



INTERIOR BOARD OF INDIAN APPEALS

Estate of Angeline Takes the Shield Lambert Iron Bear

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

ESTATE OF ANGELINE TAKES THE SHIELD

LAMBERT IRON BEAR

IBIA 72-21

Decided April 17, 1973

Appeal from Judge's decision after rehearing, denying claim of Lucille Hall as creditor of the estate for care of the decedent and a petition by her attorney for attorney's fee.

Affirmed.

Indian Probate: Claim Against Estate: Care and Support

In the absence of an expressed or implied contract providing for compensation for personal services rendered the decedent relative, such services are presumed gratuitous.

Indian Probate: Claim Against Estate: Allowable Items

A claim for attorney's fee is not allowable as a charge against the estate where the services were performed on behalf of the attorney's client and were neither on behalf of the estate nor of benefit to the estate.

Indian Probate: Claim Against Estate: Allowable Items

A claim for attorney's fee by an attorney who successfully or unsuccessfully represented a client whose interests were in opposition to creditors of the estate and the heirs at law is a private business matter between attorney and his client and not a proper claim against the estate as an administration expense.

APPEARANCES: Robert Hurly, Esquire, for the Appellant; no appearance entered by or on behalf of Carmelita Lambert Eagle Boy, Petitioner for rehearing below.

OPINION BY MR. SABAGH

Lucille Hall, granddaughter of decedent, appeals from the decision and order of the Administrative Law Judge after rehearing, disallowing her claim for care of the decedent Angeline Takes The Shield Lambert Iron Bear, and further, disallowing the claim of her attorney, Robert Hurly, for attorney's fee.

Angeline Iron Bear died April 7, 1970, at the age of 72 years. A hearing was held on June 26, 1970, by Hearing Examiner, Indian

Probate, David J. McKee 1/, and the record was certified to the Secretary of the Interior for decision. In his decision of April 7, 1971, the Secretary found, inter alia, that the will of the decedent was entitled to approval as her last will and testament. He further found that the decedent was provided care under circumstances entitling the appellant to compensation; and further that care was provided for decedent's late husband and for the child, Robert Desjarlais, under circumstances entitling the appellant to compensation from the estate. The Secretary pursuant to his order approved the will and the claim of the appellant, Lucille Hall, for care provided, in the sum of \$9,800.

Carmelita Eagle Boy, a cousin of the appellant timely filed a petition for herself and for Magdeline Stretches Himself, both heirs in the matter, for rehearing of the order proving the will and the decree of distribution set forth in the Secretary's decision of April 7, 1971. In justification of the petition the petitioner alleged that the Notice of Hearing to Determine Heirs or Probate Will dated May 8, 1970, did not include a statement of the claim for care submitted by Lucille Hall, and as a consequence

1/ Examiner McKee, after the hearing, but before rendering an initial decision became Chairman of the Board of Indian Appeals, which necessitated certification to the Secretary for initial decision. Mr. McKee took no part in the decision of this case.

she the petitioner was not ready to rebut the testimony given by the appellant; nor did the Notice advise the petitioner that she could be represented by legal counsel.

On June 25, 1971, an order granting rehearing was issued by the Director, Office of Hearings and Appeals, wherein it was found that the petition was timely filed and that it showed merit. The order further found "that because of the unavailability of the Examiner, David J. McKee, who conducted the hearing, a full rehearing should be conducted de novo as to the fact of and the legal validity of the claim of Lucille Hall." It was ordered that rehearing be granted for rehearing of those issues presented by the petition. The Judge having the Fort Peck Indian Reservation in Montana within his assigned territory was given jurisdiction to conduct the rehearing. Rehearing was held on September 23, 1971, in Poplar, Montana, by Judge William E. Hammett. The petitioner and the appellant were both represented by counsel. On March 6, 1972, the Judge issued an order disallowing the appellant's claim for care and the claim for attorney's fee. Appellant filed an appeal to this Board on July 19, 1972.

Seven grounds have been offered in support of this appeal which are as follows:

- 1) The decision exceeds the authority and jurisdiction of the Examiner under the Rehearing Regulations, in that the decision is not based on any issue raised by the Petition for Rehearing.
- 2) The Examiner exceeded the jurisdiction and authority given him by the Director in the June 25, 1971, Order for Rehearing which specifically limits the Judge to Rehearing "all issues presented by the Petition."
- 3) The April 7, 1971, decision of Rogers C. B. Morton, Secretary of the Interior, expressly considered the very facts considered by Examiner Hammett, and the Secretary of the Interior, on these same facts, expressly determined that "the requirements of 25 CFR 15.23(d) were met in that the care was given on a promise of compensation and that compensation was expected." And Examiner Hammett is without jurisdiction or authority to overrule the Secretary of the Interior on this point.
- 4) The Examiner exceeded his authority and jurisdiction in attempting to act as an appeal court and to expressly overrule the decision of April 7, 1971, of the Secretary.
- 5) The decision of the Examiner is not supported by the facts, and the testimony quoted by him clearly shows that care was given on a promise of compensation and that compensation was expected.
- 6) The decision of the Examiner is based on a mistake in Law in that in order to reach his decision, the Examiner has completely disregarded the dictionary and common and legal meanings of the words "promise of compensation", and a correct interpretation of the meaning of these words would lead to the allowance of Appellant's claim.
- 7) The decision of the Examiner is a miscarriage of justice and denies justice and equity to appellant.

