



INTERIOR BOARD OF INDIAN APPEALS

Estate of Lloyd Andrew Senator

2 IBIA 102 (11/16/1973)

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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 LLOYD ANDREW SENATOR

(YAKIMA UNALLOTTED NO. 124 U2323)

IBIA 73-14

Decided November 16, 1973

Appeal from an Administrative Law Judge's order denying petition for rehearing.

Reversed and remanded.

Indian Probate: Marriage: Generally--Indian Probate: Marriage:
Indian Custom

Indian marriages are based upon the usages and customs of the
tribe or tribes' involved.

Indian Probate: Rehearing: Generally

A rehearing will be granted when the record does not support the
Judge's findings.

APPEARANCES: Law firm of Hovis, Cockrill, and Roy, for appellant, Pauline Wannasay Senator.

OPINION BY MR. WILSON

Pauline Wannasay Senator, hereinafter referred to as petitioner, through counsel, the law firm of Hovis, Cockrill, and Roy, has filed with this board an appeal from an Administrative Law Judge's decision denying her petition for rehearing.

The record indicates that the decedent, Lloyd Andrew Senator, died intestate January 15, 1972. A hearing to determine his heirs was held and concluded October 18, 1972, by Administrative Law Judge Robert C. Snashall. Thereafter, on December 7, 1972, an Order determining heirs was made and entered by the Judge.

In the Order of December 7, 1972, Edith Eli (Senator), among other things, was found to be the surviving spouse and entitled to an undivided one-half share of the decedent's estate.

On February 5, 1973, the petitioner filed a petition for rehearing wherein she alleged that the Judge in his Order of December 7, 1972, was in error in finding Edith Eli the lawful wife of the decedent and not the petitioner.

The Judge, under date of February 15, 1973, denied the petition in the following language:

Petitioner contends Edith Eli Senator was not the lawful surviving spouse of decedent, nor his wife at any time, since "they never intended to be husband and wife nor was there ever any exchange of gifts such as would be required to validate a relationship by Indian custom." The petition evidences a lack of understanding of Indian custom marriages and divorce.

Lloyd Andrew Senator and Edith Eli Senator cohabited together for a period of approximately four years; that during said period there was born to their union three presently living children. Since, stated briefly, an Indian custom marriage consists merely of cohabitation as man and wife it is inconceivable that anyone could reasonably argue the relationship of decedent and Edith Eli Senator could fail to evidence an intention to live together as husband and wife. Estate of Charlie Wilson, Unallotted Pawnee (41345-22). Although it is true many tribes have clearly defined marriage ritual, or have had in the past, no such requirement as exchanging of gifts pertains to creation and existence of an Indian custom marriage within the Yakima Indian nation. 25 CFR 11.28.

The Yakima Indian nation by resolution of December 16, 1953, abolished Indian custom marriage and divorce. Lloyd and Edith Senator formed their relationship prior to such action in approximately year 1952. They separated in approximately 1956 and therefore could have only obtained a divorce by anglicized [sic] means. This they did not do.

Petitioner contends further that she had no notice of the hearing of October 18, 1972. However, she admits in her affidavit filed in connection with the petition for rehearing her "continuing address has been P.O. Box 503, Pendleton, Oregon 97801" which is the address to which notice of said hearing was mailed on September 15, 1972. The notice of hearing was not returned to this office and she is therefore chargeable with constructive notice of said hearing.

In view of the foregoing conclusions the result of this estate would not have been changed if the petitioner

had in fact attended the hearing and testified in keeping with the matters contained in her affidavit attached to her petition and rehearing. Likewise, there is no indication that the result might be altered by granting a rehearing at this time.

The petitioner, as basis for her appeal from the Judge's denial of February 15, 1973, alleges as follows:

The basis for this appeal is the erroneous determination by the Department Administrative Law Judge that mere cohabitation is sufficient to establish a "ceremonial marriage" under the Tribal Customs of the Yakima Indian Nation existing prior to 1953. It is the position of Petitioner that the essence of the customs of the Yakima Tribe regarding ceremonial marriages as they existed prior to 1953 was an exchange of gifts between the families and absent such an exchange formally and publicly recognizing and sanctioning the marriage, there was no marriage but only an unsanctioned cohabitation. That an unsanctioned cohabitation was the relationship which existed between Lloyd Andrew Senator and Edith Eli. That after the separation of Lloyd Senator and Edith Eli, Lloyd Andrew Senator was free to marry and did marry your Petitioner in a lawful ceremony performed in Portland, Oregon, pursuant to license and under the laws of the State of Oregon and accordingly your Petitioner is a lawful surviving spouse of Lloyd Andrew Senator and Edith Eli is not.

No brief was filed by the appellees, Edith Eli et al., in answer to appellant's brief.

The only question for determination by this Board is:

Was "mere cohabitation as man and wife" sufficient to constitute a marriage according to the custom of the Yakima Indian Nation prior to December 16, 1953?

The courts have long recognized the validity of Indian custom marriages. See Cyr v. Walker, 116 P. 931 (1911); Buck v. Branson, 127 P. 436 (1912). It was held in the case of Cyr v. Walker, *supra*, p. 934:

* * * The courts of the American Union have, from an early time, recognized the validity of marriages contracted between members of any Indian tribe in accordance with the laws and customs of such tribe, where tribal relation and government existed at the time of the marriage, and there was no federal statute rendering the tribal customs or laws invalid. (Emphasis supplied)

The Department has long likewise recognized Indian custom marriages. Estate of Noah Bredell, 53 I.D. 78 (1930). In the Bredell case, the Department said:

Upon careful examination and consideration of the record I find no good reason for disturbing the action heretofore taken in the matter of heirship to the estate of Noah Bredell; and as Congress, the courts, the department, and in many instances the States, have all recognized the validity of Indian custom marriage and divorce, it necessarily follows that they must be recognized and treated as being of equal validity with ceremonial marriage and legal divorce. Hence the policy and practice heretofore in this regard are fully justified and should be followed until the enactment by Congress of legislation changing the situation. (Emphasis supplied)

In light of the Cyr v. Walker, *supra*; Buck v. Branson, *supra*; and Noah Bredell case, *supra*, and the cases cited therein, it must be concluded that the validity of Indian custom marriages are based

upon the usages and customs of the particular tribe involved. In the case at bar the question regarding the validity of decedent's marriage to Edith Eli cannot be answered as it is not possible to ascertain from the record what the marriage customs of the Yakima Indian Nation were prior to December 6, 1953. Based thereon, we find the Judge's conclusion that a valid Indian custom marriage existed between the decedent and Edith Eli in error. Accordingly, the Order denying petition for rehearing, dated February 5, 1970, must be reversed and the matter remanded for rehearing to determine whether the decedent was married to Edith Eli in accordance with the customs of the Yakima Indian Nation and for the issuance of appropriate findings and decision thereon.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, it is hereby ordered:

1. That the Administrative Law Judge's order denying petition, dated February 15, 1973, IS REVERSED.
2. That the matter herein is REMANDED to the Administrative Law Judge for the purpose, after the parties in interest have been duly notified, of conducting a rehearing to determine the validity of the decedent's Indian custom marriage to Edith Eli and for the

issuance of appropriate findings and decision based upon the evidence presented during said proceedings.

//original signed
Alexander H. Wilson, Member

I concur:

//original signed
Mitchell J. Sabagh, Member