



INTERIOR BOARD OF INDIAN APPEALS

Estate of Asmakt Yumpquitat (Millie Sampson)

8 IBIA 1 (01/31/1980)

Judicial review of this case:

Affirmed, *Lewis v. Andrus*, No. 512 F. Supp. 1096 (E.D. Wash. 1981)



# United States Department of the Interior

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

## ESTATE OF ASMAKT YUMPQUITAT (MILLIE SAMPSON)

IBIA 79-29

Decided January 31, 1980

Appeal from an Order of Administrative Law Judge Robert C. Snashall denying petition for rehearing.

Affirmed.

1. Indian Probate: Wills: Testamentary Capacity: Generally

The burden of proof as to testamentary incapacity in Indian probate proceedings is on those contesting the will.

2. Indian Probate: Wills: Testamentary Capacity: Generally

The fact that one is aged, eccentric and occasionally forgetful or confused does not render such person incompetent to make a will.

3. Indian Probate: Wills: Undue Influence

In order to vitiate a will, there must be something more than mere influence. There must have been undue influence at the time of the testamentary act which interfered with the free will of the testator and prevented the exercise of judgment and choice.

4. Indian Probate: Appeal: Administrative Law Judge as Trier of Facts

The weight and credibility of evidence are matters properly considered by an Administrative Law Judge in the first instance.

His findings, when in accord with the preponderance of the substantial and probative evidence adduced, will not be disturbed.

5. Indian Probate: Appeal: Administrative Law Judge as Trier of Facts

Where there is sufficient evidence to support the findings and the testimony is conflicting, the determination of witness credibility and the findings of fact of the Administrative Law Judge will not be disturbed because only he had the opportunity to hear and observe witnesses.

6. Indian Probate: Wills: Undue Influence

Mere opportunity to unduly influence and suspicion thereof is insufficient to invalidate a will.

7. Indian Probate: Evidence: Newly Discovered Evidence

An Administrative Law Judge may properly deny a petition for rehearing based upon newly discovered evidence which is the same in nature as that previously considered and if heard would be merely cumulative of evidence already presented.

APPEARANCES: Pat Andreotti, Esq., for the Estate of Charles Y. Sampson, Sr., appellant; W. James Kennedy, Esq., for Louis Sohapp, Jr., respondent.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

This is an appeal from Judge Snashall's order of May 14, 1979, denying petition for rehearing. The petition sought rehearing alleging new evidence to support the allegation that testatrix was unduly influenced into revoking a previous will and executing a new will on December 28, 1976, disinheriting her son, Charles Y. Sampson, Sr., petitioner.

Decedent, an allotted member of the Yakima Tribe died testate on May 17, 1977, at age of approximately 109 years, possessed of certain trust or restricted property on the Yakima Reservation, including a substantial amount of cash in an IIM account.

Subsequent to hearings held at Yakima, Washington, on February 24 and November 30, 1978, respectively, the Judge issued an order on March 16, 1979, determining decedent's heirs at law in accordance with the laws of the State of Washington and applicable Departmental regulations. In addition the Judge found from the weight of the evidence that the decedent's last will and testament dated December 28, 1976, was properly made and executed and should be approved, objections to said will not having been sustained by the evidence.

Petition for rehearing was timely filed by decedent's son Charles Y. Sampson, Sr. Petitioner sought rehearing alleging new evidence that decedent was unduly influenced into revoking a former will dated August 3, 1973, and making a second will dated December 28, 1976, disinheriting said petitioner. The petition was supported by sworn affidavits of Louie Charles and Louise Charles Kahclemet and an unsigned affidavit of Teresa Ann Pierre who had previously testified at the hearing held November 30, 1978.

The Judge issued an order on May 14, 1979, denying the petition for rehearing wherein he found among other things after construing the two affidavits and the unsigned statement, that there would still be insufficient evidence to overcome the clear and concise testimony of noninterested persons as to the capability of the testatrix and the lack of any inference of undue influence.

