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6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

7 **COUNTY OF MENDOCINO**

8
9 IN THE MATTER OF THE
10 TRUSTEESHIP OF THE
11 PINOLEVILLE INDIANS.

CASE NO. CV 5220

12 **EXPLANATION AS TO THE PREMISE OF
THE EXISTING ORDER FOR DISPOSITION
OF TRUST PROPERTY**

13 Date: January 17, 2019

14 Time: 3:00 p.m.

15 Dept: E

16
17 At the request of the Board of Supervisors for an explanation of the basis for the sale of
18 the Pinoleville Trust Property the Court has approved the following explanation.

19 In 2002 the Superior Court issued an order, a copy of which is attached as Exhibit 1. This
20 decision is final and binding upon all parties. The Superior Court approved the concept of
21 selling the Pinoleville Trust property to the Pinoleville Band of Pomos, now referred to as the
22 Pinoleville Nation. This decision was reached after notice to the Beneficiaries and their
23 opportunity to be heard.

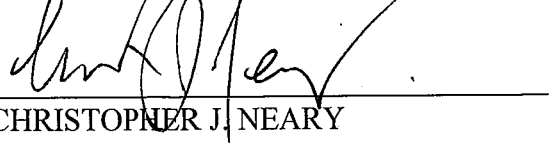
24 This decision was affirmed on appeal by the First District Court of Appeal in the matter
25 of In Re the Trusteeship of the Pinoleville Indians v. Priscilla Hunter et al., First District Court
26 of Appeal No. A099189, 2004 WL 1304994. The California Supreme Court declined to hear
27 the matter. A copy of the opinion is attached as Exhibit 2. This decision is final and binding
28 upon all parties.

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This explanation was approved at a hearing on January 17, 2019.

Dated: January 17, 2019

NEARY and O'BRIEN



CHRISTOPHER J. NEARY
Interim Receiver

EXHIBIT 1

Superior Court of California
Mendocino County
Ukiah Branch

ENDORSED-FILED

APR 02 2002

CLERK OF MENDOCINO COUNTY
SUPERIOR COURT OF CALIFORNIA

D.L.

In the Matter of the

Case No. CV 05220

TRUSTEESHIP OF THE
PINOLEVILLE INDIANS

**ORDER FOR THE DISSOLUTION OF THE TRUSTEESHIP OF THE
PINOLEVILLE INDIANS
AND FOR THE DISTRIBUTION OF TRUST ASSETS**

Historical Background

The Trusteeship of the Pinoleville Indians ("Trust") was established more than one hundred years ago when individual Indians, whose number and names are lost to history, purchased property through named individual Indians to preserve for their common use. Over the period from 1879 through 1897, a group of Indians assembled through purchases and exchanges an ownership of approximately sixty-five acres ("Trust property.") The initial acquisition in 1879 was made in the names of three individuals: Captain Jack, Charley Hale and Sam Hale, identified only as "Indians." The primary acquisition was made in 1893 by Sam Hale, Napoleon Bonaparte, Jim Reeve, Fuller Williams and Jack Mace, all of whom were identified in the exchange deed as "trustees of the Pinoleville Indians." Two additional acres were acquired in 1897 by Napoleon Bonaparte, Sam Hale, Jim Reeves, Jack Mace and John Stevenson, without further identification.

In 1911 the federal government formally recognized a group of Indians as the "Pinoleville Tribe" and purchased approximately one hundred acres of property for the tribe's benefit ("Tribal Parcel.") That property is located immediately to the east of and adjacent to the Trust Property. Oral history, as recounted by elderly

Indians, holds that the group of Indians who initially acquired the Trust Property included members of what was later formally recognized as the Pinoleville Tribe as well as members of other tribes. Reported oral history also holds that when the Tribal Parcel was acquired in 1911 some of the Indians then residing on the Trust Parcel moved to the adjacent Tribal Parcel. Other Indians, who were entitled to move onto the Tribal Parcel, wished to remain independent and stayed on the Trust Parcel with other Indians who were not entitled to move onto the Tribal Parcel. The residual Trust Parcel now contains approximately sixty acres.

The court first became formally involved with the Trust Property in 1899 when the six individuals identified in the 1893 and 1897 deeds submitted their resignations as "trustees" and petitioned the court to appoint J. L. Burchard, I. C. Reed and William Ford as successor trustees of the "the Pinoleville Indians." (The substitution of trustees was made in response to a prohibition against the Indian ownership of real property. Indian trusteeship resumed in 1934, after the repeal or invalidation of the disqualifying statute.) Since that initial petition, the court has exercised continuing jurisdiction over the trust and, from time to time as requested by petition, has named various successor trustees, approved petitions to lease and/or sell trust land and reviewed accountings.

Trust Property

The primary trust asset is a 59 acre parcel of property located westerly of the Pinoleville Rancheria. Five families have developed long-standing homes on the property. Two cemeteries totaling ten acres have been maintained over the years. The Trust Property is zoned for residential/agricultural use with a minimum parcel size of five acres. The property, excluding the value of the existing residential improvements and the ten acre cemeteries, was appraised at \$892,500 as of December 2000.

The liquid assets of the trust consist of two bank accounts, originally with the now now-longer existent Home Federal Savings and Loan Association, that have been escheated to the state. The accounts had been transferred to what is now the First Nationwide Bank. The trustees in-office at the time of the escheat are still attempting to recover the total account balance of approximately \$20,000.

