INTERIOR BOARD OF INDIAN APPEALS

Estate of Ke-I-Ze or Julian Sandoval

4 IBIA 115 (08/18/1975)

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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 KE-I-ZE OR JULIAN SANDOVAL

IBIA 75-42 Decided August 18, 1975

(Supp. IBIA 73-8)

Petition to Reopen

Denied.

1. Indian Probate: Reopening: Generally

   A petition for the reopening of an heirship proceeding filed 12 years after the Department had determined the heirs of the Indian decedent will be denied as untimely.

2. Indian Probate: Reopening: Generally

   A request for a reopening filed years after the expiration of the period allowed

will be denied even where the request for reopening is made by one who was not given an opportunity to be heard and who would clearly be entitled to the relief sought if his petition had been timely made.

3. Indian Probate: Reopening: Waiver of Time Limitation

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

APPEARANCES: Michael Celestre, Attorney for Chee Joe Sandoval, and Robert Cardin of White and Cardin, for Bessie Sandoval, et al.

OPINION BY ADMINISTRATIVE JUDGE WILSON

The above-entitled matter comes before this Board on a Recommended Order on Petition for Reopening made by Administrative Law Judge Richard B. Denu on January 28, 1975.

The record indicates an order determining heirs was made in the estate of Ke-i-ze or Julian Sandoval on February 24, 1953, wherein Bessie Sandoval, wife, and twelve children, Samuel Sandoval, Merrill Sandoval, Roger Sandoval, Beulah S. Kelly, Franklin D. Sandoval, Denny Sandoval, Mabel C. Sandoval, Daniel Sandoval, Bert Sandoval, Betsy Sandoval, Nellie Sandoval, and Benjamin Sandoval, hereinafter referred to as respondents, were found to be the legal heirs of the decedent.

On November 22, 1972, Chee Joe Sandoval, hereinafter referred to as petitioner, through his attorney, Michael Celestre, filed a petition to reopen the estate with the Administrative Law Judge.

The petition was submitted to this Board by the Administrative Law Judge on December 11, 1972, with his recommendation that the estate be reopened. On October 17, 1973, a Preliminary Procedural Order issued from this Board, conditionally reopening the case. The matter was then remanded to the Administrative Law Judge for further proceedings.

The petitioner on February 4, 1974, filed a petition for reopening, copy whereof is attached and made a part hereof, as directed by the said procedural order.

Respondent, in answer to the petition on May 2, 1974, denied all allegations set forth therein except for that part of paragraph 1 admitting that Julian Sandoval was a Navajo, Census Number 12253.

The matter was scheduled for hearing at Gallup, New Mexico, on July 17, 1974, at which time petitioner and respondents appeared with their attorneys and witnesses.

From the testimony taken at the hearing the Administrative Law Judge in his order of January 28, 1975, found as follows:

> 1. Petitioner Chee Joe Sandoval has established convincingly that he is a son of the decedent, Julian Sandoval.
>
> 2. Petitioner was not remiss, or guilty of laches for not acting sooner in the matter of attempting to reopen the estate of Julian Sandoval.

The Judge further in his order recommended:

> I recommend that the above entitled matter be declared reopened to permit modification of the Order Determining Heirs.
>
> I further recommend that the Order Determining Heirs aforesaid, of February 24, 1953, be modified and amended and corrected to include petitioner Chee Joe Sandoval as a son and heir and that shares of issue of decedent be changed accordingly.

The Board, like the respondents, is not in agreement with the findings of the Administrative Law Judge as set forth above.

The petitioner has failed to substantiate his claim by clear and convincing proof that he is a son of the decedent. His claim is based largely on the uncorroborated testimony of his mother, Maggie Joe Morgan, that she and the decedent had established relations resulting in the birth of the petitioner on September 5, 1932. Her testimony further indicated she continued to live with decedent at least three years after the petitioner's birth. This appears to be in direct conflict with the decedent's surviving spouse's testimony that she and decedent left Crown Point as early as 1934.

Herbert Cowboy's testimony in support of Mrs. Morgan's contention lacks any real or corroborative effect. His testimony merely indicates he saw Mrs. Morgan and decedent at Crown Point on some occasions. Mr. Cowboy's testimony wholly fails to establish cohabitation, or for that matter, even the maintenance of a home.

The petitioner's testimony that he had met the decedent in either 1938 or 1939 at the age of six or seven years appears

questionable in view of the fact that the decedent had moved from Crown Point some four or five years before. Moreover, the foregoing is in conflict with the petitioner's testimony on cross-examination that he had never met the decedent and that he did not know who Julian Sandoval was. Aside from the foregoing, the petitioner could add very little in support of his claim.

