



INTERIOR BOARD OF INDIAN APPEALS

Estate of Robert M. Morin

9 IBIA 188 (03/05/1982)



United States Department of the Interior

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

ESTATE OF ROBERT M. MORIN

IBIA 81-29

Decided March 5, 1982

Appeal from order determining heirs by Administrative Law Judge David J. McKee.

Affirmed.

1. Indian Probate: Evidence: Insufficiency of

At a hearing ordered upon a petition for reopening an estate to permit evidence to be taken to rebut an initial determination of heirship, the burden of establishing that the initial order was in error is upon the petitioners. Proof that decedent was survived by a son offered by the mother of the child and supported by a State birth certificate and the judicial admission of decedent that the child was his son was not overcome by statements of other relatives of decedent that decedent had denied paternity and conducted himself as though he were childless.

APPEARANCES: Appellants Margaret Hope, Shirley A. Girard, Eleanor Wilhelm, and J. Gordon Frost, pro sese; appellee Robert C. Morin, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On September 4, 1977, decedent Robert M. Morin, the beneficial owner of Indian trust land, died intestate at Poplar, Montana, at the age of 65. Following a probate hearing conducted April 11, 1978, an order determining appellee to be decedent's son and sole heir thus entitled to the entire estate of Robert M. Morin was entered by the Department on June 6, 1978. Upon petition of a niece, Mary McClammy, the estate was reopened to receive testimony concerning decedent's relationship to appellee. On July 22, 1980, a hearing was held at Wolf Point, Montana, at which petitioner and Margaret Hope, Doris Turcotte, Willard Morin, Eleanor Wilhelm, and Isabelle Mickelson, appeared personally and by counsel.

Petitioners Isabelle Mickelson (sister of decedent), Mary McClammy (niece), Willard Morin (nephew), Doris Turcott (niece), Eleanor Wilhelm (niece), and Margaret Hope (niece) testified that the decedent never admitted that he was the father of Robert C. Morin and, further, that decedent did not support the child financially. Petitioners admitted that decedent was married to appellee's mother, but questioned whether decedent had access to his wife during the 9-month period preceding appellee's birth in 1942.

Appellee testified that he was decedent's son as shown on his State birth certificate and school records. He called his mother, Mary Jean Gladnue, who testified that appellee was the natural son of decedent, born during her marriage to decedent. Appellee offered into evidence a 1944 complaint for divorce, verified by decedent, alleging that decedent, plaintiff in the action, was the father of appellee. 1/

The Administrative Law Judge below cautioned appellants at the beginning of the hearing on reopening that it was incumbent upon them to show by competent evidence that the order of distribution of June 6, 1978, which they questioned, was in error. On December 2, 1980, when he entered his order affirming the earlier order of distribution, he correctly found that appellants' evidence had failed to prove their assertion that appellee is not decedent's child and that their evidence was legally insufficient to refute the proof of paternity offered by appellee, as well as the legal presumption that a child born during wedlock is the legitimate issue of the husband and wife.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the order determining heirs is affirmed.

This decision is final for the Department.

//original signed
Franklin D. Arness
Administrative Judge

We concur:

//original signed
Wm. Philip Horton
Chief Administrative Judge

//original signed
Jerry Muskrat
Administrative Judge

1/ Also offered into evidence was the actual divorce decree which held "Robert Morin, Jr." to be the issue of the marriage of Robert and Jean Morin. In addition, official notice was taken by the Administrative Law Judge of the decedent's non-trust probate proceedings in the 15th Judicial District of the State of Montana, Roosevelt County, Montana, which found Robert C. Morin to be the son and sole heir of Robert M. Morin.