



INTERIOR BOARD OF INDIAN APPEALS

Estate of Charles Webster Hills

13 IBIA 188 (07/17/1985)

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Related Board case:
13 IBIA 1



United States Department of the Interior

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

ESTATE OF CHARLES WEBSTER HILLS

IBIA 85-1

Decided July 17, 1985

Appeal from orders issued by Administrative Law Judge S. N. Willett in IP 1341 83 (REH) and IP PH 531-81 that resulted in the disapproval of decedent's will.

Affirmed.

1. Indian Probate: Administrative Law Judge

Because Administrative Law Judges (Indian Probate) are required to carry out the Federal trust responsibility to Indian tribes and individual Indians in Indian probate proceedings, they must both serve as impartial arbiters and ensure that the trustee's responsibilities to Indian parties are fulfilled.

2. Indian Probate: Wills: Undue Influence

When the evidence shows that the principal beneficiary under an Indian will and the testator were in a special confidential relationship, particularly one involving financial matters, a rebuttable presumption of undue influence is raised, and the burden of rebutting that presumption is borne by the proponent of the will.

APPEARANCES: Waldo W. Israel, Esq., for appellant; Darla Hills Bedel and Owen Hills, appellees, pro sese. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

On May 17, 1984, the Board of Indian Appeals received a notice of appeal from Millie Romero (appellant) concerning probate of the Indian trust estate of her uncle, Charles Webster Hills (decedent). Appellant sought review of a March 23, 1984, order denying rehearing entered in the estate by Administrative Law Judge S. N. Willett. The order let stand Judge Willett's December 6, 1982, order disapproving decedent's will and ordering distribution of his Indian trust estate to his heirs-at-law, who were determined to be his son and daughter, Owen Hills and Darla Hills Bedel (appellees). For the reasons discussed below, the Board affirms Judge Willett's March 23, 1984, order.

Background

Decedent, Quechan Allottee No. 350 under the jurisdiction of the Fort Yuma Agency, Yuma, Arizona, was born October 15, 1909, and died at Winterhaven, California, on October 30, 1980. A hearing to probate decedent's Indian trust estate was held before Judge Willett on May 18, 1981.

Testimony at the hearing primarily concerned decedent's execution of a will on January 19, 1979. Under the will, all of decedent's property was devised to appellant. Testimony revealed that appellant was decedent's "payee" of funds from the Bureau of Indian Affairs (BIA). Under this arrangement funds in decedent's Individual Indian Money (IIM) account were released only to appellant, who was then responsible for paying decedent's bills and

for providing him with funds to cover necessary purchases. Decedent apparently agreed to this arrangement, which was not a formal determination of incompetency. Decedent needed assistance in managing his funds because of a severe drinking problem. Appellant's mother, decedent's sister, served as decedent's payee before her death in 1976. Appellant assumed this task when decedent's daughter declined to be his payee because she was moving out of the area and did not believe he needed assistance.

Further testimony revealed that decedent had limited English language skills, although he could communicate in English when he chose, and that appellant served as his interpreter on occasion. The 1979 will was prepared by a lawyer used by both appellant and decedent, and was written in English following decedent's instructions as interpreted to the will scrivener by appellant. The will scrivener and both witnesses testified that they had almost no recollection of the execution of the will. The scrivener did remember meeting with decedent and appellant to discuss the substance of the will.

Based upon the evidence, Judge Willett found that appellant and decedent were in a confidential relationship. She, therefore, required appellant to show that she had not exerted undue influence upon decedent in the preparation of his will. Because Judge Willett further found that appellant had not shown the absence of undue influence, she disapproved the will and ordered distribution of decedent's Indian trust estate to appellees.

Appellant timely sought rehearing of this decision. On March 23, 1984, Judge Willett denied rehearing. Appellant's appeal from this order was

received by the Board on May 17, 1984. The probate record was received from BIA on May 31, 1984. On June 18, 1984, the Board received several additional documents from the Acting Superintendent of the Fort Yuma Agency. The Board distributed copies of these documents to the parties on June 20, 1984.

By motion received on July 2, 1984, appellant sought reopening for limited rehearing based upon the allegation that the distributed documents revealed decedent could write and communicate in English. By order dated July 10, 1984, the Board dismissed appellant's appeal without prejudice and referred her motion to Judge Willett for consideration. Estate of Charles Webster Hills, 13 IBIA 1 (1984).

On July 23, 1984, the Board received a motion from appellant in which she sought to have the case assigned to another Administrative Law Judge because Judge Willett had allegedly demonstrated bias against her and her counsel. By order dated July 31, 1984, the Board denied appellant's motion, stating that it did not have the authority to reassign probate cases.