Trust Beneficiaries

In 1956 and 1979 the court supervised comprehensive inquiries to identify for the first time the specific trust beneficiaries. The initial list of sixty names (as augmented in 1976) appears to have been based more upon tribal membership (though without any specific reference to the "Pinoleville Tribe" as recognized by the federal government in 1911) than upon any relation to the original five trustees. The 1979 list added those who were "related by blood" to the original six named trustees (though inadvertently referred to in the 1979 order as the original "beneficiaries" rather than the original "trustees".) The 1979 approved list of four hundred and ninety-four beneficiaries was thus comprised of those who were "related by blood" to either the original six trustees or to the sixty tribal members identified in the 1956/76 list. No effort was apparently made to identify the descendants of those unnamed "Pinoleville Indians" on whose behalf the original trustees took title to the Trust Property.

After extensive notification procedures, the beneficiary list was brought current in 2001, based on the criteria established in 1979, to include a total of approximately six hundred and fifty-three individuals who established to the satisfaction of the trustees that they were "related by blood" either to the original six trustees or to the tribal members identified in the 1956/76 list. The approved current beneficiary list was filed with the court on December 12, 2001. All responding beneficiaries apparently concur that most of the listed beneficiaries are also enrolled members in one of the several local recognized tribes, including the Pinoleville Band. It is also acknowledged that the Pinoleville Band includes many enrolled members who are not identified as trust beneficiaries.

Recent Procedural Background

Two petitions were filed in recent years seeking either to substitute the governing council of the federally recognized Pomo Band of Indians (formerly the Pinoleville Tribe) in place of the present trustees or to terminate the trust and distribute its assets. The various requests in the petition of Leona Williams, filed July 9, 1996, was dismissed and/or denied by the court and the appeals therefrom were dismissed. The petition of Virginia Works filed July 24, 2000 was voluntarily dismissed in open court on December 6, 2001.

Dissolution of The Trust

It has become more and more evident in recent years that the remaining assets of the trust are wholly insufficient to meet the objectives for which the trust was most likely established: to provide a secure homesite for the beneficiaries. Only a fraction of the six hundred and fifty-three beneficiaries could make their homes on the Trust Property, even if they so wished. No use has been developed on the property or even proposed that would serve more than the very few beneficiaries who have elected to live on the Trust Property. With the great number of beneficiaries it is becoming increasingly more difficult and expensive for the trustees to give the notice required in the bylaws for any proposed action.

Over the last several years, the court has solicited the opinion of the beneficiaries regarding whether the trust should be continued or dissolved. Almost without exception, the beneficiaries who responded concur that the number of beneficiaries has reached the point that makes dissolution and distribution of the trust assets the only reasonable alternative. After careful consideration of the apparent objectives for which the trust was initially established, of the present circumstances, of the size and existing use of the Trust Property in relation to the number of beneficiaries and of the expressed opinions of the beneficiaries, the court concludes that the Trusteeship on the Pinoleville Indians should be dissolved. The court hereby orders that Trusteeship of the Pinoleville Indians be dissolved and that its assets be distributed as set forth below. The dissolution will be complete upon the conveyance of title of all of the trust property.

Disposition of Trust Assets

Although the beneficiaries who have participated in the recent hearing have reached a clear consensus that the trust should be dissolved, they have been unable to reach a consensus on the manner in which the trust assets should be distributed. A number of beneficiaries and the tribal council of the Pinoleville Band of Indians propose that the entirety of the trust assets be transferred to the Pinoleville Band. After careful review of the original deeds, statements made in the various petitions and court orders, historical facts as recounted by elderly Indians and the circumstances surrounding the establishment and management of the Trust

Property and the Tribal Parcel, it appears that the term Pinoleville Indians as used in the initial deeds more likely referred to Indian residents of the Trust Property and their beneficiaries rather than to the federally recognized Pinoleville Tribe. The Tribe was not formally recognized as an entity until 1911, more than ten years after the term was first used in the deeds and initial court petition and order. The two properties have existed side-by-side for more than ninety years and, except for the 1996 petition of Leona Williams, no effort had apparently been made to transfer control of the Trust assets to the Tribe. No such effort was apparently made even during the period when many of the Indians who were involved in the acquisition and initial settlement of the Trust Property were presumably still alive.

After careful consideration of the written proposals that were submitted to the court in response to the request of January 11, 2001, of the trustees' analysis of those proposals and of the opinions of the individual beneficiaries who spoke so eloquently at the court hearing on December 6, 2001, the court finds that the distribution set forth below would be most consistent with the perceived intent of the initial trustees and those individual Indians on whose behalf the trustees acquired the property and would be most equitable under the circumstances that exist today.

1. Existing Residential Sites: The continued residential use of the property by the current resident beneficiaries is consistent with what seems to be the commonly perceived intent of the initial trustees. It is unknown when the residential use commenced; however, there is no indication in the court's files of any beneficiary complaints of the residential use in general or of the use by the five families now living of the Trust Property. Statements from individual beneficiaries indicate that the beneficiary families residing on the Trust Property have made considerable improvements over the years with the reasonable expectation that their families would be permitted to continue to reside there. The removal of those families from the Trust Property would be grossly unjust and would serve no practical purpose. No responding beneficiary stated the opinion that the resident families should be removed. The court is particularly aware that one of the primary purposes for the initial acquisition of the Trust Property was most likely to provide homesites for the trust beneficiaries.

Directions to Trustees: The trustees are directed to develop a comprehensive plan to convey title to the five existing residences to the heads of the individual

resident families (Daniel Lockart, Charles Mitchell, Peggy Mitchell, Harriet Duncan, Daniel Jackson and Pearl Jackson) . The creation of the individual ownerships should be consistent with local land use regulations, unless deemed by the County to be exempt. (The trustees are reminded that with the boundary line adjustment process and the conveyance of other parcels to public entities, as discussed below, they may have considerable flexibility in the creation of the residential parcels.) All conveyances should be subject to such easements as are necessary to provide access to the residential parcels and, for all beneficiaries, to the cemetery parcels.

