INTERIOR BOARD OF INDIAN APPEALS

Estate of Stella Valandry Williams

13 IBIA 46 (11/21/1984)

Clarifying:
13 IBIA 35

Further request for clarification:
13 IBIA 148

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF STELLA VALANDRY WILLIAMS	:	Order on Reconsideration
	:	
	:	Docket No. IBIA 84-14
	:	
	:	November 21, 1984

The Board of Indian Appeals (Board) issued a decision in the above case on October 26, 1984. Estate of Stella Valandry Williams, 13 IBIA 35 (1984). On November 1, 1984, the Board received a letter from appellants John R. Williams, Rosemary Sayers, and Linda M. Westover, stating that the Board had apparently inadvertently failed to rule on one issue raised in their appeal. This issue relates to whether the valuation of approximately 320 acres of land that was held in the name of appellee Joseph Ward Williams should be included in the valuation of the amounts to be paid to appellants under the provisions of decedent's will. The property involved is N 1/2 Sec. 33, T. 40 N., R. 34 W., 6th principal meridian, South Dakota. According to appellants, appellee made the down payment on this land and decedent Stella Valandry Williams and her husband, the parties' parents, paid the balance of the amount due on the land.

Appellee objected to the Board's consideration of this matter in a letter dated November 1, 1984, and received by the Board on November 6, 1984.

Although the Board did not specifically address this issue in the additional comments set forth in its opinion, it stated at 13 IBIA 36: "The Board agrees with Judge Nitzschke's December 8, 1983, order, which is attached to this opinion and incorporated as the Board's opinion by reference." Judge Nitzschke's order states at page 2, 13 IBIA 40:

> At the hearing a Motion to Limit was filed by Ward Williams asking that no present consideration be given to a request by petitioners that certain real property currently titled in Ward Williams should in fact have been included in the estate inventory of Stella Valandry Williams. The Motion to Limit was granted by the undersigned. The matter of this motion was not addressed in the post-hearing briefs filed by the parties.

This ruling was incorporated into and made a part of the Board's decision in this case.

The Board will treat appellants' letter as a petition for reconsideration limited to this one issue. 43 CFR 4.315. The Board has again reviewed the motion to limit presented by appellee, the discussion of this issue at the hearing before Judge Nitzschke, the presentations in briefs on appeal, and appellee's objection to consideration of this matter. The motion to limit was based on four grounds:

(1) The section was not included in the inventory of decedent's estate provided by BIA; (2) Judge Nitzschke had no authority to rewrite the deed conveying this property to appellee; (3) appellants waited too long in raising this question; and (4) testimony regarding the property was beyond the stated scope of the hearing.

Appellants allege now, as they did at the hearing, that they learned of decedent's possible involvement in the purchase of this property only shortly before the death of decedent's husband in late 1981, not in 1979 when the original decree of distribution was issued. They argue that they raised the issue as soon as they became aware of it. Substantively, appellants contend that they should be given an opportunity to address the issue.

It appears that Judge Nitzschke's ruling at the hearing was not intended to be dispositive of the matter, but rather was intended only to limit the scope of that hearing. The Judge did not discuss the matter further in his order denying reopening because it was not raised in the post-hearing briefs.

The Board concludes that appellants were not required to raise the question of the failure to include this property in the 1979 decree of distribution when they were not aware until 1981 that there was any question about the purchase of the property. Therefore, they can raise the issue now unless they are precluded from raising it because of one of the other reasons stated in appellee's motion, and restated in his current objection.

Appellee's remaining objections relate to the scope of an Administrative Law Judge's authority in conducting Indian probate proceedings. By regulation, the initial responsibility for the maintenance of records relating to lands held in trust by the United States for an Indian lies with BIA, not with the Administrative Law Judges. See, e.g., 25 CFR Parts 150 and 151. The BIA is responsible for forwarding to the Administrative Law Judge a certified inventory of the trust property held by an Indian at the time of death. 43 CFR 4.210(b)(3). This inventory is based upon the title records maintained by BIA.

Under 25 CFR 150.7(b) and 43 CFR 4.272, limited authority to correct an erroneous omission of trust property from the inventory is granted to the Administrative Law Judges and BIA. The Board is not aware that the Administrative Law Judges have used this authority to review the accuracy of inventories presented to them by BIA based upon allegations raised in a probate proceeding that the land records were erroneous.

On October 2, 1984, the Board issued an order in the Estate of Max Door, Docket No. IBIA 84-21. The appellant in that case similarly argued that certain property deeded to another individual should have been included in the estate of an Indian decedent. The Board there accepted the Administrative Law Judge's determination that be did not have authority under 43 CFR 4.202 to determine whether certain deeds of Indian trust property were erroneously approved or whether those deeds were rescinded. The Board, which has broader authority than the Administrative Law Judges, referred the matter to the Bureau of Indian Affairs (BIA) and requested that BIA review any records available to it concerning the transaction and determine whether the property was properly omitted from the inventory of the decedent's trust assets.

On reconsideration in the present case, it appears that appellants have presented sufficient grounds to warrant reexamination by BIA of the records concerning title to the disputed property. Therefore, before making final distribution in this estate, BIA is requested to examine its available records concerning the acquisition of this property in light of the parties' arguments, and to determine whether the property or its value should have been included in decedent's estate. Any appeal from the determination reached by BIA in this matter must be taken through the procedures established in 25 CFR Part 2.

//original signed
Anne Poindexter Lewis
Administrative Judge

We concur:

//original signed
Jerry Muskrat
Administrative Judge

//original signed
Bernard V. Parrette
Chief Administrative Judge