



INTERIOR BOARD OF INDIAN APPEALS

Estate of Lucy Hope Deepwater

1 IBIA 201 (12/16/1971)

Also published at 78 Interior Decisions 355

Reconsideration denied:

1 IBIA 241

ESTATE OF LUCY HOPE DEEPWATER

IBIA 72-1

Decided December 16, 1971

SYLLABUS

Indian Probate: Rehearing: Pleading, Timely Filing

Where a petition for rehearing was not filed in the appropriate office of the Department of the Interior until the 61st day after entry of the original order, the hearing examiner lacked authority to extend the time for filing thereof and had no jurisdiction to determine the substantive issues raised in the petition on their merits.



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF LUCY HOPE DEEPWATER : Examiner's Order Affirmed
:
Deceased :
Shoshone-Flathead Allottee 1234 : IBIA 72-1
Probate No. P-12-71 :
: December 16, 1971

This matter is before the Board of Indian Appeals on appeal by Daniel B. Evening, Sr., from an order of Hearing Examiner Alexander H. Wilson denying his petition for rehearing.

The hearing herein was held on October 22, 1970. On February 3, 1971, the examiner issued an order approving the decedent's last will and directing distribution of the trust property comprising the decedent's estate to the beneficiaries named in the will after payment of certain allowable claims against the estate. On April 6, 1971, Mr. Evening filed his petition for rehearing at the Fort Hall Agency. On May 7, 1971, the examiner entered an order denying the petition for rehearing on substantive grounds. In doing so, however, he specifically waived the 60-day limitation provided in the applicable regulation in effect at that time, 25 CFR § 15.17(a). ^{1/} Thus, the Order Denying Petition for Rehearing states:

^{1/} So far as pertinent hereto the regulation provides that any person "aggrieved by the decision of the examiner of inheritance may, within 60 days after the date on which notice of the decision is mailed to the interested parties (or within such additional period as the Secretary, for good cause, may allow in any case), file with the superintendent a written petition for rehearing. Such a petition must be under oath and must state specifically and concisely the grounds upon which it is based. If the petition is based on newly

The petition, although bearing the date of April 5, 1971, was not actually filed with the Fort Hall agency until April 6, 1971, thus exceeding by one day the 60 days permitted by 25 CFR §15.17 (now 43 CFR 4.241) for filing for rehearing. The nominal and insignificant delay of one day in filing the petition is considered inconsequential and insufficient reason for summarily dismissing the petition. (Emphasis supplied.)

On June 28, 1971, the appellant filed his Notice of Appeal, alleging in general terms that the decedent's will was the product of duress and undue influence, and that the decedent lacked testamentary capacity. The Notice of Appeal was supported by copies of two affidavits which had previously been filed in support of appellant's Petition for Rehearing. 2/

fn. 1 (Cont.)

discovered evidence, it must state a justifiable reason for the failure to discover and present the evidence at the hearing, and the petition must be accompanied by the sworn statement of at least one disinterested person having knowledge of the facts."

2/ Approximately 2 months after filing his appeal, appellant submitted by mail an unsworn statement in letter form from the decedent's attending physician to the effect that she suffered from a "marked degree of senility" and was "in no condition . . . to intelligently review or make a will." We note here our disapproval of the practice of documenting appeals in stages. Furthermore, the doctor's opinion as expressed in the letter is too general in nature to be of significant probative value even had it been in proper form and timely submitted. In this connection it should be noted that in Estate of William Cecil Robedeaux, 1 IBIA 106, 124, 78 I.D. 234, 243 (1971) we expressed our approval of this generally accepted definition of testamentary capacity: ". . . a state of mental capacity to understand in a general way the nature of the business then ensuing, to be able to bear in mind in a general way the nature and situation of the property, to remember the objects of one's bounty, and to plan or understand the scheme of distribution." Other considerations aside, a medical opinion such as the one before us stating conclusions only and having no factual reference to the legal touchstones governing the issue in dispute is of little evidentiary value.

In the examiner's Notice to Heirs attached to and accompanying the Order Approving Will and Decree of Distribution herein dated February 3 1971, a copy of which was mailed to the appellant, the parties involved, including appellant, were specifically advised as follows:

This decision becomes final 60 days from the date of this notice. Any person aggrieved by the decision of the examiner may, within the 60 days, but not thereafter, file with the superintendent a written petition for rehearing.

If the petition is based upon newly discovered evidence, it must state the justifiable reason for the failure to discover and present the evidence at the hearing, and the petition must be accompanied by the sworn statement of at least one disinterested person having knowledge of the fact.

The primary issue involved here is whether the examiner's waiver of the 60-day limitation of 25 CFR 15.17(a) is within his power to effect. 3/

Generally speaking, where statutory provisions or administrative regulations provide that an application for a rehearing must be filed within a specified period after the service or entry of an administrative body's order or decision, such application must be filed within the specified period and the power of the administrative body is limited by the rule or regulation setting forth such limitation. 73 C.J.S., Public Administrative Bodies and Procedure, § 156b. (1951).

