



INTERIOR BOARD OF INDIAN APPEALS

Estate of Virginia Kemp Penn Lyon Webster Woodhull Stabler

3 IBIA 256 (02/06/1975)



United States Department of the Interior

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

ESTATE OF VIRGINIA KEMP PENN
LYON WEBSTER WOODHULL STABLER
(OMAHA UNALLOTTED)

IBIA 75-26

Decided February 6, 1975

Petition to reopen.

Denied.

1. Indian Probate: Reopening: Waiver of Time Limitation

It is in the public interest to require Indian Probate proceedings be concluded within some reasonable time in order that property rights of heirs and devisees in Indian allotments be stabilized.

APPEARANCES: William C. Stanek, Esq., Counsel for Petitioner.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

This matter comes before the Board upon a petition for reopening of probate filed by William C. Stanek, Esq., for and in behalf of the petitioner, Genevieve Robinson, pursuant to 43 CFR 4.242.

The estate having been closed for more than three years the matter was properly forwarded to the Board by Administrative Law Judge Frederick W. Lambrecht in accordance with the provisions of 43 CFR 4.242(h).

At the outset, it is noted that the petition is being filed some seven years after the decedent's estate was probated. The decedent, according to the record, died intestate on August 18, 1965, leaving surviving her as her only heirs the following:

Morgan Stabler	Husband	3/12
Genevieve Robinson	Daughter	3/12
Jesse Penn	Son	3/12
Barbara Popewich	Granddaughter	3/12

In support of her petition to reopen the petitioner alleges among other things that:

- 1) The decedent entered into a purported marriage with Morgan Stabler by civil ceremony on November 27, 1962, in Dakota City, Dakota County, Nebraska.
- 2) A Decree of Divorce was entered in favor of the decedent from George Woodhull, Jr., in the District Court of Thurston County, Nebraska, on January 9, 1963, which did not become final until 6 months after the entry of said decree.
- 3) The apparent marriage was invalid and void, not being recognized by the State of Nebraska nor the Omaha Tribe under Tribal law.
- 4) Morgan Stabler had never at any time been the legally recognized spouse of the decedent and as a result never received nor held any right, title or interest in the decedent's allotment or homestead interest.

The petitioner in no way alleges why she permitted seven years to pass following the final order in the decedent's estate before filing her Petition to Reopen, nor did she attempt to reconcile her present position with the testimony that she gave at the original hearing held in this matter.

The Department of the Interior over the years has consistently adhered to a strict policy of refusing to entertain appeals not timely filed. Estate of Ralyen Rabyea Voorhees, 1 IBIA 62 (1971). The same policy is applicable to a petition for reopening filed beyond the three-year limitation provided in the regulations, Estate of George Minkey, 1 IBIA 1 (1970), affirmed on reconsideration, 1 IBIA 56 (1970).

The Board is cognizant and mindful of the Secretary's power under 25 CFR 1.2 to waive and make exceptions to his regulations in Indian probate matters. However, such authority or power will be exercised only in cases where the most compelling reasons are present. Estate of Charles Ellis, IA-1242 (April 14, 1966); Estate of George Minkey, *supra*. Reopening of estates will be permitted only where it appears that the petitioner has not been dilatory in seeking his remedy. Estate of Alvin Hudson, IA-P-17 (May 29, 1969); Estate of George Squawlie (Squally), IA-1231 (April 5, 1966); Estate of George Minkey, *supra*; Estate of Sophie Iron Beaver Fisherman, 2 IBIA 83, 80 I.D. 665 (1973).

It is clear from the record that the petitioner received notice of the order entered April 28, 1967, which order was consistent with the testimony given by the petitioner at the hearing

held May 19, 1966, as it pertained to the marital status of the decedent, specifically, that the decedent married George Woodhull, Jr., about 1939 and divorced him about 1943.

It is the finding of the Board that the petition for reopening falls short of meeting the requisite standards or criteria set forth above and consequently does not justify the exercise of Secretarial discretion to waive the three-year limitation contained in 43 CFR 4.242(a). Accordingly, the petition must be denied.

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 to reopen filed by Genevieve Robinson, is DENIED and the Order Determining Heirs entered under date of April, 28, 1967, is AFFIRMED.

This decision is final for the Department.

//original signed

Mitchell J. Sabagh
Administrative Judge

I concur:

//original signed

Alexander H. Wilson
Administrative Judge