INTERIOR BOARD OF INDIAN APPEALS

Estate of Fred Redstone, Sr.

13 IBIA 44 (11/07/1984)

United States Department of the Interior

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

ESTATE OF FRED REDSTONE, SR.

IBIA 84-23 Decided November 7, 1984

Appeal from an order denying petition for rehearing issued by Administrative Law Judge Daniel S. Boos in Indian Probate No. 14671-37, IP BI 110B 84.

Affirmed.

1. Indian Probate: Evidence: Insufficiency of--Indian Probate: Reopening: Generally

The burden of proving that the initial decision in the probate of a deceased Indian's trust estate was incorrect is on the person seeking reopening.

APPEARANCES: Appellants Mabel Redstone Fourstar and Freda Redstone Fourstar, pro sese. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

On March 15, 1984, the Board of Indian Appeals (Board) received a pro sese notice of appeal from Mabel Redstone Fourstar and Freda Redstone Fourstar (appellants). Appellants sought review of an order denying petition for rehearing entered in the estate of Fred Redstone, Sr. (decedent), on January 20, 1984, by Administrative Law Judge Daniel S. Boos. For the reasons set forth below, the Board affirms that order.

Background

Decedent, Fort Peck Allottee No. 1600, died on September 27, 1935, at the age of 52. A hearing to probate decedent's Indian trust estate was held on December 4, 1936, by a Departmental examiner of inheritance. A will executed by decedent on October 15, 1934, was presented at the hearing. The original of this will, which is numbered 35098 and date stamped June 25, 1935, appears in the probate record. Paragraph 3 of that will states: "I give, devise, and bequeath to my children, Nina Wetsit #1602, Lucy R. Hart #2116, Fred, Jr. #2287, Mabel #2518, George #2689 and Freda #3007, all of the rest and residue of my estate, real, personal, and mixed, in equal shares, to share and share alike." This will was approved for the Secretary of the Interior on May 5, 1937, and decedent's trust estate was distributed in accordance with its provisions.

On January 6, 1984, appellants, who are two of decedent's children named in the third paragraph of his will, filed a petition to reopen the estate. Appellant Mabel Fourstar, who attended the 1936 hearing, stated that

she remembered the will being read at the hearing. She contended that the third paragraph read: "I give, devise, and bequeath to my minor children, Mabel #2518, George #2689 and Freda #3007 all of the rest and residue of my estate, real, personal, and mixed, in equal shares, to share and share alike." In support of their argument that the third paragraph of the will had been altered, appellants suggested that the typewriter style in the third paragraph differed from that in the second paragraph.

Judge Boos obtained the original probate record from the Land Titles and Records Office of the Billings Area Office, Bureau of Indian Affairs (BIA). Although admitting that he was not an expert in the examination of typed documents, Judge Boos found that there was no evidence that different typewriters had been used to type the two paragraphs. This conclusion was supported by a carbon copy of the will that appeared in the probate record. Judge Boos concluded that the same typewriter was used to type both paragraphs and, therefore, denied the petition on January 20, 1984. The denial order also noted that appellants had not diligently pursued this matter.

Appellants' notice of appeal from this order was received by the Board on March 15, 1984. Appellants filed a letter brief, dated June 12, 1984, in which they state that they went to the Fort Peck Agency to see decedent's will in 1939, and that the third paragraph of the will shown to them left the residue of decedent's estate to his three minor children, Mabel, George, and Freda, rather than to all six of his children.

Discussion and Conclusions

[1] On appeal, appellants bear the burden of showing the error in the decision from which they are appealing. See Estate of Wilma Florence First Youngman, 12 IBIA 219 (1984). Appellants here repeat the allegations raised to Judge Boos, with the addition of the statement that they were shown a different will by the Fort Peck Agency in 1939.

The Board has fully reviewed the probate record in this matter. Although the reading of the will was not recorded in the hearing transcript, the Board finds no evidence to suggest that the will received by BIA in 1935, prior to decedent's death, left the residue of his estate to only three of his children, rather than all of them. Furthermore, there appears to be no reason to disturb Judge Boos's finding that the two paragraphs of the will were typed on the same typewriter. Appellants have not sustained their burden of showing the error in the decision below.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Boos's January 20, 1984, order denying rehearing is affirmed.

//original signed
Anne Poindexter Lewis
Administrative Judge

We concur:

//original signed
Bernard V. Parrette
Chief Administrative Judge

//original signed
Jerry Muskrat
Administrative Judge