

CHEYENNE RIVER SIOUX TRIBAL COURT OF APPEALS
 CHEYENNE RIVER SIOUX TRIBE
 CHEYENNE RIVER SIOUX INDIAN RESERVATION

IN THE MATTER OF THE ESTATE OF AUSTIN) RAVE, Decedent)) CAROLE RAVE,) APPELLANT/RESPONDENT,) v.) KIMBERLY RAVE,) APPELLEE/PETITIONER.))	Appeal No. Tribal Court Case No. 15P055 MEMORANDUM OPINION AND ORDER
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Per Curiam (Chief Justice Frank Pommersheim and Associate Justices Taylor Bald Eagle and Franklin Duchenaux)

I. INTRODUCTION

This case involves a disagreement about expenditures incurred as part of the wake and funeral of the decedent, Austin Rave. Mr. Rave was a member of the Cheyenne River Sioux Tribe and never prepared a written will. He died intestate on December 21, 2015 in Rapid City, South Dakota at the age of sixty-nine years old. The dispute over funeral expenses is between Mr. Rave’s surviving spouse, Carole Rave, and Kimberly Rave, one of his daughters.

Ms. Kimberly Rave filed a petition in the Cheyenne River Sioux Tribal Court to be appointed the administrator of Mr. Rave’s estate. Ms. Kimberly Rave was promptly appointed the *temporary* administrator. Due to an ongoing dispute between the parties, including a restraining order obtained by Carole Rave against Kimberly Rave, there was little or no discussion between the parties concerning appropriate wake and funeral expenses.

As a result of disagreement between the parties over whether Mr. Rave’s body should be cremated, the body was held at the funeral home for several weeks until Carol Little Wounded Rave agreed in writing that Mr. Austin Rave could be buried on the Cheyenne River Sioux Reservation in Green Grass, South Dakota.

Basic funeral expenses are paid by the Tribe in the amount of \$4,275. In Mr. Rave's case, however, there were additional expenses from the Luce Funeral Home enumerated on its bill for \$8,277.80 including a sealing vault (\$1,780.80) and tombstone (\$2,000.00). There was also a separate bill from the Lakota Cultural Center in the amount of \$1,950 for four star quilts, six Pendelton blankets and four fleece blankets.

Pursuant to a hearing held on January 22, 2016, the trial court appointed Ms. Carole Rave, the widow of the decedent, Austin Rave, as the administrator of Mr. Rave's estate and ordered "that the Estate shall be responsible for the funeral related expenses that have been incurred". This order was signed and entered into the record on April 20, 2016.

This appeal followed. Oral argument was waived by the parties and the appeal was considered on the briefs.

II. ISSUE

There is a single issue raised in this appeal, namely whether certain purchases made by Ms. Kimberly Rave acting in her capacity as *temporary* administrator of Austin Rave's estate are reasonable funeral "expenses" for which the Estate is liable.

III. DISCUSSION

The Cheyenne River Sioux Law and Order Code provides for intestate succession at Section 9-2-1 – 9-3-11. Upon appointment as an estate's administrator, one of the duties of the administrator is that:

Subject to the approval of the Court ascertain and pay all the debts and legal obligations of the decedent.

Cheyenne River Sioux Tribe Law and Order Code Sec. 9-3-2(4)(d)

Inasmuch as the contested funeral expenses have not been paid, it is the responsibility of the administrator to determine the validity of any such "debts and legal obligations." The legal procedure to be followed involves notice to the creditors as provided in Sec. 9-3-5 of the Code:

The administrator of the estate or the Clerk if no administrator is appointed shall cause notices to creditors to be posted in a least three

conspicuous places on the Reservation and published at least twice in a publication of general distribution on the Reservation. Said notice shall state that creditors have 90 days from the date of the first publication of the notice to present their claims to the administrator or Clerk and that only those claims so presented shall be paid by the estate. Notice by mailing shall also be given to each creditor of whom the administrator or Clerk has actual knowledge.

Payment of creditors may only be made in accord with Sec. 9-3-6(1) which provides:

Payment of creditors of the decedent shall be made by the administrator only upon the order of the Court after determining the validity of the claims by affidavit or personal testimony of the claimant.

The Tribal Code expressly permits that such intestate succession shall be “in accordance with the laws of Intestate Succession of the State of South Dakota.” Sec. 9-2-1.

Such guidance is available pursuant to SDCL 29A-3-805, which provides:

Classification of claims. (a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

- (1) Costs and expenses of administration;
- (2) Reasonable funeral expenses;
- (3) Debts and taxes with preference under federal law;
- (4) Debts and taxes with preference under other laws of this state;
- (5) All other claims.

(b) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

Unless the parties agree, the trial court will have to determine what are “reasonable funeral expenses.” Obviously, the key issues on remand will be to determine what is “reasonable.” What is “reasonable” is not self-disclosing. Thus such an undertaking will need to consider evidence relevant to the decedent’s station in life, the overall value of his estate, and what is culturally appropriate.

Finally, the appellant’s request for attorney fees is denied, as she fails to identify any provision of the Tribal Code that authorizes the award of attorneys’ fees.

IV: CONCLUSION

For all the above reasons, the case is reversed and remanded for further proceedings not inconsistent with the provided directions.

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IT IS SO ORDERED.

FOR THE COURT:

Frank Pommersheim
Chief Justice

Dated April 24, 2017