



INTERIOR BOARD OF INDIAN APPEALS

Estate of Jennie L. Brown Bearing

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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ARLINGTON, VA 22203

ESTATE OF JENNIE L. BROWN BEARING

DECEASED WIND RIVER ALLOTTEE NO. C323

IBIA 73-5

Decided September 28, 1972

This is a petition to reopen an estate, filed 32 years after it was closed, and requesting the elimination of an heir because there was no record of his adoption.

Denied.

Indian Probate: Adoption: Generally

Where the death of the decedent and the probate of his estate occurred prior to the effective date of 54 Stat. 746, 25 U.S.C. § 372a (1970), on January 8, 1941, a lack of a written record of an adoption completed during decedent's lifetime is no bar to recognition of such adoption in a proceeding to determine decedent's heirs.

Indian Probate: Aggrieved Parties: Generally

A petition to reopen an estate which has been closed more than three years will be summarily denied when neither the petition nor the record reveals that the petitioners have any interest in the estate.

Indian Probate: Reopening: Waiver of Time Limitation

The Secretary will not exercise his discretion to waive time limitations for reopening a probate when it has been closed 32 years and there is a lack of diligence on the part of the petitioners during such period to obtain correction of an alleged mistake which they fail to attribute to fraud, accident or mistake in the original proceedings, and when they fail to allege the existence of a manifest injustice or how it might be corrected if reopening were permitted.

APPEARANCES: There were no appearances in behalf of any party.

OPINION BY MR. McKEE

This matter comes before the Board upon the petition for "rehearing" filed by Anna M. Brown and Richard Brown, Jr., dated August 21, 1972, addressed to the Superintendent, Wind River Agency, and which

was received in the office of the Administrative Law Judge William Hammett on August 23,

1972. The petition consisting of one paragraph is as follows:

We wish to petition for a rehearing in the estate of Jennie L. Brown, Probate No. 45647-40, dated July 29, 1940. The reason for this petition is because Richard Addison received a 1/3 interest and is called an adopted son. There is no records that Richard Addison was legally adopted by Mrs. Brown but that she only kept him and raised him and we think he should not inherit as an adopted son. (Emphasis supplied)

Since the estate had been closed by a Secretarial order determining heirs issued July 29, 1940, more than three years prior to the filing of this petition, Judge Hammett forwarded such petition to the Board on September 1, 1972, in accordance with the provisions of 43 CFR 4.242(h). His recommendations are contained in his transmittal memorandum as follows:

Enclosed is a petition for rehearing, which I have considered as a petition for reopening of the above estate.

The order determining heirs in this estate, a copy of which is enclosed, was issued July 29, 1940. The order lists Dickie (Richard) Addison as an heir of the decedent by virtue of being decedent's adopted son. The testimony given at the hearing, relevant parts of which are enclosed, discloses sufficient grounds for the examiner's determination that Dickie (Richard) Addison was an adopted son of the decedent. Therefore, I conclude that there is an absence of manifest injustice and that the petition should be denied. I recommend that this action be taken.

The petition, properly treated as a petition for reopening, is subject to summary dismissal for the following reasons:

There is sufficient evidence in the record to substantiate the findings that Richard Addison was the adopted child of Jennie L. Brown; that Jennie L. Brown only had two other children, and that each should receive one-third of her estate, and

There was no requirement that a formal record of adoption be made on July 29, 1940, at the time the estate of Jennie L. Brown was probated -- the statute concerning adoption records, the Act of July 8, 1940, 54 Stat. 746, 25 U.S.C. § 372(a) (1970), provides by its terms that it "shall become effective six months after the date of its approval;" and

There is a lack of diligence on the part of petitioners in waiting thirty-two years without apparent objection to the probate of this estate, and

There is nothing in the petition or probate record to show that the petitioners have any interest in the estate; nor are they parties as defined in the applicable regulations in 43 CFR 4.201(i), and

There is nothing in the petition or the probate record to show any need for additional evidence or any possible claim to be made; nor any showing that petitioners are able to establish any claim and meet the burden of proving it by a preponderance of the evidence. Estate of Samuel Picknoll (Pickernell), 1 IBIA 168, 78 I.D. 325 (1971), and

There is nothing in the petition or the probate record to show that the original determination resulted from fraud, accident or mistake of such compelling nature that a manifest injustice will occur or how it might be corrected if a reopening is granted.

CONCLUSION

It is therefore concluded that this petition for reopening is insufficient to justify the exercise of Secretarial discretion to waive the three-year limitation contained in the regulations 43 CFR 4.242(a).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 211 DM 13.7, 35 F.R. 12081, IT IS ORDERED that the petition for reopening filed by Anna M. Brown and Richard Brown, Jr., shall be and the same is hereby DENIED.

