INTERIOR BOARD OF INDIAN APPEALS

Estate of James Howling Crane, Sr.

12 IBIA 209 (03/22/1984)

Reconsideration denied:
12 IBIA 257

United States Department of the Interior

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

ESTATE OF JAMES HOWLING CRANE, SR.

IBIA 83-20 Decided March 22, 1984

Appeal from an order after rehearing issued by Administrative Law Judge Sam E. Taylor in Indian Probate Nos. IP TU 23 P 81 and IP TU 29 P 82.

Affirmed as modified.

1. Indian Probate: Children, Illegitimate: Right to Inherit: Child from Father

   Under 25 U.S.C. § 371 (1976), an illegitimate Indian child is entitled to inherit from the person shown to be his father.

2. Indian Probate: Children, Illegitimate: Generally

   The status of an Indian child as illegitimate and the required proof of paternity are questions of Federal law.

3. Indian Probate: Secretary's Authority: Generally--Indian Probate: State Law: Generally

   The Department of the Interior is not bound by state court decisions in determining the heirs of a deceased Indian, but rather has the authority and responsibility to make an independent determination of the decedent's heirs. A state court decision may present persuasive evidence of heirship.

APPEARANCES: Amos E. Black III, Esq., Anadarko, Oklahoma, for appellants; appellees Georgia Ann Fletcher Emhoolah and Rita Fletcher Winstone, pro sese; Mark R. Wesner, Esq., Cordell, Oklahoma, for appellees Clyde K. Fletcher and Stella A. Fletcher. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE MUSKRAT

On March 18, 1983, the Board of Indian Appeals (Board) received a notice of appeal from James Howling Crane, Jr., Juanita Howling Crane Onco, and Letha Howling Crane Wanhee (appellants). The appeal was taken from a January 7, 1983, order on rehearing issued by Administrative Law Judge Sam E. Taylor concerning the probate of the estate of James Howling Crane, Sr. (decedent). The order affirmed a December 18, 1981, order determining that decedent's heirs were the three appellants in this case, and Georgia Ann Fletcher Emhoolah, Rita Fletcher Winstone, Clyde K. Fletcher, and Stella A.

Fletcher (present appellees). For the reasons discussed below, the Board affirms the order as modified by this opinion.

Background

Decedent, an unallotted Cheyenne, was born on July 27, 1903, and died intestate at Clinton, Oklahoma, on March 1, 1980, at the age of 76. At the time of his death, decedent's Indian trust property on the Cheyenne and Arapaho Reservation in Oklahoma was valued for probate purposes at approximately $185,000.

A hearing into decedent's estate was held on April 6, 1981, by Administrative Law Judge Daniel S. Boos. The family history data sheet compiled by the Bureau of Indian Affairs (BIA) indicated that decedent was survived by three children, appellants here. In addition, the sheet noted an allegation that decedent was also the father of Georgia Ann Fletcher and Rita Fletcher, two of the present appellees. Appellants testified that they were decedent's only children. One of the appellees appeared at the hearing. Judge Boos indicated at the conclusion of the hearing that he would find that appellants were decedent's only children.

On May 5, 1981, Judge Boos issued an interim order for payment of claims against decedent's estate and a notice of continuance. That order states:

> However, after the hearing the notices of hearing which had been sent to * * * [Georgia Ann Fletcher and Rita Fletcher] were returned by the postal service. Thus, they had no actual notice of the hearing. It would be futile to proceed without giving them an opportunity to appear, since any order issued under these circumstances would be subject to reopening at a later date [under 43 CFR 4.242].
>
> Accordingly, the case is hereby continued and will be set for hearing at sometime in the future * * *.

Pursuant to this order, a second hearing was held before Judge Taylor on October 1, 1981. All appellees except Stella A. Fletcher appeared at this hearing, at which additional evidence relevant to paternity was presented. This evidence included an order of the County Court of Custer County, Oklahoma, finding appellees to be dependent and neglected children and making them wards of the court. The order named James Howling Crane as the father of the children. On December 18, 1981, Judge Taylor issued an order giving full faith and credit to the court decree and finding that appellees were decedent's children and ordering his estate to be distributed equally to appellants and appellees.

Appellants petitioned for rehearing of this order. A third hearing was held on May 14, 1982. Judge Taylor issued an order after rehearing on January 7, 1983, upholding the determination that decedent's heirs included both appellants and appellees.

Appellants sought additional review of this determination by the Board. Briefs on appeal have been filed by all parties.

