



INTERIOR BOARD OF INDIAN APPEALS

Estate of Cecelia Hummingbird French

8 IBIA 102 (06/20/1980)



United States Department of the Interior

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

ESTATE OF CECELIA HUMMINGBIRD FRENCH

IBIA 80-4

Decided June 20, 1980

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

Reversed in part and remanded.

1. Administrative Procedure: Administrative Law Judges--Indian Probate: Hearing: Full and Complete

When a party to an Indian probate proceeding appears without an attorney, the Administrative Law Judge has a duty not to be a mere umpire, but to see that all relevant facts are developed.

2. Administrative Procedure: Administrative Law Judges--Indian Probate: Hearing: Full and Complete

Where a party to an Indian probate proceeding was not represented by counsel and was obviously unprepared for proper presentation of testimony and ignorant of significance of the facts, the Administrative Law Judge had the duty to see that all relevant facts and circumstances, both favorable and unfavorable to the parties, were brought out.

3. Indian Probate: State Law: Generally

Under Oklahoma law, if the decedent shall have been married more than once, the spouse at the time of death shall inherit of the property not acquired during coverture with such spouse only an equal part with each of the living children of decedent.

APPEARANCES: Vera Lou Pohlemann Billy and Raynelle French, appellants, pro sese.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

Cecelia Hummingbird French, unallotted Kiowa Indian, died intestate on November 10, 1977, possessed of trust or restricted property on the Kiowa-Comanche-Apache Reservation.

After hearing held at Anadarko, Oklahoma, on June 5, 1977, at which neither the appellants nor other children of decedent were represented by counsel, the Administrative Law Judge issued an order on June 22, 1979, determining in accordance with the laws of the State of Oklahoma the heirs of said decedent and their respective shares in decedent's estate to be

Raymond Lewis French	Husband	1/3
Ronald Gene Pohlemann	Son	1/12
Vera Lou Pohlemann Billy	Daughter	1/12
Gary Lynn Pohlemann	Son	1/12
Brenda Gale French	Daughter	1/12
Raynelle French	Daughter	1/12
Bradley French	Son	1/12
La Rue French	Daughter	1/12
Brian French	Son	1/12

Vera Lou Pohlemann Billy and Raynelle French filed what was considered to be a timely petition for rehearing, alleging therein that Judge Snashall erred in his June 22, 1979, order by determining that Raymond Lewis French, surviving spouse, was entitled to an undivided one-third interest in the entire estate of the decedent. They contend that all the property interests that their mother inherited prior to her marriage to Raymond French should have been divided equally among all heirs as a matter of law.

The record establishes the decedent had been married twice, first to Bill Ahdoah, a.k.a. Alfred Pohlemann, which ended in divorce in or about 1954; that decedent entered into a common law marriage with Raymond French in or about 1959; and that said marriage was still in effect when Cecelia Hummingbird French died.

Judge Snashall denied said petition on August 10, 1979, holding that the purported petition failed to meet the substantive requirements of applicable regulations and should on that ground alone be denied. He cited 43 CFR 4.241 as controlling. The Judge further held that petitioners offered no legal basis upon which a distribution could be made, concluding that he was bound in his determination of heirs by Title 25, section 348, of the United States Code and by Title 84, section 213, of the Oklahoma Statutes.

The petitioners filed a timely appeal, reciting grounds similar to those included in said petition, referred to, supra.

The Board agrees with Judge Snashall that the petition did not comport with the technical requirements of 43 CFR 4.241. However, this does not preclude the Board from exercising the inherent authority of the Secretary of the Interior to correct a manifest injustice or error where appropriate. See 43 CFR 4.290 as amended, February 9, 1978. The Board finds that Judge Snashall's denial of appellants' petition for rehearing was not based on an objective evaluation of the hearing to determine heirs. As more fully set forth below, we find the hearing in question was not full and complete.

[1] When a party to an Indian probate proceeding appears without counsel, the Administrative Law Judge has a duty not to be a mere umpire, but to see that all relevant facts are developed. See Estate of Peahner Mable Mahseet, 5 IBIA 27 (1976); Stewart v. Cohen, 309 F. Supp. 673 (D.C. N.Y. 1970). This duty was not upheld in the present case. Moreover, the notice of hearing issued to all parties did not advise them of their right to counsel. (The standard notice of hearing form was revised in 1974 to include reference to this right.)

[2] Where a party to an Indian probate proceeding was not represented by counsel, and was obviously unprepared for proper presentation of testimony and ignorant of significance of the facts, the Administrative Law Judge had the duty to see that all relevant facts and circumstances, both favorable and unfavorable to the parties, were brought out. Cf. Coyle v. Gardner, 298 F. Supp. 609 (D.C. Haw. 1969).

From a review of the record it appears that appellants were unprepared for the proper presentation of testimony and were ignorant of significance of the facts. Moreover, it appears that appellants were not aware or familiar with Departmental procedural requirements. In addition, the scanty verbatim transcript raises grave doubt that all relevant facts and circumstances, both favorable and unfavorable to claimants, were brought out by the Administrative Law Judge. Estate of Joe (Jose) Elvino Juancha, 7 IBIA 294 (1979).

An Administrative Law Judge has a duty to develop a complete record. This was not done here.

Instead, immediately prior to the culmination of the hearing the Judge noted that four of decedent's surviving children were under the age of 18 and appointed Vera Billy as guardian ad litem to represent their interests at said hearing. The Judge then asked, "Is there anything any of you wish to add into the record?" Vera Billy responded, "I was wondering. Raymond (French) told us that he was going to get half of what my mother owned and we kids had to split the other half and we were wondering if he could do that." The Judge responded,