At most the testimony given in support of the petitioner's claim is self-serving, fraught with discrepancies regarding critical time elements and uncorroborated. Clearly, the petitioner has failed to establish the alleged Father-Son relationship by clear and convincing proof and the Board so finds. The burden of doing so was incumbent upon the petitioner.

Assuming arguendo that the alleged relationship had been established by the weight of the evidence, the petitioner's lack of diligence in asserting his rights for some ten years in itself would be sufficient and adequate reason to deny his petition.

The Department has consistently adhered to the rule of denying petitions for reopening where petitions have not been timely filed.

[1] A petition for the reopening of an Indian heirship proceeding filed 12 years after the Department had determined the heirs of the Indian decedent will be denied as untimely. Estate of Annie Red Horse Davis, IA-1517 (March 16, 1966).

[2] A request for a reopening filed years after the expiration of the period allowed will be denied even where the request is made by one who was not given an opportunity to be heard and who would be clearly entitled to the relief sought if his petition had been timely made. Estate of Jesse Swan, IA-1268 (April 28, 1966).

Moreover, the Department has long adhered to the policy of leaving undisturbed Indian probate decisions of long standing to avoid disrupting titles or creating clouds thereon.

[3] 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. Estate of Hah-Tah-E-Yazza (Navajo Allottee No. 011358, Deceased), 2 IBIA 93, 80 I.D. 709 (1973). To hold property rights of heirs of allotted lands forever subject to challenge would not only constitute an abuse, but would seriously erode the property

rights of those whose heirship in lands had already been determined. Estate of Samuel Picknoll (Pickernell), 1 IBIA 168, 78 I.D. 325 (1971).

For the reasons hereinabove stated the petition for reopening filed by Chee Joe Sandoval must be denied, notwithstanding the Administrative Law Judge's recommendation to the contrary.

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 Chee Joe Sandoval be, and the same is hereby DENIED.

This decision is final for the Department.

Done at Arlington, Virginia.

//original signed
Alexander H. Wilson
Administrative Judge

I concur:

//original signed
Mitchell J. Sabagh
Administrative Judge

Attachment

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(Supp. IBIA 73-8)

CHEE JOE SANDOVAL Petitioner,	)	
vs.	)	PETITION FOR REOPENING
EXAMINER OF INHERITANCE, Respondent.	)	

Petitioner, Chee Joe Sandoval, as his petition for reopening the decision by the Examiner of inheritance under 43 CFR §4.242(h) alleges,

1. That Mr. Julian Sandoval, census number 12253, and Mrs. Maggie Joe Morgan, census number 10869, were Navajo Indians.

2. That on or about December 5, 1931, Mr. Julian Sandoval and Mrs. Maggie Joe Morgan cohabited together as husband and wife according to the custom and manner of the Navajo Tribe. The petitioner, census number 10868A, was the issue of such cohabitation and was born on September 5, 1932. A true and correct copy of petitioner's census card is attached hereto, marked Exhibit "A", and incorporated by reference herein.

3. That according to 25 U.S.C.A. §371, §5, 26 Stat. 795, petitioner for the purpose of determining the heirs of Mr. Julian Sandoval for the descent of land must be deemed the legitimate issue of Mr. Julian Sandoval.

4. That Mr. Julian Sandoval died intestate on August 30, 1952. That Mr. Sandoval so died was recorded by Mr. Edward S. Stewart, Examiner of Inheritance in an order determining heirs. A true and correct copy of said order is attached hereto, marked page 91 of Exhibit "B", and incorporated by reference herein.

5. That an Examiner of Inheritance, Mr. Edward S. Stewart,

was appointed by the Secretary of the Interior to determine the heirs of said Julian Sandoval and determine their respective shares of Mr. Julian Sandoval's estate.

6. That Mr. Julian Sandoval had an interest in allotments Nos. 213, 011392, 011389, 011381 and in the unalloted case of Robert Sandoval.

7. That patents to said allotments have been issued by the Secretary of the Interior in the name of the allottees in trust for the sole use and benefit of the allottees by virtue of 25 U.S.C.A. §348. That the Secretary of the Interior is the trustee and the allottees are the beneficiaries of said trust. That said trust has been extended by the order of the President of the United States.

8. That notice of the hearing to be held by the Examiner of Inheritance was sent to several of the beneficiaries of the trust on February 12, 1953, page 104 of Exhibit "B". However, notice was not sent to petitioner at that time and petitioner had no notice of the Hearing to Determine Heirs or Probate the Will that was held on February 4, 1953 at the Phoenix Area Office, Phoenix, Arizona. Petitioner did not receive constructive notice of the hearing because he was in the Armed Forces of the United States in France at the time of his father's death and until after the hearing by the Examiner of Inheritance, as stated in petitioner's affidavit, marked Exhibit "C" and incorporated by reference herein.

