



INTERIOR BOARD OF INDIAN APPEALS

Estate of Loretta Pederson

1 IBIA 14 (10/06/1970)

Also published at 77 Interior Decisions 270

Estate of Loretta Pederson
Decided October 6, 1970

State Law

Applicability to Indian Probate: Generally

A state law which provides that a child who is not named or provided for in the will of his parent shall take as if the testator died intestate, is not applicable to Indian wills.

Wills

Failure to mention child

A state law providing that a child shall take as if the parent died intestate if the child is not named or provided for in his will does not apply to Indian wills executed pursuant to 25 U.S.C. 373.



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
WASHINGTON, D.C. 20240

Estate of Loretta Pederson : IBIA 70-1
Unallotted Quinaielt : Probate No. E-92-69
: Appeal from Order Denying
: Petition for Rehearing

Edward Morgan, by and through his attorney, has appealed from a decision by the Hearing Examiner, dated January 22, 1970, denying his informal petition for rehearing of the within estate in which an Order Approving Will was issued July 17, 1969.

The decedent, Loretta Lillian Garrard Morgan Pederson, died testate in February 1968, at the age of 55 years. She was survived by Edward J. Morgan, an adopted son, and four grandchildren, all of whom were the children of her natural daughter, Ilene Bridges Sampson.

After a Notice of Hearing to Ascertain Heirs at Law was duly issued, a hearing was held on March 4, 1969, at which time the decedent's will executed on April 5, 1962, was approved. In this will the decedent devised her entire estate to her daughter, Ilene Bridges Sampson, with the provision that if Ilene Sampson predeceased her, the property would go to the

children of Mrs. Sampson. Because Ilene Sampson had died on August 13, 1962, the Hearing Examiner awarded the estate to her four children.

The appellant, who had been present and had testified at the hearing, filed a letter alleging a claim against the estate with the Hearing Examiner on July 22, 1969. When no formal petition for rehearing was filed, the Hearing Examiner treated the above letter as an informal petition for rehearing.

In this letter the appellant contended, for the first time, that the will was not valid because a clause, "not being unmindful of my adopted son, Edward Morgan", had been inserted after the time of execution of the will and was, therefore, not a part of the will. He further contended that because he was not mentioned in the will, under state law he should be treated as a pretermitted heir and be entitled to inherit a portion of his mother's estate. On January 22, 1970, the Examiner denied the petition for rehearing.

The appellant claims that the will is valid except for the interlineation which was not a part of the will at the time it was signed by the testatrix and attested by the witnesses. The clause including the insertion, reads as follows:

"Not being unmindful of my adopted son, Edward Morgan, I hereby give, devise and bequeath all of my property, real, personal or mixed, wherever situated, unto my daughter, Ilene Bridges Sampson to be her sole and separate property and estate."

The clause does not change the meaning of the will. It appears that it was merely an afterthought added for the sake of emphasis or clarity. If omitted from the will, it would neither add nor detract from its construction. If a will contains unattested changes, these changes will be disregarded and the instrument admitted to probate when the original intention of the testator can be ascertained. 57 Am. Jur. Wills §508 (1963).

The appellant cites Washington State Law RCW 11.12.090, pertaining to intestacy as to pretermitted heirs. He states that since he was not named or provided for in the valid portion of the will, the deceased is deemed to have died intestate as to him. The will of Mrs. Pederson, however, is not to be governed by state law, because the entire estate consists of undivided interests in trust property administered by the Secretary of the Interior under 25 U.S.C. 373. Such a will is governed by Federal Law and regulations promulgated by the Secretary of the Interior. The purpose of the February 14, 1913, Act of Congress, 37 Stat. 678, was to allow Indians the right to make a will disposing of trust property free of state restrictions as to the portions to be conveyed and

as to the objects of the testator's bounty. Blanset v. Cardin, 256 U.S. 319 (1921). It is well settled that a state law which provides that when a child is not mentioned in a will he shall take an intestate share has no application to Indian wills. Estate of Henry Shale, IA-880 (November 21, 1958). The Examiner is not bound to apply a state statute regarding pretermitted heirs. Estate of Charles Clement Richard, IA-1260 (July 15, 1963).

Pursuant to 25 CFR §15.17 a petition for rehearing must be under oath and present a specific and concise statement of the grounds upon which it is based. If the petition presents newly discovered evidence, it must state a justifiable reason for failure to discover and present the evidence at the hearing, and must be accompanied by a sworn statement from at least one disinterested person who has knowledge of the facts. In the instant case, there was no petition under oath, no justification for the presentation of new evidence and no sworn statement from the witness, Ethel Tough, concerning the alteration in the will. In order to maintain some form of compliance with the Regulations, at least the essentials of legal procedure must be applied. We believe the Hearing Examiner was more than lenient in his treatment of the petition for rehearing. In light of the failure to meet the requirements set forth in the Regulations for a petition for rehearing, the Hearing Examiner might well have dismissed the petition as improperly filed.

Under the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, this decision is final for the Department. 35 F.R. 12081. The Appellant's petition for rehearing is denied and the Rearing Examiner's decision of March 4, 1969, is affirmed.

//original signed
James M. Day, Member

Concur:

//original signed
David McKee, Chairman

OCT 6, 1970