

In the  
Rosebud Sioux Tribe  
Court of Appeals

\* distribution of  
property

① failure to  
obtain a  
stay  
② standing

In The Matter of the Estate  
of Valeria Neiss Hand, Deceased

EUGENE LEROY, PLAINTIFF/APPELLANT

v.

ROSEBUD SIOUX TRIBE TRIBAL LAND ENTERPRISE,  
JIM HUDSON, EXECUTIVE DIRECTOR,  
DEFENDANT/APPELLEE

Appeal From the  
Rosebud Sioux Tribal Court

Honorable Sherman Marshall  
Presiding Judge

Pat Donovan  
Dakota Plains Legal Services  
Box 727  
Mission, South Dakota 57555

Attorney for Plaintiff/ Appellant

Terry Pechota  
Viken, Viken, Pechota,  
Leach & Dewell  
1617 Sheridan Lake Rd  
Rapid City, South Dakota

Attorney for Defendant/Appellee

Before Justices  
Byrd, Pommersheim, and Roubideaux

Dated June 1, 1993

Pommersheim, C.J. (CA 92-02)

I. Introduction

During her lifetime, the decedent, Valeria Neiss Hand, obtained an interest in Assignment #1733 from the Rosebud Sioux Tribe Tribal Land Enterprise program, the Defendant-Appellee herein. On February 23, 1981, Ms. Hand signed and executed a designation of beneficiary naming her sons, Robert and Clifford Marshall, as co-beneficiaries. This designation of beneficiary was signed by Valeria Hand before a notary public, but it was not done before two witnesses who must also sign and acknowledge the Designation of Beneficiary.

Ms. Hand died testate on January 20, 1991. On March 6, 1991, Tribal Land Enterprises (TLE) sent notices to the heirs of Valeria Neiss Hand that Assignment #1733 would pass to Robert and Clifford Marshall in accordance with the February 23, 1981 designation of beneficiary. On April 2, 1991, Eugene LeRoy, a son of Valeria Neiss Hand and the Plaintiff-Appellant herein, objected to the course of action stated in the notice.

On April 25, 1991, the TLE Board of Directors conducted a hearing on Mr. LeRoy's objection. The Board took no action and

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This signing of witnesses is apparently required by Sec. 8, Ch. III of the Policies and Procedures of Rosebud Sioux Tribe Tribal Land Enterprises program. In addition, Sec. 13, Ch. II states that if the designation of beneficiary is not executed properly the assignment must be passed in accordance with the decedent's last will and testament.

recommended that the parties proceed in Federal court or any other court that had jurisdiction.

Subsequently, on August 20, 1991, Mr. LeRoy requested that the tribal probate court include Ms. Hand's interest in Assignment #1733 as part of her personal estate and pass the interest in accordance with her last will and testament. The court refused.

On November 5, 1991, Mr. LeRoy's filed a motion for an order to show cause in tribal court under the caption of In the Matter of the Estate of Valeria Neiss Hand, Deceased. The motion requested the court to transfer Ms. Hand's interest in Assignment #1733 in accordance with her last will and testament as her designation of beneficiary was improperly executed according to TLE policies and procedures. A hearing was held on March 3, 1992.

On April 16, 1992 the court issued a memorandum decision denying Mr. LeRoy's motion. The opinion noted inter alia that any claim that TLE violated its administrative rules was justiciable only through a civil action commenced against TLE and further that TLE and its officers enjoyed the protection of tribal sovereignty as set out in Ch. 2, Sec. 4-2-1 of the Rosebud Sioux Tribal law and Order code.

A timely notice of appeal was filed, but there was no attempt to stay any of the proceedings below.

## II. Issues

Although the parties raise many issues, two are dispositive. They are:

A. Whether the failure to obtain a stay pending appeal renders the appeal moot; and

B. Whether the Plaintiff/Appellant has standing to pursue the appeal.

## III. Discussion

A. After the tribal court issued its memorandum opinion and judgment on April 6, 1992, the Plaintiff/Appellant made no effort to obtain a stay preventing TLE, the Defendant/Appellee, from distributing the property. The assignment at issue in the case was ultimately distributed to the named beneficiaries, Robert and Clifford Marshall, who in turn sold their interests back to TLE and received money in exchange.

This action may be properly characterized as an in rem proceeding involving the estate of Ms. Valeria Hand. In such a proceeding, it is well established that where the res may be transferred or disposed of pending appeal, the failure to obtain

a stay or secure other orders restraining distribution of the property renders an appeal moot. Holloway v. United States, 789 F.2d 1372 (9th Cir. 1986). In addition, mootness is jurisdictional in nature. State of South Dakota v. Hazen, 914 F.2d 147 (8th Cir. 1990).

Since no action was taken to restrain or enjoin TLE from distributing the proceeds of the assignment and the proceeds were in fact distributed, this action is moot. As a result, this court lacks jurisdiction to determine the central issue in this appeal namely the rightful owners of the interest in TLE Assignment #1733.

B. Although the Court's analysis of the issue of mootness is itself dispositive of this appeal, this appeal is also defective because the Plaintiff/Appellant lacks standing. Mr. LeRoy was neither a named beneficiary in Ms. Hand's designation of beneficiary nor a named beneficiary in Valeria Hand's last will and testament. In addition, he is not the executor of the estate or the named representative of any of the interested parties. In order to adjudicate the validity of any bequest, a court must have before it the parties adversely interested. The Plaintiff-Appellant can show no threatened or actual injury which is a requisite for standing. Trinity Medical Center v. North Dakota Board of Nursing, 399 N.W.2d 835 (ND 1987).

This case also raises significant issues about tribal court jurisdiction over trust property and the doctrine of tribal sovereign immunity. Nevertheless, since resolution of these important issues is not necessary for the disposition of this appeal, the court reserves consideration of them until they are more squarely presented in a future appeal.

IV. Conclusion

For all the foregoing reasons, the judgment of the tribal trial court is hereby affirmed.

IT IS SO ORDERED.

*Frank Pommersheim*

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Diane Zephier Byrd  
Associate Justice

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Frank Pommersheim  
Chief Justice

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Ramon Roubideaux  
Associate Justice

FILED  
in the  
ROSEBUD SIOUX TRIBAL COURT OF APPEALS

The undersigned Clerk of the Rosebud Sioux Tribal Court of Appeals hereby certifies that this document was received and entered on the docket in the above-entitled matter by this Court on the 3rd day of June, 1993.

*Denita Marshall*  
Clerk of Courts

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Chief Justice

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*Denita Marshall*  
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