

F. A final judgment or decree entered by the court.

History

CJY-26-04, July 20, 2004.

Title 8

Decedents' Estates

Chapter 1. Descent and Distribution

§ 1. Jurisdiction

The Family Court of the Navajo Nation shall have original jurisdiction over all cases involving the descent and distribution of deceased Indians' unrestricted property found within the territorial jurisdiction of the Court.

History

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

Revision note. "Tribal" changed to "Family", and "Tribe" changed to "Nation". See 7 N.N.C. § 253(B).

Cross References

Descent and distribution of grazing permits, see 3 N.N.C. § 785.

Disposition of land use permit, personal property and improvements on death of assignee, see 3 N.N.C. §§ 154 and 217.

United States Code

Descent and distribution of property, see 25 U.S.C. §§ 348, 371-379.

Code of Federal Regulations

Issuance of patents in fee, certificates of competency, removal of restrictions, and sale of certain Indian lands, see 25 CFR § 152.1 *et seq.*

Probate of Indian estates, see 25 CFR § 15.1 *et seq.*

Annotations

1. Construction and application

"The family court has original jurisdiction over the descent and distribution of 'deceased Indians' unrestricted property' (probate jurisdiction)." *In the Matter of the Estate of Kindle*, No. SC-CV-38-99, slip op. at 4 (Nav. Sup. Ct. August 2, 2001).

2. Wrongful death actions

"[I]n a wrongful death action, the claims and damages are those of the survivors and the proceeds are not part of the decedent's estates." *In the Matter of the Estate of Tsinahnajinnie*, No. SC-CV-80-98, slip op. at 9 (Nav. Sup. Ct. January 31, 2001).

"For future guidance, we hold that it is not necessary to open a probate case to appoint an administrator or administratrix for wrongful death claims. Any person who has a claim can bring his or her own claim. There is the special case of actions on behalf of children." *In the Matter of the Estate of Tsinahnajinnie*, No. SC-CV-80-98, slip op. at 7 (Nav. Sup. Ct. January 31, 2001).

§ 2. Determination of heirs

A. When any member of the Navajo Nation dies leaving property other than an allotment or other trust property subject to the jurisdiction of the United States, any member claiming to be an heir of the decedent may bring a suit in a Family Court of the Navajo Nation to have the court determine the heirs of the decedent and to divide among the heirs such property of the decedent. No determination of heirs shall be made unless all the possible heirs known to the court, to the President of the Navajo Nation, and to the claimant have been notified of the suit and given full opportunity to come before the court and defend their interests. Possible heirs who are not residents of the Navajo Nation under the jurisdiction of the court must be notified by mail and a copy of the notice must be preserved in the record of the case.

B. In the determination of heirs the court shall apply the custom of the Navajo Nation as to inheritance if such custom is proved. Otherwise the court shall apply state law in deciding what relatives of the decedent are entitled to be heirs.

C. Where the estate of the decedent includes any interest in restricted allotted lands or other property held in trust by the United States, over which the examiner of inheritance would have jurisdiction, the Family Court of the Navajo Nation may distribute only such property as does not come under the jurisdiction of the examiner of inheritance, and the determination of heirs by the court may be reviewed, on appeal, and the judgment of the court modified or set aside by the said examiner of inheritance, with the approval of the President of the Navajo Nation, if law and justice so require.

History

CJA-1-59, January 6, 1959.

Revision note. Slightly reworded for purposes of statutory form.

Annotations

1. Custom; Fundamental laws

"While the Navajo Probate Code states that state law should apply unless custom

is 'proved,' 8 N.N.C. § 2(B) (2005), the subsequent passage of the statute affirming the Fundamental Laws of the Diné, 1 N.N.C. § 201, et seq. (2005) (passed by Navajo Nation Council Resolution No. CO-72-03, (October 24, 2003)), means that a trial court may take judicial notice of *Diné bi beenahaz'áanii*." *In the Matter of the Estate of Amy Kindle*, No. SC-CV-40-05, slip op. at 7 (Nav. Sup. Ct. May 18, 2006).

"This Court's previous decision in this case, that state law applies if custom is not proven, see *Kindle*, No. SC-CV-38-99, slip op. at 4, predates these statutory changes. In light of these new statutory developments, the choice of law provision in the probate Code cannot be reconciled with the clear mandate to apply *Diné bi beenahaz'áanii* first, and state law only in the absence of Navajo law, and must therefore yield." *In the Matter of the Estate of Amy Kindle*, No. SC-CV-40-05, slip op. at 7 (Nav. Sup. Ct. May 18, 2006).

"The choice of law statute in our short probate code requires the application of Navajo inheritance customs, but if a custom is not 'proved,' the court may apply state law to determine the heirs of a decedent." *In the Matter of the Estate of Kindle*, No. SC-CV-38-99, slip op. at 4 (Nav. Sup. Ct. August 2, 2001).

"Enacted in 1959 and never amended, Section 2(b) provides that the court shall apply the Navajo custom as to inheritance, if such custom is proven, in order to determine the heirs." *In re: Estate of Thomas*, 6 Nav. R. 51, 52 (Nav. Sup. Ct. 1988).

"The word 'custom' for the purposes of this Section not only includes customs which may be testified to, judicially noticed, proved by expert testimony or otherwise shown by evidence, but it includes recorded opinions and decisions of the Navajo Courts not dealing with statutory interpretation or the application of principles of state or general Anglo-European law, and some learned treatises on Navajo ways." *In the Matter of the Estate of Boyd Apachee*, 4 Nav. R. 178 (Nav. Ct. App. 1983).

