



INTERIOR BOARD OF INDIAN APPEALS

Estate of Charles First Sound, a.k.a. Charles Track No. 2

2 IBIA 159 (01/29/74)

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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF CHARLES FIRST SOUND,

a/k/a CHARLES TRACK NO. 2

(Deceased Fort Peck Allottee No. 3550)

IBIA 74-5 and Supp. to 72-13

Decided January 29, 1974

Appeal by Raymond Track from the Order Determining Heirs After Reopening of Estate, Disallowing Claim and Directing Distribution, entered April 11, 1973, by Administrative Law Judge William E. Hammett.

Affirmed.

Indian Probate: Appeal: Generally

Where an appellant fails to specify any error made by the Administrative Law Judge in his findings of fact, conclusions of law, or order, and, upon review of the record the Board finds substantial evidence to support such findings, the decision and order of the Administrative Law Judge will be affirmed.

Indian Probate: State Law: Generally

Under Montana statute, R.C.M. 1947, § 91-404, pertaining to inheritance to and from illegitimate children, a father may not inherit from his illegitimate child unless (1) the father, after marrying the mother has adopted the illegitimate into his own family, or (2) the father, after marrying the mother of the illegitimate, acknowledges his paternity.

APPEARANCES: Raymond Track, of Wolf Point, Montana, pro se.

OPINION BY MR. DOANE

Factual and Procedural Background

Charles Track, also known as Charles Afraid of His Track, Fort Peck Indian Allottee No. 1106, sometimes hereinafter referred to as, "the father," died April 30, 1965. Said decedent, during his lifetime, was married three times. His first wife bore him one child who died in infancy. He had five daughters and two sons by his second and third wives. During the third marriage, one Lena First Sound, also known as Tena First Sound and also as Tena Bearskin First Sound, to whom Mr. Track was never married,

bore him an illegitimate son. The illegitimate son, named Charles First Sound, Fort Peck Indian Allottee No. 3550, also known as Charles Track #2, is sometimes hereinafter referred to as, “the son.”

The son predeceased the father, having died intestate, unmarried and without issue on April 12, 1952. The father never adopted the son, or brought him into his home, or in any other manner contributed to his care or support.

In the course of the probate of the son’s estate, which consisted solely of his allotment of Indian trust lands upon which oil was discovered, the Examiner of Inheritance, on January 12, 1953, determined that half of the son’s estate was inherited by the father and the other half by the mother, the aforesaid Lena First Sound. An Order for Distribution of the son’s estate in equal shares to the mother and father was thereupon duly issued.

Subsequently, after the father’s death in 1965, substantial controversy developed among the father’s heirs regarding the distribution of his estate. One of the disputes which arose during the probate proceedings involved the validity of a claim against the father’s estate by Lena First Sound for reimbursement of a

proportionate share of support provided by her to the illegitimate son during his lifetime. Her claim was allowed by the Examiner in the amount of \$27,000 and ordered to be paid from the royalties derived from the oil production realized from a lease of the lands allotted to the son. 1/

An appeal was ultimately taken to this Board from a decision of the Secretary, dated June 29, 1971, affirming the Examiner's decision with respect to Lena's claim as well as with respect to other issues. The matter before the Board was designated as the Estate of Charles Track, Deceased Fort Peck Allottee No. 1106, Probate No. K-61-69-S, and was assigned Docket No. IBIA 72-5. In its decision, dated March 15, 1972, 1 IBIA 216, 79 I.D. 83, the Board questioned the correctness of the determination by the Examiner, in the probate proceeding of the son's estate, that the father was a legal heir of the illegitimate and entitled to one-half of the estate. 2/ Among other things, the Board concluded in such decision that, since the son died intestate the Montana statute pertaining to inheritance rights to and from illegitimate children

1/ In allowing this claim, the Examiner, among other things, stated: "This is in lieu of the claim for not only the full amount of all royalties received from the property, before and after decedent's death, but also the title to the minerals which this examiner is powerless to award."

2/ See Estate of Charles Track a/k/a Charles Afraid of His Track, 1 IBIA 216, 288, 79 I.D. 83, 89 (1972).

applied, 3/ and construed such statute to require the marriage of the parents of the illegitimate as a factor prerequisite to establishing a right in the father to inherit from the estate of the illegitimate. 4/

Based upon the foregoing conclusions of law and the factual background outlined above, and pursuant to the authority reserved to the Secretary in 25 CFR 1.2 and 43 CFR 4.242(h), 5/ the Board ordered a reopening of the Estate of Charles First Sound, deceased Fort Peck Allottee No. 3550. The Board directed, in substance, that the reopening was to afford all interested parties an opportunity to present evidence and legal argument, if any they might have, why the half interest from the Charles First Sound allotment obtained by Charles Track should not be deleted as an asset from the estate of Charles Track, and why the entire allotment should not be awarded to Lena First Sound in lieu of her claim against the Estate of Charles Track for the care and support of Charles First Sound.

3/ Ibid. 1 IBIA 216, 229; 79 I.D. 83, 89.

