



INTERIOR BOARD OF INDIAN APPEALS

Estate of Alice N. Whiteman Rides Pretty Hayden

12 IBIA 203 (03/21/1984)



United States Department of the Interior

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

ESTATE OF ALICE N. WHITEMAN RIDES PRETTY HAYDEN

IBIA 83-4, 83-13

Decided March 21, 1984

Consolidated appeals from two orders denying reopening issued by Administrative Law Judge Daniel S. Boos in IP BI 414B 79.

Affirmed.

1. Indian Probate: Adoption: Crow Tribe

Unless an estate was being probated when the act was passed, under the Crow Adoption Act of March 3, 1931, 46 Stat. 1494, an individual may not be recognized as an adopted child of a deceased member of the Crow Tribe of Montana unless the adoption was by a judgment or decree of a state court, or was a written adoption approved by the Superintendent of the Crow Agency and recorded in a book kept by him for that purpose.

APPEARANCES: Emmett Old Bull, Lodge Grass, Montana, for himself and Floyd Old Bull, Joyce Bear Below, Genevieve Smells, and Serena Bishop; Andrew M. Small, Esq., Harlem, Montana, for Myrtle Marilyn Thomas; Vicki W. Dunaway, Esq., Billings, Montana, for intervenors. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE MUSKRAT

On November 1, 1982, and January 10, 1983, the Board of Indian Appeals (Board) received separate notices of appeal from two orders denying petitions to reopen the estate of Alice N. Whiteman Rides Pretty Hayden (decedent). The orders were issued by Administrative Law Judge Daniel S. Boos on August 31 and November 4, 1982. The Board consolidated the appeals by order dated January 13, 1983. On January 17, 1983, the Board granted a motion to intervene. The parties to this proceeding are identified in the "Background" section, *infra*. For the reasons discussed below, the Board affirms both orders denying reopening.

Background

Decedent, Crow Allottee No. 147, was born in 1902 and died of natural causes on February 21, 1979. At the time of her death, decedent owned the full equitable title to 2,443.79 acres of Indian trust land on the Crow Reservation in the State of Montana. This land was valued for probate purposes at \$244,379. In addition, decedent owned fractional interests in another

4,880.12 acres, also on the Crow Reservation, valued for probate purposes at \$94,041.85. Because decedent had no funds in her Individual Indian Money account when she died, her trust estate consisted only of this real property, with a total valuation of \$338,420.85.

A hearing to probate decedent's Indian trust estate was held on June 25, 1979. In an order dated August 2, 1979, the Administrative Law Judge approved decedent's November 17, 1978, will 1/ under which she left all of her trust property to her husband, John Hayden (Hayden), who was found to be non-Indian. The order further held that, had decedent died intestate, her entire estate would have passed to Hayden as her surviving spouse and sole heir under the Montana laws of intestate succession. 2/ See 25 U.S.C. §§ 348, 372 (1976). No petition for rehearing or notice of appeal was filed disputing any finding in this order.

Hayden died on October 17, 1980. His estate is presently in probate in the District Court of the 13th Judicial District of the State of Montana, in and for the County of Big Horn. Filings made by various parties in the present proceeding indicated that there was initially no evidence that Hayden had any heirs at law or that he left a valid will. It therefore originally appeared that his entire estate, consisting principally of the land inherited from decedent, would escheat to the State of Montana.

On November 10, 1980, the Superintendent of the Crow Indian Agency, Bureau of Indian Affairs (BIA), filed a petition to reopen decedent's estate. The petition stated the Superintendent's desire "to prevent the subject real property from passing out of Trust Status, because the subsequent deceased heir, JOHN HAYDEN, claimed he was a Cherokee Indian." The Administrative Law Judge denied the petition on November 17, 1980, finding that although Hayden had testified at decedent's probate hearing that his father was Cherokee, there was no evidence to substantiate this claim and the petition failed to present such evidence. Furthermore, the Administrative Law Judge noted that Hayden had not objected to the finding that he was non-Indian. No appeal of this determination was taken.

On July 13, 1981, 15 blood relatives of decedent sought information from the Crow Agency Superintendent on the status of decedent's estate and on the possibility of reopening the estate. The letter states that Hayden was non-Indian and expresses concern that decedent's estate would pass out of tribal jurisdiction. The letter was forwarded to the Administrative Law Judge

1/ Decedent had executed an earlier will on Jan. 3, 1958, in which she left property to her husband, a sister, and several nieces. This will was revoked by written revocation executed and witnessed on May 2, 1958, and approved as to form by Examiner of Inheritance Frances C. Elge on May 9, 1958. The revocation stated that, unless decedent later executed another will, she desired her property to pass to her heirs at law.