A timely appeal was filed by Anita Sampson Lewis, daughter of petitioner, Charles Y. Sampson, Sr., who died on June 19, 1979, on behalf of his estate. In the notice of appeal counsel for appellant alleged the Administrative Law Judge committed error in his March 6, 1979, order approving will by concluding that objections to decedent's December 28, 1976, will had not been sustained and further, concluding that the asserted new evidence submitted with the petition for rehearing together with the evidence presented at the previous hearings was insufficient to establish the element of undue influence and thus requires invalidation of said will.

In addition to the grounds asserted in appellant's notice of appeal, counsel asserts the Judge's order of March 6, 1979, failed to comply with the Administrative Procedure Act, specifically section 5 U.S.C. § 557(c) thereof, which provides in pertinent part that:

The record shall show the ruling on each finding, conclusion or exception presented. All decisions including initial, recommended, and tentative decisions are a part of the record and shall include a statement of --

(A) findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law or discretion presented on the record.

Counsel for appellant estate asserts that the finding as set forth on page 2 of the Judge's order of March 6, 1979, was a generalized and conclusive statement which does not constitute findings and conclusions and reasons therefor on the material issues presented at the hearing as required by 5 U.S.C. § 557(c) and is not sufficient to apprise the parties, including the appellant, of the basis for the approval of the December 28, 1976, will and the denial of appellant's objections thereto.

Let us turn first to appellant's objection that the finding set forth in the order of March 6, 1979, did not comply with the provision of the Administrative Procedure Act, referred to, supra.

The purpose of administrative findings of fact is to furnish parties and reviewing court with sufficiently clear basis for understanding premises of law, adjudications and orders. Gilbertville Trucking Co. v. United States, 196 F. Supp. 351 (D.C. Mass. 1961).

We cannot agree that Judge Snashall's finding in his March 6, 1979, order violated 5 U.S.C. § 557(c) of the Administrative Procedure Act. Although the finding may not have proved satisfactory to appellant, we find it to be clear and concise enough to furnish a clear basis for understanding the Judge's decision. This is further substantiated after a careful review of the petition for rehearing which addressed itself to the finding in question and to the issue derived therefrom, namely, whether undue influence was exerted upon the decedent testatrix to make and execute the December 28, 1976, will.

Assuming arguendo that the finding in question did not meet the A.P.A. requirement, Departmental regulations provide an interested party an opportunity to petition for rehearing, thereby continuing jurisdiction in the Judge to reconsider the matter with or without a hearing as he may deem appropriate. The provision entitled "Rehearing" in pertinent part provides: "The Administrative Law Judge shall then reconsider with or without hearing as he may determine, the issues raised in the petition; he may adhere to the former decision, modify or vacate it, or make such further order as is warranted." 43 CFR 4.241(c).

On May 14, 1979, the Judge issued an order denying petition for rehearing wherein any ambiguity that may have existed was amply clarified relating to the issue of undue influence.

We direct our attention now to the contentions that the Judge committed error in approving the December 28, 1976, will by concluding that objections to the decedent's will had not been sustained and further that the purported new evidence submitted with the petition for rehearing together with the evidence presented at the previous hearing was insufficient to establish undue influence and thus requires invalidation of said will.

The Board has carefully reviewed the record in the case at bar, including transcripts of testimony elicited at the hearings held on February 24, 1978, and November 30, 1978, and concludes that the findings of Judge Shashall are supported by a preponderance of the substantial and probative evidence adduced therefrom.

Judge Shashall viewed the witnesses and evaluated their testimony. He gave great weight to the testimony of the Bureau of Indian Affairs employees who participated in the preparation and execution of decedent's last will and testament dated December 28, 1976. Based on their testimony regarding the mental capacity and capabilities of the decedent, Judge Shashall described her as a "most remarkable testatrix."

Teresa Pierre testified that she observed the decedent for 4 days and nights after her daughter Lena Sohappy passed away in December 1976. She further testified that decedent cried a lot and was really upset. She testified that during this period Melvina Aleck and Helen Scott asked decedent on several occasions what she was going to do with her property now that her daughter Lena was dead.