9. That petitioner only recently became aware of his failure to be notified of the hearing and the failure of the Examiner of Inheritance to award petitioner his share of

Mr. Julian Sandoval's estate, as stated in "C".

10. That the Superintendent or other area field representative who had jurisdiction over Mr. Julian Sandoval's estate failed to adequately examine the records of the Bureau of Indian Affairs. But that if it is found that an adequate examination took place then the Bureau of Indian Affairs failed to adequately keep those records. For whichever the cause, the name and last known address of petitioner was not forwarded to the Examiner of Inheritance as one of the presumptive heirs of decedent, Mr. Julian Sandoval. In not doing so the Superintendent or other area field representative failed to comply with the predecessor section of 43 CFR 4.210(b)(2)(ii).

11. That by failing to send notice of the Hearing to Determine Heirs to petitioner, the Examiner of Inheritance failed to comply with the predecessor section of 43 CFR 4.211(b).

12. That the Order Determining Heirs, page 91 of Exhibit "B" in failing to recognize the share of petitioner violated 25 U.S.C.A. §371, §5, 26 Stat. 795.

13. That because petitioner lacked either actual or constructive notice of said hearing, the Examiner of Inheritance failed to have jurisdiction to render a valid order under 25 U.S.C.A. §372, Mullane v. Central Hanover B. & T. Co., 70 S. Ct. 652, 339 U.S. 306, 94 L. Ed. 865 (1950).

Wherefore, petitioner prays that the decision of the Examiner of Inheritance be set aside as without jurisdiction and the Examiner of Inheritance reopen the decision under 43 CFR 4.242(h). Petitioner then prays that another hearing be ordered to determine the heirs of Mr. Julian Sandoval under

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43 CFR §4.200 et seq.

//original signed
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Petitioner
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//original signed
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(Supp. IBIA 73-8)

CHEE JOE SANDOVAL,	)	
Petitioner,	)	
	)	
vs.	)	AFFIDAVIT
	)	
EXAMINER OF INHERITANCE,	)	
Respondent.	)	
	)	
STATE OF NEW MEXICO	)	
COUNTY OF McKINLEY	)	ss.

CHEE JOB SANDOVAL, being first duly sworn, upon oath deposes and says:

I first became aware that my father had died in 1962 at a Yei be cha Dance at Dalton Pass, New Mexico. In 1969 or 1970 because of my contact with the Bureau of Indian Affairs I asked the Census Office in Crownpoint to give me a copy of my father's census card.

When I saw the census card and discovered that my name was not listed, I then asked to see my father's file but I was refused permission. I then contacted DNA Legal Assistance about how to obtain copies of my father's records at the Bureau of Indian Affairs. Through their assistance I obtained those records and noticed that my father's land had been distributed to some of the heirs.

Only in 1972 did I become aware of the procedure for correcting the mistake made in the probate of my father's allotment.

//original signed
CHEE JOE SANDOVAL

SUBSCRIBED AND SWORN to before me this 4th day of February, 1974.

My Commission Expires:
10-13-77

//original signed
NOTARY PUBLIC

IBIA 75-42
(Supp. IBIA 73-8)

CHEE JOE SANDOVAL,	)	
Petitioner,	)	
	)	
vs.	)	AFFIDAVIT
	)	
EXAMINER OF INHERITANCE,	)	
Respondent.	)	
	)	
STATE OF NEW MEXICO	)	
COUNTY OF McKINLEY	)	ss.

MAGGIE J. MORGAN, being first duly sworn, upon oath deposes and says:

That about a year prior to the birth of my son Chee Joe Sandoval, Julian Sandoval and I began to live together as man and wife according to the Navajo custom. We were living together in my house at Dalton Pass.

Chee Joe Sandoval was born in 1932 and was the son of Mr. Julian Sandoval. Julian Sandoval and I continued to live together for two more years. In about 1934 Mr. Sandoval left my home and began to live with another woman.

About four months after Julian left me I went to the Chapter Officers in Crownpoint and asked them to help me make Julian Sandoval support his child. At the hearing held by the chapter officers Julian Sandoval agreed to support his son, Chee Joe Sandoval.

//original signed
MAGGIE MORGAN

SUBSCRIBED AND SWORN to before me this 4th day of February, 1974.

My Commission Expires:
10-13-77

//original signed
NOTARY PUBLIC