2/ The Administrative Law Judge found that decedent's only child, William Godley Rides Pretty, born May 31, 1920, had died on Mar. 21, 1923. Hayden testified at the hearing that although decedent had raised a sister's daughter, she had not adopted her and had returned the girl to her mother (Tr. 2).

who, on August 7, 1981, informed the Superintendent that the estate had passed to Hayden under the provisions of decedent's will. Furthermore, he noted that the same result would have been reached if decedent had not executed a will. No appeal was taken of the Administrative Law Judge's determination.

On July 19, 1982, Emmett Old Bull, Floyd Old Bull, Joyce Bear Below, Genevieve Smells, and Serena Bishop (Old Bull appellants) filed a petition to reopen decedent's estate. The petition sought a determination that Hayden was Indian and that these appellants were his heirs. In support of the petition, the Old Bull appellants alleged that Hayden may have been of Cherokee or other Indian ancestry and, in any case, Hayden had been adopted by Indian custom by Pup Plays With Himself, an enrolled Crow who was the grandfather of these appellants. The Old Bull appellants further alleged that as Hayden's nieces and nephews, they were his heirs at law.

The petition was denied on August 31, 1982. The Administrative Law Judge found that no sufficient grounds for reopening had been shown and that the alleged adoption was not valid under the terms of the Crow Adoption Act of March 3, 1931, 46 Stat. 1494. On November 1, 1982, the Old Bull appellants appealed this order to the Board.

On October 29, 1982, the Crow Agency Superintendent filed a second petition to reopen the estate for the purpose of determining that Hayden was a member of the Crow Tribe. In support of this petition, the Superintendent attached a copy of Crow Tribal Resolution No. 83-1, approved October 9, 1982, which declared Hayden to be a member of the tribe. The Administrative Law Judge denied this petition on January 17, 1983. Once again, no appeal was taken from this order.

On November 1, 1982, Myrtle Marilyn Thomas (Thomas) filed petition to reopen the estate, alleging that she was decedent's adopted daughter. The petition was denied on November 4, 1982, on the grounds that no proper adoption had taken place under the terms of the Crow Adoption Act, *supra*. Thomas appealed this decision to the Board on January 3, 1983. This appeal was consolidated with the appeal filed by the Old Bull appellants by Board order of January 13, 1983.

On January 17, 1983, Idaho Thompson Purce, for himself and as guardian for Betty Bernice Thompson, and Anna Mae Thompson (intervenors), moved the Board to intervene in this proceeding on the grounds that they are the heirs of Hayden and that their interests would be affected by the two appeals before the Board. The motion was granted the same day.

Only intervenors filed a brief in this matter.

Discussion and Conclusions

In the interest of ensuring that full and fair consideration is given to all positions in this proceeding, the Board will assume that each party had standing under 43 CFR 4.242 to petition for the reopening of decedent's estate.

These appeals raise questions concerning two alleged adoptions. The first question, whether Thomas was the adopted daughter of decedent, must be answered through construction of the Crow Adoption Act, supra:

That hereafter no person shall be recognized as an adopted heir of a deceased Indian of the Crow Tribe of Indians of Montana unless said adoption shall have been by a judgment or decree of a State court, or by a written adoption approved by the superintendent of the Crow Indian Agency and duly recorded in a book kept by him for such purpose: Provided, That adoption by Indian custom made prior to the date of approval hereof involving probate proceedings now in process of consummation, shall not be affected by this Act.

As noted by the Administrative Law Judge in denying Thomas' petition for reopening, this statute was construed in Estate of Walks With A Wolf, 65 I.D. 92 (1958). That opinion states:

[T]he 1931 act is a special act, confined in its applicability to the Crow Indians of Montana. The purpose of this legislation (S. 6098) is clearly reflected by the report on its companion bill (H.R. 16862), i.e., "to create an orderly procedure in connection with the inheritance rights of children adopted by members of the Crow Tribe of Indians." (H.R. Rep. No. 2604, 71st Cong., 3d Sess.)

It was alleged in Walks With A Wolf that an Indian custom adoption occurred in or around 1911. In accordance with BIA instructions approved December 21, 1936, Walks With A Wolf executed a document entitled "Confirmation of Adoption to comply with the act of March 3, 1931 (46 Stat. 1494)," in which he expressed his desire to confirm and record the earlier adoption. A similar document was executed by his putative adoptive daughter. These documents, however, were not approved by the Superintendent of the Crow Agency. The documents were found inadequate to establish an adoption under the act.

[1] In reaching this result, Walks With A Wolf states at page 94: "Absent compliance with these provisions [of 46 Stat. 1494], and with the exception of Indian custom adoptions made prior to the date of approval of the 1931 act involving probate proceedings then in the process of consummation, no person could be recognized as an adopted heir of a deceased Crow Indian." (Emphasis in original.) The opinion concludes at page 96 that "a contrary construction would supply in effect an adoption status which does not exist, and the avowed purpose of the 1931 act to create an orderly procedure in connection with the inheritance rights of persons adopted by members of the Crow Tribe of Indians would not be achieved, but uncertainty and confusion would result." Cf. Estate of Victor Young Bear, 8 IBIA 130, 87 I.D. 311 (1980), rev'd on reconsideration, 8 IBIA 254, 88 I.D. 410 (1981); Estate of William (Konoa) Jackson, 6 IBIA 52 (1977) (both cases make similar findings concerning adoptions governed by 25 U.S.C. § 372a (1976), which was enacted on July 8, 1940, and closely parallels 46 Stat. 1494).