The petition for rehearing, among other things, indicated that the petitioner was not advised of the claim of Lucille Hall in the

Notice of Hearing to determine Heirs and Probate Will, because of which she was not ready to rebut the testimony given by Lucille Hall nor was she advised that she could be represented by counsel. Moreover the only available attorney was out of the area and unavailable. The petition further stated that the appellant attempted to coerce the decedent into executing a new will. The petition enumerated certain periods during which the appellant could not have taken care of the decedent or her late husband.

It is noted that the petitioner was not aware of the technical requirements and procedures necessary for a proper preparation or presentation of her case, and was not forewarned in the Notice of Hearing to Determine Heirs and Probate Will because the claim was not made until hearing was in progress.

A rehearing will be granted where the original hearing did not conform with the standards of a full opportunity to be heard embodied in the Administrative Procedures Act. Estate of Little Toby (Tobin), A-24519 (February 14, 1947).

The petitioner did not have the requisite knowledge, background, or understanding and was not represented by counsel. Under such circumstances, the specific allegations technically required by the

regulations may be inferred from the petition, the record, and the subsequent incidents and circumstances of the case. Estate of Lucille Mathilda Callous Leg Ireland, 1 IBIA 67, 78 I.D. 66 (1971).

We cannot agree with the appellant and conclude that the Judge did not exceed his authority and jurisdiction with respect to the issues raised by the Petition for Rehearing.

We turn now to consideration of the claim of Lucille Hall for care under 25 CFR 15.23(d) which provides:

Claims for care will not receive favorable consideration unless clear and convincing proof is offered showing that the care was given on a promise of compensation and that compensation was expected. 2/

The Department long ago concluded that a decedent's promise to give land to a claimant in return for care and support cannot be construed as "compensation" within the meaning of that term in 25 CFR 15.23(d). Estate of Frank Puck-ke-shin-no, IA-1373 (March 15, 1966); See also Estate of Albert Windy, A-25452 (September 21, 1948).

Departmental decisions have consistently held that services performed by persons in family relations are presumed to be gratuitous

2/ The regulation has been superseded by a new regulation which is substantially the same. See 43 CFR 4.250(d) (1972).

and in the absence of a contract, expressed or implied, providing for payment of compensation for the services rendered the decedent, no claim for compensation out of the estate may be allowed.

Estate of Ralph Old Dog, IA-11 (October 5, 1949); Estate of Little Toby (Tobin), (A-24519 (Supp.). November 24, 1947).

The record on rehearing established that:

1) The appellant, her sisters and brothers, lived with and were cared for and supported by the decedent from the time the appellant was 3 years old, appellant's mother having died in or about 1948.

2) The appellant's sisters and brothers left the decedent's home in or about 1959 to marry or go their separate ways, but that the appellant continued to live with the decedent Angeline Iron Bear and her late husband, Charles Iron Bear, until the demise of Angeline on April 7, 1970, except for several periods of absence.

3) The decedent wanted the appellant to continue school; that she in fact went to vocational school from late fall 1959 to the spring or summer of 1960, when she dropped out.

4) The appellant began receiving welfare payments in or about 1966.

5) The appellant gave birth to four children while living with the decedent, one of which was supported by the decedent.

6) The decedent received \$100,000 on an oil lease which she shared with the grandchildren including the appellant.

The appellant testified that she dropped out of school while in the 9th grade in 1959 to take care of her grandfather, Charles Iron Bear. He did not ask her to drop out of school, nor did she expect to be compensated for the alleged care she gave the grandparents.

The appellant further testified that she did not file a claim against the grandfather's estate upon his death because the decedent, Angeline Iron Bear, told her that Charles Iron Bear told her that he wanted the appellant to have all of the Iron Bear land and that the decedent Angeline Iron Bear would leave this land to the appellant. This testimony was uncorroborated. No one was present during this conversation, nor did anyone hear the decedent make such a promise.

