



INTERIOR BOARD OF INDIAN APPEALS

Estate of Pearl Asepermy Werqueyah

13 IBIA 49 (11/27/1984)



United States Department of the Interior

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

ESTATE OF PEARL ASEPERMY WERQUEYAH

IBIA 84-28

Decided November 27, 1984

Appeal from an order denying rehearing issued by Administrative Law Judge Sam E. Taylor in Indian Probate No. IP OK 114 P 84, IP OK 133 P 83.

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: Appellant Lena Mae Wermey, pro se. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

On May 7, 1984, the Board of Indian Appeals (Board) received a notice of appeal from Lena Mae Wermey (appellant), appearing pro se. Appellant sought review of a March 7, 1984, order denying rehearing issued by Administrative Law Judge Sam E. Taylor in the probate of the estate of Pearl Asepermy Werqueyah (decedent). The order denying rehearing let stand a January 5, 1984, order approving decedent's will and ordering distribution of her Indian trust estate in accordance with the provisions of that will. For the reasons discussed below, the Board affirms those orders.

Background

Decedent, an unallotted Comanche, was born on September 16, 1910, and died in Cache, Oklahoma, on February 14, 1983. A hearing to probate her Indian trust estate was held on September 14, 1983. At the hearing, decedent's heirs at law were determined to be her two daughters, Ella Alene Werqueyah Gembaez (appellee) and Lena Mae Werqueyah Wermey (appellant). An individual named Richard Claude alleged that he was decedent's common-law husband. The Judge found that no common-law marriage existed. No appeal was taken from this determination.

Decedent had executed a last will and testament on October 5, 1982. Under the terms of this document, decedent left all of her trust property to appellee and appellee's children. Appellant was specifically excluded from taking by paragraph VI of the will.

Appellant argued at the hearing that appellee and her children had exercised undue influence over decedent in the execution of this will. The

attorney who prepared the will testified at the hearing. Although he could not specifically remember whether anyone had accompanied decedent to his office when the will was discussed and executed, he stated his belief that decedent had the testamentary capacity to execute a will and that she was not acting under undue influence. Appellee stated that she and her children spent considerable amounts of time with decedent and frequently took her to town to go shopping. Appellant admitted that the relationship between decedent and herself was strained and had been for some time.

Based upon this evidence, Judge Taylor found that decedent had testamentary capacity and that the will was executed freely and voluntarily. He, therefore, approved the will.

On March 1, 1984, appellant filed a petition for rehearing. This petition stated merely that it was based upon the testimony of Wesley A. Jones, the will scrivener. Judge Taylor denied rehearing on March 7, 1984.

The present appeal was received by the Board on May 7, 1984. Appellant again stated her belief that undue influence was exerted upon decedent in the execution of her will. Although granted two extensions of time, appellant did not file an opening brief.

Discussion and Conclusions

[1] On appeal, appellant bears the burden of showing the error in the decision from which she is appealing. See Estate of Fred Redstone, Sr., 13 IBIA 44 (1984); Estate of Wilma Florence First Youngman, 12 IBIA 219 (1984). Appellant attempts to carry that burden by simply repeating the allegation made to and considered by Judge Taylor, that decedent was unduly influenced in the execution of her will.

The Board has fully reviewed the probate record in this matter. There is no evidence that appellee exerted undue influence over decedent in the execution of her October 1982 will. There is, however, evidence of a strained relationship between appellant and decedent that could account for decedent's decision to disinherit appellant. Appellant's mere assertions of undue influence are not sufficient to sustain her burden of showing that the will should not have been approved.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Taylor's March 7, 1984, order denying rehearing is affirmed.

//original signed
Anne Poindexter Lewis
Administrative Judge

We concur:

//original signed
Jerry Muskrat
Administrative Judge

//original signed
Bernard V. Parrette
Chief Administrative Judge