The trustees shall have the underlying land value of individual parcels appraised and offer the parcels for sale to the resident families on reasonable terms, keeping in mind that the trust will need available cash to pay the expenses of the dissolution and asset distribution. The trustees shall first develop and record a declaration of covenants and restrictions which effectively imposes upon the individual owners the obligation to give a right of first refusal to the Pinoleville Band of Indians prior to any proposed conveyance or sale to a grantee other than one or more individuals who had been previously identified as a trust beneficiary or a descendant thereof.

2. Cemetery Plots: The Trust Property includes two distinct cemetery areas, estimated at a total of ten acres. Little evidence was offered regarding the historical use and management of the cemeteries, except for the existence of some fairly recent but unexplained disputes over burial rights. All comments from the responding beneficiaries appear to be based on the underlying but unstated assumption that the cemeteries were developed for the use of the beneficiaries and that all beneficiaries have burial rights, so long as sufficient space remains. The responding beneficiaries also concur that the two cemeteries should be preserved under long-term management.

Directions to Trustees: The trustees shall prepare legal descriptions of the cemetery plots. If possible, the cumulative area of the plots shall not exceed ten acres. The trustees shall also recommend to the court a legal frame work for the long-term ownership and management of the cemeteries. A cemetery district may be too cumbersome as it may require publicly regulated and conducted elections and the assessment of taxes. The trustees may wish to consider a private cemetery (Heath and Safety Code, Sec. 8250, et seq.) operated by an incorporated or unincorporated association. If it is not feasible to establish a separate legal entity to hold title to and

operate the cemeteries, the court will probably order the transfer of title to the Pinoleville Band of Indians.

3. Residual Parcel: The 28.5 acre residual parcel is far too small to provide meaningful housing for the great number of current beneficiaries. The responding beneficiaries did not propose any type of non-residential use that would provide any community or cultural services to the beneficiaries as a whole or to any significant portion of the beneficiaries. The conveyance of the parcel to a relatively small number of beneficiaries, as proposed by some, would favor those relatively few beneficiaries who have significant financial resources available to them over the remaining beneficiaries. Numerous beneficiaries have also pointed out that the conveyance of the residual parcel to a relatively small number of beneficiaries who may also be members of a tribe other than the Pomo Band would place a potentially rival tribal group adjacent to both the resident beneficiaries and the Pinoleville Rancheria. Various beneficiaries testified to the existence of somewhat bitter rivalries that have unfortunately developed among various local tribes and recurring incidents of conflict. The court does not want to perpetuate that potential for trouble. The court believes the best solution is to merge the residual parcel with the adjacent Pinoleville Rancheria. A substantial number of the beneficiaries are also enrolled members in the Pinoleville Band. The two communities have existed side-by-side for more than ninety years without any apparent substantial conflict.

Directions to Trustees: The trustees shall obtain a legal description and appraisal of the fair market value of the residual parcel. They are then directed to negotiate with the governing body of the Pinoleville Rancheria for the sale of the residual parcel. In their consideration of the sale price and terms, the trustees are reminded of their fiduciary obligation to the beneficiaries and of the necessity to obtain sufficient funds to pay the anticipated costs involved in any legal subdivision of the Trust Property that may be required and legal fees and other costs. The conveyance of the residual parcel and of the individual residential parcels, if necessary, shall be made subject to reasonable easement rights to ensure reasonable access to the individual residential parcels and, for all beneficiaries, to the cemetery plots.

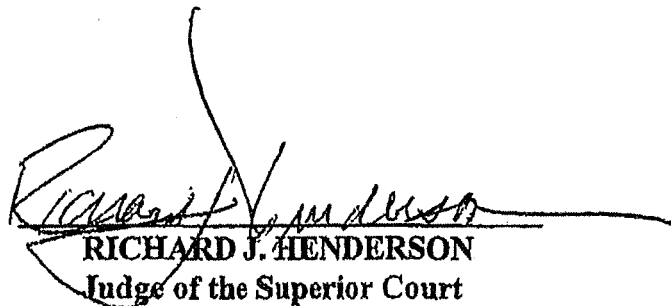
4. Accounting: The trustees shall maintain a complete and accurate accounting of all funds received by them. The trustees are authorized to pay the reasonable costs and expenses as incurred for the services necessary to comply with the instructions set forth above, provided that no payment shall be made for attorneys fees without

prior court approval. Upon the conveyance of all the real property assets and the payment of all expenses incurred in the dissolution of the trust, including attorneys fees as allowed by the court, any remaining cash assets shall be distributed to the identified beneficiaries.

Status Review

This matter is set for a status review hearing on Friday, July 26, 2002 at 3:00 P.M. in Department E. The trustees are directed to file by June 28, 2002 a detailed report of their compliance with the directions set forth above. Copies of the status report may but need not be sent to all beneficiaries; any beneficiary wishing to review the report prior to the hearing may review the filed report in the court's file and/or purchase a copy from the court clerk if desired. Any written objections or questions concerning the report must be filed with the court and served on the trustees no later than July 16, 2002. At the hearing, the court will consider the report and any filed objections or questions and will give the trustees further directions as may be necessary for the distribution of trust assets consistent with this order. All beneficiaries are advised at the July 26, 2002 hearing the court will then set a date, time and place for the next hearing in this matter and that no further notice of the date, time and place of the subsequent hearing will be mailed or otherwise given to individual beneficiaries.


Dated: March 28, 2002


RICHARD J. HENDERSON
Judge of the Superior Court

Copies to Counsel:

Nancy B. Thorington
Davis Bergren
Sam Goodhope
Michael E. Kinney
Blaine Green
Alex Seiberth

EXHIBIT 2

 KeyCite Red Flag - Severe Negative Treatment
Unpublished/noncitable June 14, 2004

2004 WL 1304044

Not Officially Published

(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts
citation of unpublished opinions in California courts.

Court of Appeal, First District, Division 4, California.