Further, the appellant testified that two weeks before her death the decedent told her that she wanted to change her will. This testimony was corroborated by a social worker with the Bureau of Indian Affairs. A memorandum prepared by the appellant incorporating the

changes the decedent wished to make in the will was accepted into evidence as exhibit A during the initial hearing. However there was no mention in it of wishing to give all of the Iron Bear land to the appellant. Angeline Iron Bear died without amending or altering her will to include the contents of exhibit A.

Pertinent portions of appellant's testimony taken from the transcript of the initial hearing held on June 26, 1970, are hereinafter set forth:

Q. Lucille what is the nature of the claim you are filing against this estate?

A. For the care of my grandmother and her husband. (Tr. 18.)

Q. How long did you provide care for the deceased, Angeline Iron Bear.

A. Since '59.

* * * * *

Q. What kind of care did you provide for her?

A. Oh, I drove for her, drove for her and cleaned her house and cooked for her and ironed her clothes. (Tr. 19.)

* * * * *

Q. How did you come to care for Angeline and her husband?

A. Well, my grandfather was going blind in one eye and I dropped out of school to take care of him. My grandmother was in the hospital. (Tr. 20.)

* * * * *

Q. Was * * * did you do this on your own or did they * * *?

A. Well, there was no one else that would do it so I quit school.

Q. Did he specifically ask you to quit school or did you ever have any conversation with him about quitting school to take care of him, or with Angeline?

A. No, I just did it.

Q. Was this Charles Iron Bear?

A. Yes.

Q. How long was he alive?

A. Until '65.

Q. You provided the same kind of care for him as you did for Angeline?

A. Yes.

Q. Did you file a claim in his estate?

A. No.

Q. Why not?

A. Because, when he gave all of his land to my grandmother and to one of his grandsons and he said when grandma died she was supposed to give me all of the Iron Bear land for taking care of him.

Q. Did he tell you this?

A. He told my grandmother that and my grandmother told me that she was going to leave all the Iron Bear land to me. (Tr. 21.)

* * * * *

Q. When was it that you made these arrangements with Angeline concerning your compensation for care? How long before she died?

A. What do you mean?

Q. That Exhibit A doesn't have any date on it.

A. Do you want to know when I made that. After my grandfather died she told me she was going to leave me that Iron Bear land for taking care of him. (Tr. 24.)

Q. For taking care of him?

A. Yes.

Q. Did you have any arrangements with her for her care?

A. She gave me a piece of land for herself.

Q. This is satisfactory to you?

A. Yes.

Q. Then the \$9,800 would all be chargeable to the care you gave her husband would that be right?

A. Well, for both of them.

Q. How long was it before she died did you make up this paper Exhibit A.

A. About two weeks before she died. (Tr. 25.)

At the rehearing, attorneys for the petitioner and appellant stipulated that the matter of the claim of Lucille Hall could be heard and considered for decision on the record as a whole, including the evidence adduced at the first hearing of June 26, 1970.

Pertinent portions of appellant's testimony taken from the transcript of the rehearing held on September 23, 1971, are hereinafter set forth:

Examiner * * * Did you ever have any agreement with your grandmother as to any fixed amount of money that she would pay you for taking care of the children or taking care of her husband?

A. No. (Tr. 84.)

Q. Did you take care of her in expectation that you would receive something for taking care of her?

A. Well I was taking care of her and she told me that she was giving me that land cause my grandfather was gonna give it to me. (Tr. 84, 85.)

Q. Ok. Did you understand that it would be land that she would leave to you by will or land that she would give to you during her lifetime?

A. Land that she would give me in her will. (Tr. 85.)

The record falls far short of establishing any understanding on the part of the appellant and decedent that the appellant's services were rendered in expectation of compensation. The services rendered between 1959 and 1970 consisted of chauffeuring, washing, cleaning and cooking. It is conceded that the appellant did render services of this nature. However, during the entire period covered by the claim, no compensation for such services was paid nor was it shown that the appellant at any time during that period asserted a claim for compensation. In her testimony taken at the initial

hearing and elaborated upon on rehearing, the appellant stated in positive terms that she made no agreement with the decedent or her grandfather, and that she took care of her grandfather because there was no one else that would do it. The uncorroborated oral promise of the decedent made a few weeks before her death to leave all of the Iron Bear land to the appellant is regarded at most as only an expression of her testamentary intention, which would be subject to change at any time. This is further supported by the evidence adduced at the rehearing to the effect that the appellant was brought up by the decedent from early childhood, who fed, clothed and took care of her, her sister, brothers, and appellant's own child, without expecting anything in return. In addition to all this, the appellant received a share of \$100,000 received by the decedent on an oil lease, and, was named as a beneficiary in her will.

We are obliged to conclude that there is no clear and convincing evidence in the record, express or implied, showing that the grandfather or the decedent promised to compensate the appellant for the care rendered, although appellant may have expected it.

We further conclude that the claim for attorney's fees is not a proper claim against the estate of the decedent since it is a private