The Board finds this precedent conclusive. Decedent's estate was not in process of consummation at the time the 1931 act was passed. Consequently,

any adoption of Thomas must have been made or confirmed in accordance with the provisions of that act. Thomas has presented no evidence that she was adopted by order of a state court. She has submitted no documentary evidence of an adoption by Indian custom and has not disputed the Administrative Law Judge's finding that the adoption book maintained by the Crow Agency Superintendent does not record an adoption of her by decedent. Therefore, the November 4, 1982, order denying Thomas' petition to reopen on the grounds that the petition is without merit is affirmed.

The second adoption question raised by these appeals is whether Hayden was adopted by Pup Plays With Himself. The Board will assume for purposes of this decision that such a determination can be made in the context of a reopening of decedent's estate. ^{3/}

The alleged adoption of Hayden is also controlled by the Crow Adoption Act. The analysis and reasoning applied to Thomas' purported adoption requires the same finding that no adoption of Hayden acceptable under 46 Stat. 1494 has been shown. Therefore, the Administrative Law Judge correctly denied that part of the petition to reopen decedent's estate filed by the Old Bull appellants that was based on the allegation that Hayden had been adopted by Pup Plays With Himself.

The Old Bull appellants further allege that Hayden was Indian by birth. ^{4/} The primary evidence offered in support of this allegation was gathered by the Crow tribal researcher after the Administrative Law Judge denied the Superintendent's first petition to reopen decedent's estate. The relevant facts are that Hayden was born somewhere in the East, perhaps Kentucky. He ran away from home at age 12 because of problems with his alcoholic father. He acknowledged a large percentage of Black blood, but claimed that his father or mother or both were part Cherokee or Choctaw. The researcher was able to find records indicating that a "John H. Hayden" was the descendant of an individual listed on the roll of Freedmen among the Cherokee. A "John H. Hayden" may also be descended from individuals with Cherokee blood. Whether this "John H. Hayden" is the "John Hayden" in this case is purely speculative.

^{3/} It is at least arguable that such a determination can be made only through reopening the Estate of Plays With Himself, D-36-55 (Feb. 25, 1955). The determination of heirs in that estate did not mention Hayden as an adopted son, but did list Melvin Pretty On Top as an heir through adoption. It would be expected that Hayden's relationship to Pup Plays With Himself would have been brought out when this estate was probated, especially if the relationship were common knowledge as is claimed in the present proceeding.

^{4/} Because it has been found that Hayden was not properly adopted by Pup Plays With Himself, even if Hayden was an Indian for whom the United States has an obligation to hold property in trust, the Old Bull appellants would not be entitled to participate in his estate. Instead, 25 U.S.C. § 373a (1976) would require the escheat of the land to the Crow Tribe, if there were no other heirs.

It is of course difficult to trace the ancestry of an individual when the sole clues are the memories of an unhappy 12-year old. The microfilm records searched by the researcher were incomplete, and apparently almost unreadable in places. However, the fact remains that, as the Administrative Law Judge found, there is no concrete evidence that Hayden was Indian. 5/ Consequently, that portion of the petition to reopen filed by the Old Bull appellants which alleged that Hayden was Indian was also properly denied. 6/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the August 31 and November 4, 1982, orders denying reopening issued by Administrative Law Judge Daniel S. Boos are affirmed.

//original signed
Jerry Muskrat
Administrative Judge

We concur:

//original signed
Bernard V. Parrette
Chief Administrative Judge

//original signed
Anne Poindexter Lewis
Administrative Judge

5/ The Administrative Law Judge unsuccessfully sought information from the Crow Agency Superintendent, BIA, on whether Hayden had ever participated in any distribution of tribal assets. There is no evidence that Hayden did participate as a member of the Crow Tribe, or that he was enrolled in or participated as a member of any other tribe, including the Cherokee or Choctaw.

6/ The findings that the two petitions to reopen this estate, filed by Thomas and by the Old Bull appellants, were properly denied disposes of this matter. However, the Board believes that a brief additional statement will clarify the status of decedent's estate. The finding that Hayden was non-Indian means that his estate was properly probated in Montana State court. The Board has been presented no evidence as to the alleged relationship between Hayden and intervenors. The determination of intervenors' claim is within the jurisdiction of the Montana Court. The result of this decision will probably be that a large number of acres will pass out of Indian trust status. The Board is not unaware of the potential impact on the tribe, but the result is required by law.