In re the TRUSTEESHIP OF
THE PINOLEVILLE INDIANS.

Leona Williams, Plaintiff and Respondent,

v.

Priscilla Hunter et al., Defendants and Appellants.

No. A099189.

(Mendocino County Super. Ct. No. CV05220).

June 14, 2004.

Review Denied Sept. 15, 2004.

Attorneys and Law Firms

Michael Arthur Robinson, Monteau & Peebles LLP,
Sacramento, CA, for Plaintiff-Respondent.

Edward William Swanson, Swanson & McNamara LLP,
San Francisco, CA, for Defendant-Appellant.

Nancy Bridget Thorington, Santa Rosa, CA, for Amicus
curiae for real party in interest.

Opinion

REARDON, J.

*1 After more than a century of court supervision, the trial court ordered dissolution of the "Trusteeship of the Pinoleville Indians" (Trust), along with distribution of all Trust assets. The primary asset is a 59-acre parcel of property near Ukiah, Mendocino County. It is adjacent to the Pinoleville Rancheria (Rancheria), an approximately 100-acre parcel acquired by the federal government for the federally recognized Pinoleville Band of Pomo Indians (Pinoleville Band).

Appellants are Priscilla Hunter, chairperson of the Coyote Valley Band of Pomo Indians (Coyote Valley Band) and other members of that tribe who are also identified beneficiaries of the Trust. They challenge that aspect of the distribution plan which directs the trustees to negotiate with the Pinoleville Band for the sale of the residual parcel¹ -a conveyance that would result in the merger of the Trust property with the adjacent Rancheria. We conclude that the distribution plan comports with the requirements of Probate Code² section 15410, subdivision (c), and therefore the trial court did not abuse its discretion in directing distribution as it did.

I. FACTUAL BACKGROUND

A. Early History

In 1850 the California Legislature passed the Act for the Government and Protection of Indians providing, among other matters, that "any indian able to work and support himself in some honest calling" who is "found loitering and strolling about" could be arrested and, if found "vagrant" could be "hired out" to the highest bidder for up to four months. (Compiled Laws of California, 1850-1853, Ch. CL, § 20, p. 825.) Reported oral history holds that in the mid-1800's, many California Pomo Indians were rounded up by "white" immigrants and incarcerated or enslaved. Later in the century many escaped or were released, to find that their lands were then owned by "white" settlers. Native Americans were not declared citizens of the United States until 1924. (Act of June 2, 1924, ch. 233, 43 Stats. 253.)

In the late 19th century, a group of Native Americans living around Ukiah, Mendocino County, purchased several tracts of land. The first transaction occurred in 1879, with the deeding of approximately 51 ½ acres of land to Captain Jack, Charley Hale and Sam Hale, identified as "Indians." In 1893, an exchange of land took place. Captain Jack and Sam Hale, identified as "surviving Trustees of the Indians heretofore [and] now living in Pinoleville," conveyed the 51 ½ acres to Elizabeth Reed. Israel (I.C.) and Elizabeth Reed, in turn, conveyed property near the Ackerman Creek in Mendocino County to "Sam Hale[,] Napoleon Bonaparte[,] Jim Reeve[,] Fuller Williams and Jack Mace (indians) and trustees of the [Pinoleville] Indians near Ukiah." The instrument recited that the grantees were "[t]o have and to hold [the

premises] unto [themselves], *their* heirs and assigns forever *as such trustees of said Pinoleville Indians.*" (Italics denote handwritten words.)

*2 Several years later, in 1897, the Reeds sold approximately two more acres to Napoleon Bonaparte, Sam Hale, Jim Reeve, Jack "Maze [*sic*]" and John Stevenson.

Court proceedings concerning the Trust first opened in 1899, when the original trustees resigned and petitioned for appointment of three non-Native American trustees, who were so appointed. In 1934, the above trustees having died, upon petition the court appointed new, Native American trustees.

B. Federal Recognition Status

In 1911 the federal government first recognized the existence of a tribal entity, now known as the Pinoleville Band, with the establishment of the Rancheria immediately east and contiguous to the Trust property. Reported oral history holds that when the Rancheria opened, many living on Trust land moved next door to the Rancheria, but others stayed in order to remain independent of the reservation system.

California rancherias are small Indian reservations or communities, comprised of lands purchased in the early years of the 20th century pursuant to a federal program that was prompted by the findings of an inquiry into conditions of California Indians. (*Duncan v. United States* (Ct.Cl.1981) 229 Ct.Cl. 120, 667 F.2d 36, 38.) An investigator commissioned by the federal government found that "Indians had been forced from agriculturally productive lands and were then living on worthless lands in distressing conditions." (*Duncan v. Andrus* (N.D.Cal.1977) 517 F.Supp. 1, 2.)

In 1958 Congress enacted legislation³ authorizing termination of federal supervision over, and distribution of the assets of, various rancherias, upon approval of the majority of affected Native Americans voting in a referendum. (Rancheria Act, §§ 1, 2.) Under the Rancheria Act, termination of a rancheria ended rights of the Native Americans to receive special federal services *as Native Americans*, and exposed rancheria lands to state tax liability and regulation. (*Id.* at § 10(b), as amended by Pub.

Law No. 88-419 (Aug. 11, 1964) 78 Stats. 390, 391; see Rancheria Act § 2(d).)

The Rancheria apparently was terminated in 1966 pursuant to the provisions of the Rancheria Act. The Pinoleville Band's federal status was reinstated in 1983 with entry of a stipulated judgment restoring federal recognition of numerous Northern California tribes. (See *Hardwick v. United States* (N.D. Cal., Dec. 22, 1994, No. 79-1710 SW) 1994 WL 721578.)