4/ Ibid. 1 IBIA 216, 234; 79 I.D. 83, 91.

5/ These regulations permit the Secretary (Board of Indian Appeals) to reopen an estate after three years have elapsed from the date of entry of a final decision in a probate proceeding for the correction of a manifest injustice.

Pursuant to such Order, Administrative Law Judge, 6/ William E. Hammett, after due notice to all interested parties, did reopen such estate and held a hearing, September 15, 1972. At such hearing, some of the heirs of Charles Track, including Appellant, appeared in person and others appeared by counsel. After considering the evidence and arguments presented, the Judge concluded that Charles Track, the father, was not an heir at law of Charles First Sound, the son, and therefore, was never entitled to inherit any trust property from the estate of Charles First Sound. Accordingly, on April 11, 1973, the Judge entered his Order Determining Heirs After Reopening of Estate, Disallowing Claim and Directing Distribution. It is from such Order that Appellant herein has taken this appeal.

Contentions of Appellant

In substance, Appellant contends that there was a "common Indian marriage" between Charles Track and Lena First Sound in accordance with tribal custom and that the affirmance of the Decision and Order of the Administrative Law Judge would work an injustice upon the Appellant and his family.

6/ The title, "Examiner of Inheritance," was officially changed to "Administrative Law Judge" pursuant to 38 F.R. 10939 (May 3, 1973, effective Aug. 19, 1972).

Issue Presented on Appeal

Whether the Administrative Law Judge erred by holding that Charles Track, the father, was not a legal heir of his illegitimate son, Charles First Sound, and therefore, not entitled to any inheritance from such son's estate.

Discussion

We have reexamined the legal conclusion reached in our decision of March 15, 1972, 7/ to the effect that, under Montana law, a marriage must take place between the father and mother of an illegitimate child in order to establish a legal right in the father to inherit from the illegitimate's estate. Neither Appellant, nor any other party in this proceeding, has cited any legal authority or persuaded us to the contrary. We, therefore, adhere to such previous holding.

Upon review of the record, the Board finds no evidence whatever, or any proffer of evidence, by Appellant or any other interested party, to the effect that Charles Track was at any time married to the mother of his acknowledged son, Charles First Sound.

7/ See n. 3, supra.

All of the parties, the attorneys, and public officials involved in the probate of the estate of Charles Track, seemed to accept as fact, without question, that Charles First Sound was born out of wedlock to Lena First Sound while Charles Track was still married to his third wife, Mary Parnell. Although the record is clear that Charles Track never contributed to the care and support of such child, there is substantial evidence that he did acknowledge publicly, before a Tribal Council, the paternity of such child. However, the fact of acknowledgment of paternity, by itself, is not sufficient to confer upon the father any entitlement in the estate of his illegitimate son in the absence of a marriage to the mother.

The Board takes official notice, particularly, of the testimony of Elizabeth Brown, daughter of Charles Track, presented before the Examiner of Inheritance on June 16, 1965, in the course of the probate proceedings of the estate of Charles Track. At page five of the transcript of her testimony, counsel states, "The Examiner wants to know if Charles Track was ever married to Lena First Sound?" The witness, Elizabeth Brown, replies, "No, she wasn't married to him." On the same day in the same proceeding, another witness, Thomas Buckles, at pages eight and nine of the same transcript, testified that he had known Charles Track, "since

we were both born” (for 82 years); that he and Charles Track were first cousins; that he was acquainted with the marriages, children, and family of Charles Track; that he was a disinterested witness and not expecting anything from the estate; that he had heard the testimony given by Elizabeth Brown concerning the family of Charles Track; and that such testimony was “all correct.”

The Appellant, Raymond Track, was given every opportunity to present evidence and legal argument to prove his assertion that Charles Track was married to Lena First Sound. He failed to do so. Consequently, the Board finds that Appellant’s contention here amounts to nothing more than a self-serving declaration and is without any evidentiary support whatsoever.

On the basis of the records of the above-entitled matter and the estate of Charles Track, the Board finds that Charles Track was never married to Lena First Sound, by an Indian common marriage or otherwise, and that Charles First Sound was the son of Charles Track and Lena First Sound, born out of wedlock. We, further, find that administrative due process has been accorded all the interested parties.

No other issue having been raised in this appeal, we, therefore, conclude that the Findings of Fact, Conclusions of

Law, and Order of Judge Hammett were correct, and further, that he did not err in holding that Charles Track was not a legal heir of his illegitimate son, Charles First Sound, and not entitled to any inheritance from such son's estate.

Order

WHEREFORE, 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 Order Determining Heirs After Reopening of Estate, Disallowing Claim and Directing Distribution, entered April 11, 1973, in the above-entitled matter by Judge Hammett, be, and the same HEREBY IS, AFFIRMED;

(2) That a copy of this decision, together with a copy of Judge Hammett's aforesaid Order of April 11, 1973, be inserted into the official departmental file in the matter of the Estate of Charles Track, a/k/a Charles Afraid of His Track, Deceased Fort Peck Allottee No. 1106, Probate No. K-61-69-S, Docket No. IBIA 72-5; and