Charles Sampson, Sr., decedent's son, testified that he would have to tell decedent who he was before she recognized him during the period immediately after Lena Sohappy's death. Charles Sampson, Sr., further testified that he did not think that decedent made the December 26, 1976, will of her own free mind and that he did not know why decedent left him and the children of Kelly Sampson (decedent's predeceased daughter) out of the December 28, 1976, will.

Anita Lewis, daughter of Charles Sampson, Sr., and granddaughter of the decedent testified that immediately after Lena Sohappy's death, the decedent was in grief and upset and she said, "Aunt Lena is going to come back pretty soon and then we are going to dig roots." Anita Lewis further testified that "sometimes decedent's mind would go back like twenty years or so." Anita further testified that during that period she would have to tell decedent who she was.

No testimony other than the testimony of the Bureau of Indian Affairs employees was presented to establish whether or not the decedent was influenced, unduly or otherwise, during the period the December 28, 1976, will was made and executed.

[1] The burden of proof as to testamentary incapacity in Indian probate proceedings is on those contesting the will. Estate of William Cecil Robedeaux, 1 IBIA 106, 78 I.D. 234 (1971); In re Moulton's Estate, 465 P.2d 419 (Wash. 1970).

[2] The fact that one is aged, eccentric, and occasionally forgetful or confused does not render such person incompetent to make a will. In re Hansen's Estate, 401 P.2d 866 (Wash. 1965).

[3] In order to vitiate a will, there must be something more than mere influence at the time of the testamentary act, which interfered with the free will of the testatrix and prevented the exercise of judgment and choice. Dean v. Jordan, 79 P.2d 331 (Wash. 1938); Estate of John J. Akers, IA-D-18 (Feb. 26, 1968), 77 I.D. 268 (Sept. 9 1970) aff'd, Akers v. Morton, 333 F. Supp. 184 (D. Mont. 1971).

[4] The weight and credibility of evidence are matters properly considered by an Administrative Law Judge in the first instance. His findings, when in accord with the preponderance of the substantial and probative evidence adduced, will not be disturbed. Estate of Roland Loyd (Mobeadlema) Botone, 7 IBIA 177, 180 (1979); United States v. Del De Rosier, 8 IBLA 407, 79 I.D. 709 (1972).

[5] Where there is sufficient evidence to support the findings and the testimony is conflicting, the determination of witness credibility and the findings of fact of the Administrative Law Judge will not be disturbed because only he had the opportunity to hear and observe witnesses. Estate of Crawford J. Reed, 1 IBIA 326, 79 I.D. 621 (1972).

[6] Mere opportunity to unduly influence and suspicion thereof is insufficient to invalidate a will. Estate of Noctusie (Willie) Whiz, 3 IBIA 161, 81 I.D. 657 (1974).

[7] An Administrative Law Judge may properly deny a petition for rehearing based upon newly discovered evidence which is the same in nature as that previously considered and if heard would be merely cumulative of evidence already presented. Estate of Rosalind No Ear (L.S. Buffalo or Brooks) Brown, IA-T-2 (Mar. 31, 1967).

We find that the alleged new evidence contained in the sworn affidavits of Louie Charles and Louise Charles Kahclemet is cumulative of evidence previously adduced. Taken as a whole, the record does not support the allegations set forth in said affidavits. In addition, the unsigned statement of Teresa Pierre, whose testimony at the probate hearing was characterized as unreliable by Judge Shashall, fails to satisfy the minimum of standards for supporting a petition for rehearing.

Considering all of the credible evidence as a whole, we find that the testamentary capacity of the decedent was not disproven.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals under 43 CFR 4.1, the order of Administrative Law Judge Robert C. Snashall dated March 6, 1979, is affirmed. This decision is final for the Department.

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Mitchell J. Sabagh  
Administrative Judge

We concur:

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//original signed  
Frank Arness  
Administrative Judge

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//original signed  
Wm. Philip Horton  
Chief Administrative Judge