C. Ascertaining Trust Beneficiaries; Governance Issues

In 1956 trustees of "the Pinoleville Indians" petitioned for determination of Trust beneficiaries. The judgment provided that the beneficiaries "are the Pinoleville Indians who from time immemorial have constituted a tribe of Indians and that the conveyance of said real property was made for the use and benefit of members of said tribe." The court further explained that the property was conveyed to the original trustees "for the benefit of the Pinoleville Indians and that by said designation of 'Pinoleville Indians' the original grantors meant and intended the Pinoleville tribe of Indians and that it was intended that said land should be held in trust for the said Pinoleville tribe of Indians in perpetuity." The court ordered that the 54 beneficiaries listed in the judgment were the sole and only beneficiaries.

*3 Six beneficiaries were added in 1976, and three years later the court again designated current beneficiaries, confirming a list of 494 and ruling that "[a] beneficiary must be related by blood to the original beneficiaries of the land trust established in 1893."

In 1979 the court directed a referee to prepare a proposal for the government and operating procedures for the "Trusteeship of the Pinoleville Indians." Bylaws were debated and confirmed in 1980, and thereafter new trustees were elected pursuant to the bylaws. 1980 also saw additional efforts to determine present beneficiaries.

D. Recent Procedural History

Respondent Leona Williams, Chairperson of the Pinoleville Band, petitioned in pro. per. for review and modification of the terms of the Trust in 1996. She sought (1) a determination that the beneficiaries of the original transfer are the enrolled members of the Pinoleville Band; (2) an order dissolving the trust and

distributing the property to the tribe; (3) in the alternative, an order modifying the trust agreement and substituting the Pinoleville Tribal Council for the board of trustees; (4) an accounting; and (5) further relief as just and proper.

Some beneficiaries opposed the petition. Objectors also moved to dismiss for lack of subject matter jurisdiction. Ruling on the motion to dismiss, the court struck Williams's first and second prayers for relief and retained jurisdiction to decide the remaining matters. The parties stipulated to appointment of two interim trustees: Charles Mitchell, a member of the Coyote Valley Band, and Joseph Myers of the Pinoleville Band.

The court set a hearing for September 1, 2000, on the petition to dissolve the Trust and requested proposals from the parties for disposition of Trust property. Williams and interim trustee Myers submitted proposals.

The matter was reset for November 3, 2000. Williams was late and her counsel failed to appear. The court deemed the petition abandoned. Williams moved to set aside that ruling. The court reaffirmed its prior ruling striking the first two prayers for relief, denied the third prayer to substitute the tribal council as trustees and retained power to require accounting.

E. Trust Dissolution Proceedings

Meanwhile, in view of recurring disputes, periodic and unending litigation, lack of accountings, impractical and inadequate court supervision of the trustees and assets, and the general consensus of appearing parties that continued court supervision would serve no useful purpose, the court proceeded with a series of hearings on dissolution of the Trust. The court directed the interim trustees to collect and summarize all proposals for distribution of Trust assets and to make recommendations concerning the same. The forthcoming submission summarized 16 proposals, including proposals from the Pinoleville Band and the Coyote Valley Band. As well, the interim Trustees set forth their own proposal.

Another round of proposals followed a court hearing. Attempting to accommodate various competing interests, the interim trustees called for: (1) a right of first refusal to purchase five-acre parcels to the existing residents, for 90 percent of the appraised value; (2) a right of first refusal to the Pinoleville Band to purchase the remaining trust land not sold to current residents or set aside for cemeteries (the

residual parcel), for 90 percent of the fair market value, subject to easements in perpetuity to all current residences and to the two cemeteries; and (3) creation of a cemetery district to maintain the two cemeteries.

*4 Williams filed a proposal on behalf of the Pinoleville Band to purchase the Trust property (minus acreage for the cemetery set asides) for the appraised value less 10 percent, less the pro rata per capita portion attributable to members of the tribe. The proposal also called for maximum two-acre life estates to current residents, with survivorship rights in the tribe, and for forming and operating the cemetery districts.

Appellants presented a proposal similarly giving life estates to current residents and with easements for access to graveyards, but calling for the remainder to be offered for sale to any trust beneficiary or group of beneficiaries, and to any federally recognized tribe with at least 100 members who are trust beneficiaries (a "qualified tribe"). An alternative proposal would give any qualified tribe a right of first refusal to purchase a portion of the trust property remaining after cemetery set asides and current beneficiary-resident purchases, in proportion to the number of trust beneficiaries who are members of that qualified tribe.

On October 16, 2001, the court approved a current list of approximately 653 beneficiaries. The trust dissolution hearing took place two months later. Standing by their recommendation that the Pinoleville Tribe should have the right to purchase the residual parcel, the interim trustees put forth two arguments. First, administrative simplicity: It would be easier to transfer the land to one entity rather than breaking it into parcels and selling plots piecemeal. Second, keeping the community peace: The Pinoleville Band owns the adjacent Rancheria, and if trust land were sold to another tribe, existing hostilities would be exacerbated. The Pinoleville Band supported the trustee's recommendations and concurred that there was historical enmity between the tribes, casting the matter as "a tribe versus tribe issue."

F. Order for Dissolution and Distribution

The court decreed that the Trust be dissolved and the assets distributed, describing the real property as a 59-acre parcel zoned for residential/agricultural use with a minimum parcel size of five acres. Five families have developed homes on the property and two cemeteries

occupying a total of 10 acres have been maintained there for years. In December 2000 the property, excluding the value of the existing residential improvements and the cemetery acreage, was appraised at \$892,500.

In light of all the pertinent circumstances, the court determined that the term "Pinoleville Indians" as used in the initial conveyances "more likely referred to Indian residents of the Trust Property and their beneficiaries rather than to the federally recognized Pinoleville Tribe. The Tribe was not formally recognized as an entity until 1911, more than ten years after the term was first used in the deeds and initial court petition and order."