Discussion and Conclusions

[1, 2] The sole issue before the Board is whether appellees were correctly found to be decedent's children. In making this determination, it is irrelevant whether or not decedent and appellees' mother, Irene Fletcher, were married. Under 25 U.S.C. § 371 (1976), the illegitimate children of an Indian father are legitimatized for purposes of inheriting Indian trust property. Furthermore, state laws relating to proof of paternity are immaterial in determining paternity in Departmental Indian probate proceedings. Instead, the applicable law consists primarily of the decisions of this Board interpreting Federal statutes and regulations concerning questions of paternity. See Ruff v. Portland Area Director, 11 IBIA 267 (1983).

In this case, there is no documentary evidence of paternity. According to Oklahoma practice, no father was listed on appellees' birth certificates because they were illegitimate. Although appellees' school records are not part of the administrative record in this matter, appellants stated that no father's name appeared in those school records. Furthermore, the testimony as to whether decedent acknowledged appellees as his children during his lifetime and the extent of his involvement with appellees' mother was conflicting.

Rather than basing his decision on the weight of evidence presented in the hearings, Judge Taylor instead gave full faith and credit to the order of the Custer County Court in finding that decedent was appellees' father. Appellants question this reliance first on the grounds that the Secretary is empowered and required to make an independent determination of heirship, and that the State court decision is not controlling.

[3] The Board agrees that under 25 U.S.C. §§ 372-373 (1976), the Department of the Interior has been entrusted with the responsibility of determining the heirs to Indian trust property, and consequently has full authority to make an independent determination of heirs. Under appropriate circumstances, this authority includes the power to reject the findings or orders of a state court. Lane v. United States, 241 U.S. 201 (1916); Estate of James Wermy Pekah, 11 IBIA 237 (1983); Weiser v. Portland Area Director, 9 IBIA 76, 78 n.1 (1981). However, a state court decision is at least evidence which may be considered in reaching an heirship determination, and in some cases may directly affect the Department's determination. Ruff, supra at 273 n.12.

Appellants next argue that the State court orders should be disregarded because the parties in that proceeding were Indians residing in Indian country over which Oklahoma had never assumed or been granted civil jurisdiction. See Ahboah v. Housing Authority of the Kiowa Tribe of Indians, Vol. 54 O.B.J., p. 501 (Mar. 5, 1983). Appellants thus contend that the court lacked jurisdiction to enter the orders. The Board has previously remanded an appeal for a determination, in accordance with the decision in Ahboah, of whether a state court had jurisdiction to enter an adoption decree. See Pekah, supra.

The present case is distinguishable from Pekah. In Pekah, 25 U.S.C. § 372(1)(a) (1976) required distribution of the decedent's estate to an adopted son if the state court adoption decree was valid. Therefore, the question of whether the court had jurisdiction to enter the decree would control the Department's heirship determination. Here, however, the orders

issued by the state court do not even purport to be dispositive of paternity. The court was concerned with the welfare of four neglected minor children over whom it found it had jurisdiction. The proceeding was apparently approached by all concerned under the assumption that the court did have jurisdiction, with the concomitant powers to receive and consider evidence concerning the status of the children and to decide their fate. Under the judicial and Board precedents cited above, the court's orders are merely evidence of paternity adduced in a judicial setting. 1/

In finding appellees to be dependent and neglected children and ordering decedent to pay child support, the court stated that decedent was given notice of the hearing as the children's father, that he appeared at the hearing, and that he concurred in the finding that they should be made wards of the court. Appellees' mother did not attend the hearing. There is no indication in the court's orders that decedent denied paternity at the time or following the entry of the orders.

Under the circumstances of this case, in which the testimony is conflicting, the Board finds this evidence persuasive. The lack of any indication that decedent denied paternity of appellees to the court, and the evidence that he, in fact, concurred in the court's order as their father, stands as a public acknowledgment of paternity.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the January 7, 1983, order on rehearing issued by Administrative Law Judge Sam E. Tailor is affirmed as modified by this opinion. 2/

//original signed
Jerry Muskrat
Administrative judge

We concur:

//original signed
Bernard V. Parrette
Chief Administrative Judge

//original signed
Anne Poindexter Lewis
Administrative judge

1/ The Board thus disapproves so much of the order on rehearing that gave full faith and credit to the court's statement of paternity.

2/ Appellants alternatively seek approval of a "family settlement agreement" under which appellees Georgia Ann Fletcher Emhoolah and Rita Fletcher Winstone allegedly agreed to a settlement of $10,000 each. No signed settlement agreement appears in the record. The Board is empowered to approve settlement agreements in Indian probate proceedings under the provisions of 43 CFR 4.207.

Section 4.207 requires the Board to find that all parties to the settlement are fully advised of all material facts and are fully cognizant of the effect of the settlement upon their rights, and that it is in the best interest of all parties to settle rather than to continue litigation. The Board is unable to make any of these findings under the conditions present in this case. Accordingly, the purported settlement is not approved.