



INTERIOR BOARD OF INDIAN APPEALS

Estate of Charles Hall, Sr.

8 IBIA 73 (05/14/1980)

Denying reconsideration of:

8 IBIA 53

Judicial review of this case:

Affirmed, *Hall v. Andrus*, No. CV-80-67-GF (D. Mont. Aug. 26, 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 CHARLES HALL, SR. : Order Denying Petition for
: Reconsideration
:
: Docket No. IBIA 79-35 (Supp.)
:
: May 14, 1980

ORDER

On May 12, 1980, Charles Hall, Jr. and Ruby Martin Archdale, filed a "Petition for Rehearing to Remand" directed to this Board's decision dated March 28, 1980, approving the will of Charles Hall, Sr. See 8 IBIA 53, 60-64 (1980). While Departmental rules permit "reconsideration" of decisions, no provision is made for "rehearing." 43 CFR 4.21(c). The "Petition for Rehearing to Remand" is therefore considered to be a petition for reconsideration.

Petitioners assert the decision of the Board was "arbitrary and capricious" because it is based upon unsupported conjecture that the will offered for probate in this estate was prepared by some agency other than "Montana Legal Services." Petitioners also offer argument concerning the employees, equipment, and organization of "Montana Legal Services" and an affidavit from an attorney reciting he practiced, together with two others at Wolf Point, Montana, in the "Huxsol Building," and that neither he nor any of the other lawyers in the building prepared a will for Charles Hall, Sr. at any time. Additionally, they assert the evidence shows Charles Hall was not hospitalized on the date the will was signed.

These matters were argued and briefed previously: the identical issues now sought to be raised by petitioners were before the Board at the time it made its decision on March 28, 1980. Petitioners do not point to any specific matters of fact or law that were overlooked or misapplied by the Board. The assertion inherent in the petition that the Board's opinion necessitates a finding the questioned will was drawn by a certain named employee of "Montana Legal Services" is without basis. No such finding was made in the decision of March 28, 1980. No evidence in the record establishes a basis for petitioners' assumption that the later establishment of a local funded legal program made the preparation of decedent's will impossible. See footnote 8, at 8 IBIA 61.

Finally, petitioners assert that this Board's decision erroneously reversed findings concerning "credibility" made respecting the

testimony of Mrs. Akers, the drafter of the challenged will. 1/ This contention ignores the effect of the testimony of the other attesting witness to the will: her unchallenged testimony was to the effect that the will was properly executed. 8 IBIA at 55 (and see: footnote 11, 8 IBIA 62, 63). The Board's decision rests upon the evidence of record which established that decedent executed a valid will--a showing that petitioners failed to rebut by circumstantial evidence not directly relevant to the issue in the case. Footnote 15, 8 IBIA 64.

Accordingly, the petition for reconsideration of the Board's decision of March 28, 1980, is denied.

//original signed
Franklin Arness
Administrative Judge

We concur:

//original signed
Wm. Philip Horton
Chief Administrative Judge

//original signed
Mitchell J. Sabagh
Administrative Judge

1/ While initial findings concerning credibility of witnesses are entitled to great weight, they are not, as petitioners suggest, beyond agency review. N.L.R.B. v. Pacific Intermountain Exp. Co., 228 F.2d 170 (8th Cir 1956), cert. denied 351 U.S. 952 (1956); Stuckey v. Flemming, 188 F. Supp. 1 (1959).