



INTERIOR BOARD OF INDIAN APPEALS

Estate of Oscar Bubuna Deloria

5 IBIA 34 (02/26/1976)



United States Department of the Interior

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

ESTATE OF OSCAR BUBUNA DELORIA

IBIA 76-2

Decided February 26, 1976

Petition to reopen.

Granted and prior order determining heirs modified.

1. Indian Probate: Reopening: Waiver of Time Limitation

An estate which has been closed for 13 years may be reopened under extraordinary circumstances to add an omitted heir to the original determination of heirs, notwithstanding the estate is no longer intact, so as to protect the omitted heir if additional property of the decedent is later discovered and to provide a consistent heirship record.

APPEARANCES: James Margadant, Esq., on behalf of petitioner.

OPINION BY BOARD MEMBER HORTON

In this action the Board grants a petition to reopen the estate of Oscar Bubuna Deloria, Yankton-Sioux Allottee No. 579, filed September 21, 1973, under the provisions of 43 CFR 4.242(h), by Donald Howe, Crow Creek Sioux Unallotted No. 566, an adopted son of the deceased. Further, on the basis of the recommendation of Administrative Law Judge Vernon J. Rausch submitted to the Board on July 17, 1975, the original decree in this matter is modified without further proceedings to include Donald Howe as an heir at law of Oscar Bubuna Deloria.

Oscar Bubuna Deloria died on September 17, 1961. After a hearing conducted July 9, 1962, it was ruled August 3, 1962, that the decedent was survived by two heirs at law-- Evangeline Day Deloria, his widow, and Lawrence Francis Deloria, a son. Each took one-half of the decedent's estate.

Evangeline Day Deloria died testate on November 10, 1973, prior to administrative action on Donald Howe's petition to reopen the estate of Oscar Bubuna Deloria. On May 15, 1974, the heirs at law of Evangeline Deloria and devisees under her will met to discuss a compromise of the pending appeal in the estate of Oscar Bubuna Deloria in order that an expeditious settlement of the Evangeline Deloria estate could be accomplished.

The foregoing meeting resulted in a compromise agreement by three of the four heirs at law of Evangeline Deloria in which they agreed to deed directly to Donald Howe, the undisputed fourth heir at law, that portion of Evangeline Deloria's estate which Donald Howe would have been entitled to had he successfully pursued his petition to reopen the estate of Oscar Bubuna Deloria. This agreement was approved by the Administrative Law Judge and incorporated in his December 16, 1974, Order Approving Will and Decree of Distribution entered in the estate of Evangeline Deloria, Probate No. IP TC337R 74.

[1] Over 13 years have passed since the original order involving the Oscar Bubuna Deloria estate was entered. Administrative Law Judge Rausch advises that although this estate is no longer intact, a modifying order which identifies Donald Howe as an heir at law of his adoptive father will protect the petitioner in the distribution of any additional property discovered to be a part of the estate of Oscar Bubuna Deloria. Such an order will also provide a consistent record of heirship in the Department's probate of the Oscar Deloria and Evangeline Deloria estates.

It further appears to the Board that the compromise agreement of parties approved by the Administrative Law Judge in the estate of Evangeline Deloria has served to correct the injustice suffered by the petitioner when he was omitted as an heir in the probate of the estate of Oscar Bubuna Deloria.

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 the Estate of Oscar Bubuna Deloria filed by Donald Howe on September 21, 1973, is hereby GRANTED and the Order Determining Heirs dated August 3, 1962, be, and the same is hereby MODIFIED to designate and include Donald Howe, adopted son of the decedent, as a lawful heir entitled to a one-third share of decedent's estate, the other two-thirds to be shared equally by Evangeline Day Deloria (now deceased) and Lawrence Francis Deloria. As a result of the December 16, 1974, Order Approving Will and Decree of Distribution entered in the Estate of Evangeline Deloria, this Order observes that the Petitioner has already obtained all other relief to which he was entitled in the Estate of Oscar Bubuna Deloria. Accordingly, this order is limited to the relief hereinabove set forth, i.e., to protect Petitioner in the distribution of additional property of the

decendent that may be discovered and to provide a consistent record of heirship in the Estate of Oscar Bubuna Deloria.

Done at Arlington, Virginia.

//original signed

Wm. Philip Horton
Member

I concur:

//original signed

Alexander H. Wilson
Administrative Judge