The court concluded that its distribution scheme was most consistent with the perceived intent of the initial trustees and the Native Americans on whose behalf they acquired the property, and the most equitable resolution under existing circumstances. Pursuant to this scheme, the court directed the trustees to: (1) convey title to the five existing residential sites to the current residents, offered on reasonable terms following an appraisal, and with restrictive covenants giving first refusal rights to the Pinoleville Band prior to any proposed conveyance to someone other than a trust beneficiary or descendant; (2) prepare legal descriptions of the cemetery plots and recommend a legal framework for their long-term ownership and management; (3) obtain a legal description and appraisal of the 28.5-acre residual parcel and negotiate with the Pinoleville Band for its purchase; and (4) maintain accurate accounting, with any remaining cash assets distributed to beneficiaries upon conveyance of all the real property and payment of all expenses incurred in dissolving the Trust. The court reasoned that merger of the residual parcel with the Rancheria would reduce the potential for rivalries and conflict that might recur should the parcel be conveyed to beneficiaries who are not members of the Pinoleville Band. Moreover, a substantial number of beneficiaries are also enrolled members of the band and the two communities-the Rancheria and the Trust lands-have existed side-by-side for over 90 years without significant conflict.

*5 Appellants' primary argument on appeal is that the distribution did not accord with the settlors' intent. As a subargument appellants claim that the court's "adoption" of the trustee's recommendations was erroneous because the recommendations reflected a breach of their fiduciary duties.

II. DISCUSSION

A. Clarification and Statement of Issue

At the outset we point out that all parties were in consensus that the Trust should be dissolved. The issue on appeal is the manner of its distribution, specifically and only the distribution of the residual parcel.

Upon termination of a trust other than by revocation or with consent of the settlor or as provided in the trust instrument, the trust property shall be disposed "in a manner directed by the court that conforms as nearly as possible to the intention of the settlor as expressed in the trust instrument." (§ 15410, subd. (c).) In construing trust instruments, the court must, where possible, ascertain and effect the intent of the settlor. (*Crook v. Contreras* (2002) 95 Cal.App.4th 1194, 1206, 116 Cal.Rptr.2d 319.) Where the trust instrument is ambiguous on this point, courts can consider extrinsic evidence as to the circumstances surrounding its creation in order to divine the settlor's intent. (See *Wells Fargo Bank v. Marshall* (1993) 20 Cal.App.4th 447, 453, 24 Cal.Rptr.2d 507.)

Appellants insist that the settlors' intent is clear. Specifically, they argue that prior rulings established the "fact" that the settlors created the trust to benefit "their descendants,"⁴ and that "fact" is consistent with the wording of the trust instrument and "evidence introduced in earlier proceedings." Respondent is adamant that ambiguity pervades the trust instrument, prior rulings are contradictory as to who are the intended beneficiaries and the court properly ordered distribution in accordance with section 15410, subdivision (c).

Let us clarify: This appeal is not about *who* are the current beneficiaries. Indeed, the court specifically rejected Williams's request to find that the Pinoleville Band was the intended beneficiary.

Moreover, the order that is the subject of this appeal states: "In 1956 and 1979 the court supervised comprehensive inquiries to identify for the first time the specific trust beneficiaries. The initial list of sixty names (as augmented in 1976) appears to have been based more upon tribal membership (though without any specific reference to the 'Pinoleville Tribe' as recognized by the federal government in 1911) than upon any relation to the

original five trustees. The 1979 list added those who were 'related by blood' to the original six named trustees.... The 1979 approved list of four hundred and ninety-four beneficiaries was thus comprised of those who were 'related by blood' to either the original six trustees or to the sixty tribal members identified in the 1956/76 list. No effort was apparently made to identify the descendants of those unnamed 'Pinoleville Indians' on whose behalf the original trustees took title to the Trust Property. [¶] ... [T]he beneficiary list was brought current in 2001, based on the criteria established in 1979, to include a total of approximately six hundred and fifty-three individuals who established to the satisfaction of the trustees that they were 'related by blood' either to the original six trustees or to the tribal members identified in the 1956/76 list. The approved current beneficiary list was filed with the court on December 12, 2001. All responding beneficiaries apparently concur that most of the listed beneficiaries are also enrolled members in one of the several local recognized tribes, including the Pinoleville Band. It is also acknowledged that the Pinoleville Band includes many enrolled members who are not identified as trust beneficiaries."

*6 The question on appeal is whether the court erred in determining that the distribution plan it ordered "conforms as nearly as possible" to the intent of the settlors/original trustees. (§ 15410, subd. (c).) Although the current beneficiaries and manner of ascertaining them is settled, the intent of the original five trustees as to distribution of the trust property is not. For that analysis, we again look at the language of the trust instrument, court orders and relevant historical events.

B. The Court Did Not Abuse Its Discretion in Ordering the Plan that it Did

The declaration of trust appears in the 1893 deed describing, in handwritten words, the five purchasers as "(indians) and trustees of the [Pinoleville] Indians near Ukiah." Another handwritten provision states that the grantees were to have and hold the property "as such trustees of said Pinoleville Indians." At that time there was no federally recognized Pinoleville Band, and no definition of "the Pinoleville Indians" appeared in the 1893 deed.

We take judicial notice that in 1909, Jack Mace and John Stevenson, two of the initial trustees, along with others, filed a complaint in Mendocino County "on behalf of

the Tribe of Pinoleville Indians" to set aside the sale of a portion of the Trust property by Napoleon Bonaparte, also one of the original trustees, to persons who were "not members" "of the tribe of Pinoleville Indians." The complaint stated that "the Pinoleville Indians are a tribe residing in tribal relations upon a tract of land situated in Mendocino County" and that the tribe members numbered approximately 150. Further, the complaint recited that the Pinoleville Indians acquired the property with "tribal funds." As to Napoleon Bonaparte, his interest in the property was an interest "in common with the other members" of the tribe.

