



INTERIOR BOARD OF INDIAN APPEALS

Estate of Crawford J. Reed

1 IBIA 326 (09/28/1972)

Also published at 79 Interior Decisions 621

Judicial review of this case:

Dismissed, *Reed v. Morton*, No. 1105 (D. Mont. June 14, 1973)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF CRAWFORD J. REED

UNALLOTTED CROW NO. 6412

IBIA 72-12

Decided September 28, 1972

Appeal from an Examiner's Order Determining Heirs After Rehearing.

Affirmed.

Indian Probate: Appeal: Examiner as Trier of Facts

Where there is sufficient evidence to support the finding and the testimony is conflicting, the determination of witness credibility and the findings of fact by the Examiner will not be disturbed because only he had the opportunity to hear and observe the witnesses.

Indian Probate: Attorneys at Law: Fees

The allowance of attorney's fees is discretionary and based not only on the results produced but on what the services themselves are worth considering the labor, time, talent and skill the attorney expended.

Indian Probate: hildren, Illegitimate: Right to Inherit: Child from Father

Once a child has been determined to be a child of a deceased Indian, Title 25 U.S.C. § 371 applies and authorizes the descent of its deceased father's lands to the child as an heir whether the parents of the child cohabited or not.

APPEARANCES: Thomas E. Towe on behalf of George Reed, Sr., for the Appellant; and James E. Torske on behalf of Jennifer Ann Walks, the respondent.

OPINION BY MR. HARRIS

Crawford J. Reed died on September 20, 1968, at the age of 27 years. On October 9, 1969, Hearing Examiner (Indian Probate) David McKee held a hearing to determine the heirs of the deceased.

At the hearing it was determined that Crawford Reed had died intestate and single without ever having married. Laura Ground, mother of Alice Ground, who did not appear, testified that Gladys Ann Ground, born March 2, 1965, was the daughter of Alice Sees the Ground and Crawford Reed. Adelia Walks testified that Crawford Reed was the father of her child, Jennifer Ann Walks, who was

born on July 19, 1967. George Reed, Sr., testified that he and Ruby Good Horse, who had predeceased Crawford, were the parents of Crawford Reed.

The Secretary, because of the unavailability of Examiner McKee, issued the Order Determining Heirs on October 23, 1970. This decision, based on the hearing record and in accordance with the laws of Montana, declared Gladys Ann Ground and Jennifer Ann Walks to be Crawford Reed's heirs at law and fixed their shares in the estate at one-half each.

George Reed, Sr., the surviving father of Crawford, would have received all his property were it not for the Secretary's Order. George Reed, Sr., filed a petition for rehearing on December 7, 1970. The petition was granted on January 6, 1971.

The rehearing, held on April 15, 1971, held by Examiner Daniel Boos was actually a complete and lengthy hearing de novo. The testimony of the witnesses at the rehearing is in conflict on whether Crawford J. Reed was the father of Jennifer Walks. Adelia Walks testified that she "slept with Crawford Reed" the first part of November 1966 at Sylvia Fighter's place; that she became pregnant and told Crawford. Sylvia Fighter testified that they stayed to-

gether at her place and that Crawford later told her Adelia was pregnant. Adelia, her mother, and Alice Ground testified that Crawford acknowledged he was the father of Jennifer Walks. Others testified that Crawford had bought things for Jennifer and paid her medical bills.

Rena Half testified that she lived with Crawford as man and wife at Pryor, Montana, from September until December of 1966 and was with him day and night. Court records introduced at the rehearing showed Rena had been arrested and incarcerated for three and a half days and had been at the Crow Agency on several occasions during the same period of time. With respect to the testimony of Rena Half the Order appealed from stated, "Further, having closely observed the appearance and demeanor of the witness, the Examiner gives no credence to her testimony."

Following the rehearing the attorney for Jennifer Walks, on April 23, 1971, filed a petition for attorney's fees for services he had provided in connection with the preparation and presentation of her cause at the rehearing.

On December 6, 1971, Examiner Daniel Boos issued an Order Determining Heirs After Rehearing. The examiner made a specific find-

ing, "that the evidence is insufficient to support a finding that Crawford J. Reed was the father of Gladys Ann Ground" and "That the weight of the evidence preponderates in favor of the claimant, Jennifer Walks," that "Crawford J. Reed was (her) father." Examiner Boos accordingly found her to be the sole heir at law and declared her to be entitled to all of the estate of Crawford J. Reed. The examiner also allowed the claim of \$200 for attorney's fees.

Gladys Ann Ground did not appeal the examiner's order.

George Reed, Sr., has appealed the Order After Rehearing to this Board. His stated grounds for appeal are that "the evidence introduced at the hearing is insufficient to sustain a finding that Crawford J. Reed was the father of Jennifer Walks" and "that 25 U.S.C. § 371 does not apply to this case and, therefore, even if Jennifer Walks was the daughter of Crawford J. Reed, she would not be entitled to inherit the property of the deceased."

