



INTERIOR BOARD OF INDIAN APPEALS

Estate of Mollie Kinsman Pomona

3 IBIA 232 (01/31/1975)



United States Department of the Interior

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

ESTATE OF MOLLIE KINSMAN POMONA (Deceased Unallotted Mono Indian)

IBIA 75-15

Decided January 31, 1975

Petition to reopen.

Granted.

1. Indian Probate: Reopening: Waiver of Time Limitation

To avoid perpetuating a manifest injustice, a petition to reopen filed more than three years after the final determination of the heirs will be granted where compelling proof is shown that the delay was not occasioned by the lack of diligence on the part of the petitioning parties.

APPEARANCES: Annie Kinsman Flores, pro se.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

Annie Kinsman Flores, hereinafter referred to as petitioner, on June 12, 1974, filed with Administrative Law Judge William E. Hammett a petition to reopen the above-entitled matter.

The petition was properly referred to this Board pursuant to the provisions of 43 CFR 4.242(h).

The petitioner sets forth the following reasons in support of her petition to reopen the estate:

(1) That the decedent, Mollie Kinsman Pomona, died testate, having executed a last will and testament on June 15, 1966; and

(2) That petitioner had no notice or knowledge of the hearing held in this estate by the Hearing Examiner at Sacramento, California, on November 15, 1967; and

(3) That petitioner had no knowledge of the will or its contents until January 16, 1974;
and

(4) That this is the earliest opportunity petitioner has had to present the will for
consideration by the Department; and

(5) That petitioner is one of the devisees under the decedent's purported last will and
testament.

[1] After careful consideration of the record the Board finds that the petitioner has not
been dilatory in pursuing or asserting her rights in the decedent's trust estate through the last
will and testament in question. The Department has heretofore reopened trust estates where the
petitioning parties have not been dilatory in asserting their rights. Estate of George Mortimer
Cummings, 2 IBIA 112, 80 I.D. 789 (1973); Estate of Alvin Hudson, IA-P-17 (May 29, 1969).

In view of the reasons hereinabove set forth, the petition should be granted and the
matter remanded to the Administrative Law Judge for further proceeding along the lines
hereinafter set forth.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian
Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition of Annie K. Flores, dated
June 7, 1974, is HEREBY GRANTED and the estate herein is HEREBY REOPENED and
the matter REMANDED to the Administrative Law Judge, Room E-2740, 2800 Cottage
Way, Sacramento, California 95825, for further proceedings to (1) determine the validity of the
purported last will and testament dated June 12, 1966 (2) determine the rights of the devisees
thereunder (3) for whatever other action the Judge may deem appropriate and necessary in the
matter, and (4) to issue an appropriate final order disposing of the estate.

Done at Arlington, Virginia.

//original signed
Mitchell J. Sabagh
Administrative Judge

I concur:

//original signed
David J. McKee
Chief Administrative Judge