The court rendered judgment quieting title in the trustees, ruling that defendants had no right or title to any portion of the Trust lands. It further held that defendants were not members "of the tribe of Pinoleville Indians" and enjoined them from interfering with "the tribal relations existing between the tribe of Pinoleville Indians." In the conclusions of the law, the court stated that plaintiffs were "all members of the tribe of Pinoleville Indians to the exclusion of all other persons, [and] are the beneficiaries of said trust."

The ensuing court rulings in this matter have been inconsistent, adding confusion, not clarity, to the intended meaning of "the Pinoleville Indians." The 1956 judgment identified the beneficiaries as "the Pinoleville Indians who from time immemorial have constituted a tribe of Indians," noting also that the conveyance was made "for the use and benefit of members of said tribe." Further, by the term "Pinoleville Indians" the settlors meant "the Pinoleville tribe of Indians" and intended the land to be held in trust for that tribe "in perpetuity." However, the court certified a list of 54 *individuals* as the sole beneficiaries of the Trust.

*7 The more recent 1979 ruling directed that current beneficiaries must be blood relatives of the original beneficiaries. However, at that time the Pinoleville Band's federal status had been revoked and thus the court did not have the option of naming the tribe as the intended beneficiary.

Grappling with the long history of the case and the diminishing returns of continued court supervision, the court set a hearing on dissolution of the Trust and directed the interim trustees to make recommendations that included consideration of numerous items. These

included old unappealed court rulings; the interests of court-designated beneficiaries, longstanding residents, the existing "community" and the adjacent federally recognized Pinoleville Band; and the interest in preserving graveyards or other sites of tribal significance.

Having digested all the submitted materials and listened to the opinions of those who spoke at the hearing, the court concluded that its distribution plan was most consistent with the "perceived intent" of the original trustees and the individual Native Americans on whose behalf they acquired the property.

Appellants first maintain that by giving the Pinoleville Band-a "non-[b]eneficiary" entity-the right to purchase the property, the court "[d]ivested" the beneficiaries of a fundamental and valuable right for no consideration and thus violated the settlors' intent. We disagree.

First, it is the trustees who hold legal title to the Trust property, and as such they have the power to grant an option in connection with disposition of that property. (§ 16233.) Nothing in the statute requires that the trustees seek payment for the option, or that they first offer it to the beneficiaries.

Second, the exclusive right to negotiate for the purchase of the residual parcel is not an ordinary option. Rather, the "right" is integral to implementing the court's decision that merger of the residual parcel with the Rancheria is the best disposition of that parcel. The court's assessment derived from a number of factors, including: (1) the residual parcel is not large enough to provide housing for many of the current beneficiaries; (2) responding beneficiaries did not propose any use that would accommodate community or cultural services to the beneficiaries as a whole, or to a significant portion of beneficiaries; (3) conveyance to a relatively small number of beneficiaries would favor only those with significant financial resources; (4) the merger would mitigate the potential for tribal rivalries and friction; (5) a substantial number of beneficiaries are enrolled members of the Pinoleville Band; and (6) the Pinoleville Band has existed next to the Trust property for 90 years, without conflict.

Third, the decision to merge the two parcels comports with the perceived intent of the original trustees, who were interested in benefiting the "Pinoleville Indians," the Native American residents of the Trust lands. As the

court found, the trust was established "to provide a secure homesite" for these beneficiaries. However, it cannot be ignored that from the beginning there was motivation to provide for the residents *in community*, later described in papers filed by some of the original trustees as "a tribe residing in tribal relations." Moreover, individual members of the tribe held their interest in the property "in common with" other members of the tribe. The intent then was not to provide for individuals qua individuals, but to provide for individuals *in relationship to the group*.

*8 Now, with over 650 identified beneficiaries, fulfillment of the residential purpose is no longer feasible. In order to provide any benefit to the beneficiaries, the court had to dissolve the trust, sell the property and distribute the sale proceeds. Under section 15410, subdivision (c), the court was obligated to craft a sale that most closely matched the intentions of the settlors of the trust. The court did this by providing for the continued residential use of the property by the current resident beneficiaries who had substantially improved it with expectation that their families could continue to reside there, while ensuring that the remaining beneficiaries shared in the net proceeds from the sale of the residential and residual parcels. In addition, the court-ordered disposition respects the initial trustees' intent by ensuring that the residual parcel would continue to serve a community purpose. Breaking the residual parcel into individual five-acre parcels for individual beneficiaries would destroy the community aspect of the Trust property. The Pinoleville Tribe in particular has deep connections to the Trust property. Most of the graves are Pinoleville Band tribal members, and the tribe's "Big Time"-the main social and cultural event that it undertakes-takes place on Trust property.

Fourth, appellants overstate the value of the right to purchase the residual parcel. While the Pinoleville Band has a greater interest in acquiring it than does a third party member of the public or another tribe, if the property were placed for sale on the open market, the legal implications attendant to subdividing the property, developing on lands with two known cemeteries and unmarked graves and the like, could greatly increase the cost of any such transaction. On the other hand, negotiating with the Pinoleville Band has the potential to maximize proceeds to individual beneficiaries. This solution eliminates the expense and effort of putting the parcel out to bid among several entities or all beneficiaries, plus the Pinoleville

Band as a tribe has access to cash to consummate the transaction and the greatest interest in purchasing the parcel.

