



INTERIOR BOARD OF INDIAN APPEALS

Estate of Mary Soldierwolf

5 IBIA 146 (07/13/1976)



United States Department of the Interior

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

ESTATE OF MARY SOLDIERWOLF

IBIA 76-25

Decided July 13, 1976

Petition to reopen estate.

Dismissed.

1. Indian Probate: Reopening: Standing to Petition for Reopening

The petitioners, grandsons of the testatrix who are not heirs at law, cannot be considered to be persons with "an interest in the estate" which is the recognized standard governing who may seek reopening.

2. Indian Probate: Reopening: Generally

Pursuant to 43 CFR 4.242(h), the Board is not required to reopen an estate closed for more than three years unless a probable manifest injustice can be shown.

3. Indian Probate: Wills: Generally

It is not a valid basis for overturning an Indian's will that certain relatives were not included in a devise of property.

APPEARANCES: William Marshall Harris, petitioner, for himself and Thomas Charles Harris, a minor.

OPINION BY BOARD MEMBER HORTON

Mary Killnight Soldierwolf, deceased Northern Cheyenne Allottee No. 1048, died testate on January 25, 1966. Her final will, dated June 12, 1964, was approved by Hearing Examiner (now Administrative Law Judge) David J. McKee by order dated January 12, 1968, following

a probate hearing held April 20, 1967, at Lame Deer, Montana. As no petition for rehearing was filed by any party within 60 days of the order approving will, the Hearing Examiner advised the Superintendent of the Northern Cheyenne Agency on March 14, 1968, to distribute the estate in accordance with the final order.

On August 13, 1971, a petition for rehearing was filed with Hearing Examiner Daniel S. Boos, signed by Stella Soldierwolf Harris a/k/a Stella D. Harris, daughter of the testatrix. The petition for rehearing was treated as a petition for reopening and was denied as untimely by order dated October 18, 1971. Stella Harris filed an appeal from this order on December 16, 1971, which was dismissed by order of the Board dated March 31, 1972.

The present petition for reopening is brought by two sons of Stella Soldierwolf Harris, grandsons of the testatrix, named William Marshall Harris (a/k/a William Matthew Harris) and Thomas Charles Harris, a minor. This petition was docketed by the Board on February 2, 1976.

The Board has considered the arguments submitted in support of the above petition and we find that it must be denied for the reasons set forth below.

[1] By memorandum dated January 28, 1976, Administrative Law Judge Boos recommended that the Board deny the petition for reopening on grounds that the petitioners lack necessary standing to petition. Judge Boos correctly points out that under the applicable state laws of intestate succession, the sons of Stella Soldierwolf cannot be considered heirs at law of Mary Soldierwolf, petitioners' deceased grandmother, since Stella is a surviving daughter of the testatrix. Thus, it is Stella and not her sons who would stand to gain additional inheritance if the 1964 will of the testatrix is invalidated. At the outset, therefore, we find that the petitioners in this case cannot be considered to be persons with "an interest in the estate" which is the recognized standard governing who may seek reopening. See 43 CFR 4.242(a).

[2] Irrespective of our finding that the petitioners lack standing to seek reopening of this estate, we find that there is no likelihood that any manifest injustice will occur if the Mary Soldierwolf estate is not reopened. Pursuant to 43 CFR 4.242(h), the Board is not required to reopen an estate closed for more than 3 years unless a probable manifest injustice can be shown. Estate of David Marksman, 5 IBIA 56 (decided March 29, 1976).

The injustice alleged by petitioners is that the 1964 will approved in this case was executed through duress or fraud and that Mary Soldierwolf lacked testamentary capacity. These questions were sufficiently explored by the Hearing Examiner who conducted

the probate hearing in 1967. The testimony of witnesses who signed the will in the presence of the testatrix squarely refutes the claim now being raised regarding the willingness and ability of Mary Soldierwolf to devise her property. (See transcript of hearing, p. 6-8).

[3] Petitioners express dissatisfaction with the fact that Thomas Charles Harris was not included as a beneficiary in Mary Soldierwolf's will and that he had no notice of the March 24, 1967, probate hearing. Because Thomas Charles Harris was born July 26, 1965, it would not have been possible for him to be named in the 1964 final will of the testatrix. Further, it is not a valid basis for overturning an Indian's will that certain relatives were not included in the devise of property. Estate of Shows in a Crowd, A-24813 (February 25, 1948).

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 for Reopening filed by William Marshall Harris and Thomas Charles Harris and docketed by the Board on February 2, 1976, is hereby DISMISSED.

This decision is final for the Department.

Done at Arlington, Virginia.

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Wm. Philip Horton
Member of the Board

//original signed

Alexander H. Wilson
Administrative Judge