2. Wrongful death actions

"A personal representative who brings a wrongful death action on behalf of heirs is a nominal party and that person holds the recovery in trust for the named beneficiaries." *In the Matter of the Estate of Tsinahnajinnie*, No. SC-CV-80-98, slip op. at 9 (Nav. Sup. Ct. January 31, 2001).

"For future guidance, we hold that it is not necessary to open a probate case to appoint an administrator or administratrix for wrongful death claims. Any person who has a claim can bring his or her own claim. There is the special case of actions on behalf of children." *In the Matter of the Estate of Tsinahnajinnie*, No. SC-CV-80-98, slip op. at 7 (Nav. Sup. Ct. January 31, 2001).

"The confusion over what cause of action applies and who the beneficiaries of that action should be arises because the Navajo Nation does not have wrongful death or survivor's action statutes." *In the Matter of the Estate of Tsinahnajinnie*, No. SC-CV-80-98, slip op. at 4 (Nav. Sup. Ct. January 31, 2001).

3. Standing to petition

"The dismissal was an error, as the Navajo Probate Code only requires 'a person claiming to be an heir' to bring a petition." *In the Matter of the Estate of Amy Kindle*, No. SC-CV-40-05, slip op. at 8 (Nav. Sup. Ct. May 18, 2006).

"Our probate code, at 8 N.N.C. § 2(A) (1995 ed.), permits 'any member claiming to be an heir' to petition the family court to determine heirs and divide property. We [Navajo Supreme Court] assume that 'member' relates back to the term 'member of the Navajo Nation' in the first part of the statute." *In the Matter of the Estate of Kindle*, No. SC-CV-38-99, slip op. at 6 (Nav. Sup. Ct. August 2, 2001).

4. Oral wills

"In following *Estate of Lee* [1 Nav. R. at 31], the Navajo courts recognized the validity of an oral will when it is made by the testator in the presence of all of his or her immediate family and all members of the immediate family agree that the testator orally made known his or her last will before them. We hold today that the immediate family includes all of the children of the testator and the spouse if alive." *In re: Estate of Thomas*, 6 Nav. R. 51, 53 (Nav. Sup. Ct. 1988).

5. Immediate family

"In the present case, the immediate family of Joe Thomas includes all of his eight children, whether or not they resided with him at his homesite. Because not all of those children were present at the time the alleged oral will was made, there is not valid oral will." *In re: Estate of Thomas*, 6 Nav. R. 51, 54 (Nav. Sup. Ct. 1988).

§ 3. Approval of wills

When any member of the Navajo Nation dies, leaving a will disposing only of property other than an allotment or other trust property subject to the jurisdiction of the United States, the Family Court of the Navajo Nation shall, at the request of any member of the Navajo Nation named in the will or any other interested party, determine the validity of the will after giving notice and full opportunity to appear in court to all persons who might be heirs of the decedent, as under 8 N.N.C. § 2. A will shall be deemed to be valid if the decedent had a sane mind and understood what he or she was doing when he or she made the will and was not subject to any undue influence of any kind from another person, and if the will was made in accordance with a proved Navajo custom or made in writing and signed by the decedent in the presence of two witnesses who also signed the will. If the court determines the will to be validly executed, it shall order the property described in the will to be given to the persons named in the will or to their heirs; but no distribution of property shall be made in violation of a proved Navajo custom which restricts the privilege of Navajo Nation members to distribute property by will.

History

CJA-1-59, January 6, 1959.

Revision note. Slightly reworded for purposes of statutory form.

Annotations

1. Authority of state court

Where will had been admitted to probate in Navajo Tribal Court of Indian Offenses, Arizona Superior Court, on petition to admit will to probate, did not have authority to inquire into execution of will, and should have admitted it to probate. *In re Lynch's Estate*, 9 Ariz. 354, 377 P.2d 199 (1962).

2. Oral dispositions

If all of his immediate family are present and agree that his wishes will be honored after his death, a Navajo may, under custom, orally state who shall have his property after his death. *In re Estate of Lee*, 1 Nav. R. 27 (Nav. Ct. App. 1971).

3. Wrongful death actions

"For future guidance, we hold that it is not necessary to open a probate case to appoint an administrator or administratrix for wrongful death claims. Any person who has a claim can bring his or her own claim. There is the special case of actions on behalf of children." *In the Matter of the Estate of Tsinahnajinnie*, No. SC-CV-80-98, slip op. at 7 (Nav. Sup. Ct. January 31, 2001).

4. Custom

"The family court applied a rule of Navajo common law that insurance proceeds should be distributed to the 'immediate family.' This rule, as it is applied to distribution of an estate without a will, under Navajo custom, states that non-producing property (i.e., money) should go to the 'immediate family.' *In the Matter of the Estate of Boyd Apachee*, 4 Nav. R. 178, 182-183 (Window Rock Dist. Ct. 1983)." *In the Matter of the Estate of Tsinahnajinnie*, No. SC-CV-80-98, slip op. at 7-8 (Nav. Sup. Ct. January 31, 2001).

5. Generally

In the Matter of the Estate of Howard, 7 Nav. R. 262 (Nav. Sup. Ct. 1997).

Title 9

Domestic Relations

Chapter 1. Marriage

§ 1. Validity generally

A. Marriages contracted outside of the Navajo Nation are valid within the Navajo Nation if valid by the laws of the place where contracted, with the exception of marriages that are void and prohibited by Section 2 of this Title.