-SIOUX
TRIBAL COURT**

SISSETON-WAHPETON OYATE
SUPREME COURT

1/23/15

Date

by:

Big Noh

Clerk of Courts

In the Matter of:	NO. D-13-821-605
The Estate of ORVILLE DAVID LABATTE	MEMORNADUM OPINION AND ORDER

Per Curiam (Thor Hoyte, Chief Justice and Associate Justices Russel Zephier and Pat Donovan)

I. FACTS AND PROCEDURAL HISTORY

Orville David LaBatte, a member of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, died on August 20, 2013. Ms. Cynthia LaBatte was married to Mr. LaBatte at the time of his death. Mr. LaBatte had executed his Last Will and Testament on June 22, 2013. His Will was drafted and prepared with the assistance of Dakota Plains Legal Services.

The decedant’s wife was disinherited in the will, and she has challenged the validity of the will as she should inherit a marital share under South Dakota law. Furthermore, Mrs. LaBatte also challenges the will distribution under the “customs and traditions” of the Oyate, asserting she would receive inheritance from her husband under such.

II. ISSUES ON APPEAL

Mrs. LaBatte appeals two issues, namely:

1. Whether South Dakota law regarding marital share applies to the Oyate?
2. Whether Oyate “custom and tradition” entitles Mrs. LaBatte to a distribution?

Each issue will be discussed in turn.

III. DISCUSSION

1. Whether South Dakota law regarding marital share applies to the Oyate?

Mrs. LaBatte argues South Dakota law regarding marital share applies to the Oyate. This

issue is simply dismissed: it does not in this case for the reasons stated in the trial court. Mrs. LaBatte relies on SDCL 29A-2-102 as her basis for argument she should receive a marital share of her late husband's estate. However, SDCL 29A-2-102 applies to intestate estates. Mr. LaBatte died with a will.

Oyate law (SWOC Chapter 44) controls the distribution of property. The will was found to be valid by the trial court, and was not challenged in this Court. We therefore find the application of SDCL 29A-2-102 to be misplaced. Mr. LaBatte did not die intestate, therefore we do not reach the issue of whether SDCL 29A-2-102 applies to the Oyate.

2. Whether Oyate “custom and tradition” entitles Mrs. LaBatte to a distribution?

Mrs. LaBatte, as alternative to applying SDCL 29A-2-102, urges the Court to find Oyate “custom and tradition” mandates a distribution of her late husband's estate to her, as wife. The role of custom and tradition is very important to our courts. It is not unusual for long-held customs and traditions to be recognized by our courts to illuminate and clarify Oyate law.

However, Mrs. LaBatte, in argument, cannot point to specific findings of “custom and tradition”. The trial court, also, did not find specific custom and tradition that would upset the distribution in the will.

Moreover, Oyate law (SWOC Chapter 44) controls the distribution of an estate. The trial court found Chapter 44 to be inclusive of custom and tradition and authored in keeping with Oyate custom and tradition. We find no reason to upset that conclusion.

IV. CONCLUSION

For the above stated reasons the trial court is affirmed and we uphold the court's distribution of the LaBatte estate.

IT IS SO ORDERED.

Dated this 22nd day January, 2015.

FOR THE COURT:

A handwritten signature in cursive script, reading "Thor A. Hoyte". The signature is written in black ink and is positioned above a horizontal line.

Thor A. Hoyte, Chief Justice