Whether Jennifer Walks is the child of Crawford J. Reed is a question of fact. We find that, if accepted as credible, there is sufficient evidence in the record to support such a finding of fact. Once the fact is determined, we can proceed to determine its significance under the applicable law. Where the testimony is in conflict,

as here, the examiner as the trier of fact must resolve the questions on the sufficiency of the evidence or on witnesses' credibility to reach the true facts. On the question of credibility, such elements as interest of the witness in the outcome of the case, relationship of the witness to others, and what the witness said can only be partially evaluated on the record of the hearing. Equally important in the determination of credibility of the witnesses' statements to resolve questions of fact is the manner and demeanor of the witness on the stand -- how he said what he said, etc. Therefore, where there is sufficient evidence to support the finding and the testimony is conflicting, the determination of witness credibility and the findings of fact by the examiner will not be disturbed, because only he had the opportunity to hear and observe the witnesses. This is a long standing Departmental policy which has the approval of this Board. Estate of Abner Henry Hall, Deceased Blackfeet Indian Allottee No. 751, IA-4 (December 9, 1949); Estate of Albert Attocknie, IA-1442 (February 7, 1966); Estates of Josie Carroll Mustache and John Mustache, Sr., IA-1262 (April 4, 1966). See Estate of William Cecil Robedeaux, 1 IBIA 106, 78 I.D. 234 (1971). The Board finds that there is sufficient credible evidence to find that Jennifer Walks is the child of Crawford J. Reed, and we so rule.

The purpose of both the original hearing and the rehearing which were held in this case was to ascertain the heirs of a deceased Crow

Indian, Crawford J. Reed, in order to determine the descent of lands held in trust for him.

On its face 25 U.S.C. § 371 applies to this case:

For the purpose of determining the descent of land to the heirs of any deceased Indian under the provisions of section 348, of this title, whenever any male and female Indian shall have cohabited together as husband and wife according to the custom and manner of Indian life the issue of such cohabitation shall be, for the purpose aforesaid, taken and deemed to be the legitimate issue of the Indians so living together, and every Indian child, otherwise illegitimate, shall for such purpose be taken and deemed to be the legitimate issue of the father of such child:

* * *

Jennifer Walks having been determined to be the child of Crawford J. Reed, this section is the authority for declaring her to be his legitimate child for the purpose of allowing the descent of his trust lands to her. The argument advanced by appellant, George Reed, Sr., that § 371 only applies to children born of Indian parents who cohabit as man and wife is both unreasonable and against the weight of authority. For the purpose of determining descent of land, by its terms § 371 applies both to such children and "every Indian child, otherwise illegitimate, shall for such purpose be taken and deemed to be the legitimate issue of the father." The plain meaning of the words leads to the reasonable conclusion that Congress intended to protect the right to inherit from the father for both classes of children, those born of parents who cohabited

and those born of parents who did not. To this effect see In Re House, 112 N.W. 27, 132 Wisc. 212 (1907), Gray, et al. v. McKnight, et al., 183 P. 489, 75 Okla. 268 (1919), Solicitor's Opinion, 58 I.D. 149 (1942), Estate of Harry Colby, 69 I.D. 113 (1962), and Estate of Nelson Drags Wolf, IA-D-12 (September 19, 1967).

Appellant cited both In Re House, supra and the Solicitor's Opinion, supra and argued both were wrong with respect to the issue born of parents who did not cohabit because both cases (according to appellant) held that such issue could inherit from the father only and could not inherit from the mother. Appellant argues that since it is unreasonable to deny a child the right to inherit from the mother the holding in both cases should be thrown out.

Appellant's interpretation of both cases is incorrect. Through the court's interpretation of 25 U.S.C. § 371 the illegitimate children of Thomas House were allowed to inherit from him in In Re House supra -- the question of inheritance from the mother was not before the court. In the Solicitor's Opinion, supra the first question was whether the illegitimate nephew, whose mother was deceased, could inherit through his mother and receive part of the estate of his uncle. The second question was whether the 14 legitimate children of a predeceased illegitimate half brother whose mother was deceased were entitled to inherit through him and his mother and receive part

of the estate which was in probate. On both questions the Solicitor held that the children of the father could inherit from him under 25 U.S.C. § 371, but that Congress had left the question of whether illegitimate children of the mother could inherit from the mother or through her to state law and the controlling state law, while providing that they could inherit from her, prohibited inheritance through her, absent certain circumstance.

Since the question before this Board is whether Jennifer Walks can under 25 U.S.C. § 371, inherit from her father, it can be seen that under the decision in both In Re House *supra* and the Solicitor's Opinion, *supra* she can so inherit and this Board so holds.

The attorney for respondent on June 7, 1972, and subsequent to the filing of briefs and a reply brief, filed a petition for allowance of \$480 attorney's fees in connection with the services he provided respondent on this appeal. Title 43 CFR Part 4, § 4.281(a) and (b) provides for such petitions, and, as a matter of discretion, provides that the fee may be charged against the interest of the person represented. The fee to be allowed is dependent on the worth of the services provided, *i.e.*, quantum meruit. The reasonable worth of legal services rendered is determined not only on what such services produce, but also on what the services in

themselves were reasonably worth considering the labor, time, talent, and skill reasonably expended by the attorney. Estate of Tah-wat-is-tah-ker-na-ker or Lucy Sixteen, Deceased Comanche Allottee No. 429, 70 I.D. 531. Respondent submitted a well-written brief, displaying an able legal talent. Considering the effort and time necessarily expended to produce this brief and its contribution to the successful results for respondent's clients, the full amount of \$480, as petitioned for, is hereby allowed.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 211 DM 13.7; 35 F.R. 12081, the Examiner's Order Determining Heirs After Rehearing is AFFIRMED.

This decision is final for the Department.

//original signed
Daniel Harris, Member

I concur:

//original signed
James M. Day, Ex Officio Member