Fifth, we find no merit in appellants' suggestion that the negotiated sale would transpire "in a way likely to deprive the beneficiaries of the best sale price for the land." They point out that court order does not set a minimum price, the Pinoleville Band does not have to meet any other offers, there is no language requiring the sales price to meet the appraised value, and prior proposals from the Pinoleville Band sought an outright gift or a 10 percent discount. Further, they claim that some "beneficiaries" expressed an interest in purchasing at a higher price than the Pinoleville Band. All this is speculative. The court directed the trustees to obtain a fair market value appraisal of the residual parcel. It also admonished the trustees to remember their fiduciary duties when considering the price and terms of sale, as well as the anticipated costs of legal subdivision. In other words, the trustees cannot ignore the beneficiaries in negotiating the price. Finally, the court set the matter for a status review, with reports of compliance forthcoming from the trustees. These orders sufficiently protect the beneficiaries.

*9 Appellants also suggest that the actual value to the Pinoleville Band might be far higher than any appraised value because the Pinoleville Band might build a casino on the neighboring Rancheria. Again, this is speculative. Moreover, representations were made at the hearing with respect to the Trust lands that the Pinoleville Band is "very, very open to ensuring that there would be no business development on the trust property, that it would be for social, cultural, governmental and perhaps housing purposes."

C. The Record Supports the Existence of Rivalries

Appellants also insist that the court's dissolution plan was impermissibly predicated on a finding of rivalries among tribes that had no evidentiary support. We do not agree.

To begin with, appellants have furnished a spotty, inadequate record, having only provided us with a transcript of the most recent hearing. That hearing consisted of arguments concerning the various proposals; testimony was not taken. Transcripts of other related proceedings were not provided.

Further, factionalism has been alluded to in prior, unchallenged court rulings. For example, the court's order of January 11, 2001, directing trustees to collect proposals and make specific recommendations, refers to "periodic and re-occurring disputes over the control, use and management" of Trust assets. As well, a minute order of August 23, 2001, refers to an 1899 petition wherein petitioners state: " *That owing to factional differences among the said Indians, and among the present Trustees* " The court went on to observe that "[t]he same discord continues [today], and is one of the bases (mentioned in the preamble to this Court's Order filed January 11, 2001) [noted above] indicating that an end to State Court supervision and termination of this Trust is appropriate."

Additionally, intertribal factionalism was merely one of many considerations that informed the court's decision. And finally, at the hearing that was transcribed, counsel for appellants first downplayed the issue of tribal factionalism and hostility, calling it "differences of opinion." Later, he recognized that "there may be more than differences of opinion and the potential for hostilities" and acknowledged that the two tribes "have a history of hostility." In effect factionalism has been conceded. Similarly, the interim trustees—one from each tribe—underscored in their summaries the need to "promote the healing of the various Indian communities involved in this dispute." They also commented that to allow another tribe to purchase land adjacent to the Rancheria "would certainly exacerbate existing tensions within the Indian communities in the area."

D. Appellants Cannot Pursue Their Breach of Fiduciary Duty Claims

Appellants also try to recast their argument in breach of fiduciary duty terms. Namely, they assert that the trial court erred in adopting the trustee's proposal because that proposal was the product of breaches of fiduciary duties to the beneficiaries.

*10 This the first time appellants have said anything about breach of fiduciary duties. The matter should have been raised, and the pertinent factual issues tried, in the trial court. One perfect time to raise the matter would have been in connection with the hearing on interim trustee Joseph Myers's petition to resign. Appellants and their attorney were present at the hearing but did not argue for his replacement. The court denied the petition without prejudice. Significantly, the trustees are not parties to this

appeal and clearly appellants are not seeking damages from them. Nonetheless the trustees, through their amicus curiae brief, have seen a need to "defend" the various accusations, without the benefit of a trial below on the issue. We deem the matter waived. (*Newton v. Clemons* (2003) 110 Cal.App.4th 1, 11, 1 Cal.Rptr.3d 90.)

More significantly, if we were to find that the trustees breached their fiduciary duties, what would be the remedy, and where is the prejudice? It appears that appellants' theory is that by largely adopting the trustee's final recommendations, the court impermissibly "endorsed" the trustees' breaches. The court, not the trustees, rendered the decision herein, exercising its *independent judgment* based on the history of the case and all the information and proposals before it. Everyone had an opportunity to put forth their point of view. The trustees held no special sway over the court. Indeed, *the court itself* designed the inquiry that the trustees pursued, through a series of very specific directions to collect proposals, summarize them in a neutral fashion, and make recommendations on which proposals or portions of proposals are lawful and equitable, keeping in mind a variety of interests, include those of the Pinoleville Band, the existing community and designated beneficiaries. We have already determined that

the court properly exercised its discretion under section 15410 in crafting the distribution plan at issue here—that plan comes as close to the settlor/trustee's intention as is reasonably possible, given the changed circumstances that render continued fulfillment of the Trust purpose impossible. Churning through each argument of alleged breach would have no impact on our ultimate decision. Appellants simply have not shown that the process the court undertook was flawed.

III. DISPOSITION

The judgment is affirmed. The trustees' request that appellants reimburse the Trust for attorney fees and costs associated with submitting the trustees' amicus curiae brief is denied.

We concur: KAY, P.J., and RIVERA, J.

All Citations

Not Reported in Cal.Rptr.3d, 2004 WL 1304044

Footnotes

- 1 The residual parcel is the 28.5-acre parcel remaining after carving out sites for existing residences and cemetery plots.
- 2 Unless otherwise indicated, all further statutory references are to the Probate Code.
Section 15410 provides for various dispositions, upon termination of a trust, including disposing of trust property "in a manner directed by the court that conforms as nearly as possible to the intention of the settlor as expressed in the trust instrument." (*Id.* at subd. (c).)
- 3 Public Law No. 85-671 (Aug. 18, 1958) 72 Statutes 619 (the Rancheria Act).
- 4 This statement begs the question, who were the settlors? I.C. and Elizabeth Reed conveyed the property to the original trustees. They were not Native Americans. It makes more sense that the original Native Americans who purchased the property for consideration were self-declared trustees who declared their intent to hold the property for the beneficiaries. Thus, they were both settlors and original trustees.