3/ If he has no such power the necessity for determining if the Examiner correctly denied the petition for rehearing on the specific substantive grounds stated in his denial of the Petition for Rehearing arises only if we should otherwise determine that this is a proper situation for the exercise of the Secretary's discretion to waive the regulations.

We construe the qualifying language of section 15.17(a), i.e., “. . . or within such additional period as the Secretary, for good cause, may allow in any case . . .” to be merely an expression of the power reserved by the Secretary in 25 CFR § 1.2 which provides that “the Secretary retains the power to waive or make exceptions to his regulations . . . in all cases where permitted by law and the Secretary finds that such waiver or exception is in the best interest of the Indians.” It follows that section 15.17(a), insofar as it permits extension of the 60-day period of limitation, creates a discretionary power to be exercised by the Secretary only, except as he has delegated it. The Secretary has not delegated to hearing examiners the power to extend time limitations. He has, however, specifically delegated to the Board of Indian Appeals his authority to decide appeals from orders and decisions of hearing examiners, including his authority in relation, to “extension of time or waiver of time limitations with respect to rehearings, reopenings, or appeals in proceedings for the determination of heirs or the approval of wills of deceased Indians . . .” 35 F.R. 12081.

In past decisions this Department has consistently held that petitions for rehearing which are not filed within the 60-day period are properly denied, Estate of Henry Aauty, IA-879 (July 17, 1959); Estate of Agatha Quiltairre (Qualtier), IA-114 (January 11, 1954), and that an examiner does not have authority to grant an extension of the time for filing a petition for rehearing. Estate of Jack Fighter, 71 I.D. 203 (1964); Estate of Jeanette Halfmoon, IA-120 (May 5, 1954).

Over the years the Department of the Interior has adopted a strict policy of refusing to entertain appeals not timely filed. Estate of Ralyen or Rabyea Voorhees, 1 IBIA 62 (1971). This same policy has been applied to petitions for reopening filed beyond the three-year limitation provided in the regulations, Estate of George Minkey, 1 IBIA 1 (1970); Estate of Samuel Picknoll (Pickernell), 1 IBIA 168; 78 I.D. 325 (1971), and we see no reason why such a policy should not apply to petitions for rehearing as well. ^{4/} In Estate of Ralyen or Rabyea Voorhees, supra at 63 where we dismissed the petition for rehearing filed 67 days after the issuance of the order determining heirs, the policy was applied although not expressly stated. We did note, however, that “The language of sec. 15.19 governing appeals is substantially identical to that governing petitions for rehearing in sec. 15.17” and that “. . . the reasons for the rule in sec. 15.17 are the same as in sec. 15.19 and shall apply equally . . .”

In the instant case, the petition for rehearing was not filed in the appropriate office of the Department until the 61st day. It is

^{4/} Admittedly, the effects of strict enforcement of limitations is sometimes harsh. However, the efficacy of such rules is based thereon. If, for example, the time could be extended one day at the discretion of the hearing examiner, why not for another day? The logic and justification for extending from the 61st day to the 62d comes more readily than for extension from the 60th to the 61st, and so on. Nothing would be gained by construing limitations to be guidelines, rather than bars, and by granting examiners discretion to extend limitation periods. At some point a cut-off date for filing has to be established and uniformly enforced so that cases come to a conclusion and property rights become stabilized.

thus untimely and should have been denied by the examiner for that reason since he had no jurisdiction to make any other determination. Estate of Henry Aauty, supra.

Nor do we see any reason, on the facts of this case, for this Board to exercise the discretion of the Secretary duly delegated to it to waive the time limitation provided in 25 CFR 15.17(a). Such power will be exercised only in cases where the most compelling reasons are present. Estate of Samuel Picknoll (Pickernell), supra; Estate of Charles Ellis, IA-1242 (April 15, 1966). Here, the appellant has not met the requirements of the regulation by virtue of his failure to propound any "justifiable reason" for not discovering and presenting at the hearing the evidence which he includes as attachments to his Petition for Rehearing and his Notice of Appeal. ^{5/} On the basis of the record before us we are unable to ascertain any truly compelling reason justifying an exception to the regulations. We have carefully reviewed the record and find that there is ample support therein for the examiner's decision to approve the will and direct distribution of the decedent's estate according to its terms. Moreover, the evidence submitted by the appellant in support of his appeal is both vague and

^{5/} In his Petition for Rehearing appellant alleges that he was unable to remain at the hearing and present evidence because of an emergency involving the "physical well being" of his family. The hearing examiner, however, in denying the petition noted that "The petitioner, contrary to his allegation, was present during the entire proceedings, with the exception of a relatively short period of time prior to the conclusion of the hearing."