Appellant refiled her request for a change in judges with the Phoenix Office on August 9, 1984. On August 16, 1984, Judge Willett, concluding that appellant had confused bias with the special requirements placed upon an Indian Probate Administrative Law Judge, denied the motion.

On August 20, 1984, Judge Willett denied appellant's request for reopening, finding that the newly discovered evidence appellant sought to present was insufficient to rebut the presumption of undue influence. The Board received appellant's notice of appeal from this order on October 1, 1984.

The notice incorporated by reference all previous arguments and objections. Only appellant filed a brief on appeal.

Discussion and Conclusions

Appellant alleges that Judge Willett was biased against her. She contends that Judge Willett "did not function as an impartial trier of fact but demonstrated a clear pattern of partiality toward and advocacy in behalf of" appellees. Appellant's opening brief at page 22. Appellant states that this partiality can be seen in the hearing transcript.

[1] The position of an Indian Probate Administrative Law Judge and the requirements placed upon such judges are, as Judge Willett noted on page 2 of her August 16, 1984, order, "virtually unique in jurisprudence." The Federal trust responsibility requires that every action undertaken by the Department of the Interior in Indian matters be executed in a fiduciary capacity. Seminole Nation v. United States, 316 U.S. 286 (1942); Joint Tribal Council of the Passamaquoddy Tribe v. Morton, 388 F. Supp. 649 (N.D. Me.), aff'd, 528 F.2d 370 (1st Cir. 1975). This trust responsibility extends to the conduct of Indian probate proceedings. Estate of Wesley Emmett Anton, 12 IBIA 139 (1984); Estate of Helen Ward Willey, 11 IBIA 43 (1983). Because the Indian probate judge is an agent of the trustee, the judge is required not only to serve as an impartial arbiter, but also to ensure that the proceeding is conducted with due regard to the trustee's responsibilities to all Indian parties. When Indian parties are not represented by counsel, this

Board has required the judges both to ensure the full development of the factual record and to conduct independent investigations into legal issues apparent in the case, even when such issues were not raised by the parties. See, e.g., Anton, supra; Estate of Joe (Jose) Elvino Juancho, 7 IBIA 294 (1979).

This dual responsibility of an Indian probate judge to function as an impartial judge while fulfilling the additional duties of a trustee may, on occasion, result in the appearance of bias, especially when one party in an Indian probate proceeding is represented by counsel and another is not. The test of whether an Indian probate judge is biased cannot, therefore, rest solely on the appearance of the hearing, but the propriety and legality of the final decision must also be considered. Cf., Estate of Eugene Patrick Dupuis, 11 IBIA 11 (1982).

In the present case, appellant was represented by the attorney who prepared decedent's will. Appellees were not represented by counsel. The transcript shows appellees did not understand what constituted valid grounds for attacking the will and were easily confused by questioning from experienced counsel. Under these circumstances, Judge Willett was required to fulfill the trustee's responsibilities to appellees and thereby ensure that their position was developed. The fact that the Judge fulfilled this responsibility in conducting the hearing does not indicate bias. In order to determine finally whether the Judge was biased, the decision rendered must also be examined. For the reasons set forth in the following discussion of the decision, the Board concludes that the Judge was not biased against appellant.

[2] The December 6, 1982, order disapproving decedent's will placed on appellant the burden of proving she had not exerted undue influence upon decedent. Normally, the will contestants bear the burden of proving undue influence was exerted upon a testator. See, e.g., Estate of Grace Dion Antelope Horse Ring, 12 IBIA 232 (1984); Estate of William Cecil Robedeaux, 1 IBIA 106, 78 I.D. 234 (1971); Estate of Louis Fronkier, IA-T-24 (1970).

However, the Board has also held that when the facts of a particular case show that the principal beneficiary under an Indian will was in a confidential relationship with the testator and actively participated in the preparation of the will, a rebuttable presumption arises that undue influence was exerted upon the testator, and the burden shifts to the will proponent to show there was no undue influence. See, e.g., Estate of Julius Benter, 1 IBIA 24 (1970); Estate of Lewis Leo Isadore, IA-P-21 (1970); Estate of George Green, IA-T-11 (1968).

The testimony presented at the hearing in this case showed appellant was, and had been for some time, decedent's "payee," the person responsible for taking care of decedent's financial affairs. She took decedent to the lawyer's office when his will was prepared and executed. The lawyer had represented both appellant and decedent on previous occasions, and he took no special precautions to safeguard decedent's interests. Appellant was present when the will's provisions were discussed and acted as an interpreter for decedent, who did not speak English in the lawyer's presence. Appellant was the sole beneficiary under the will. The two will witnesses did not know the decedent and could remember almost nothing about the execution of the will.

The Board agrees with Judge Willett that the facts of this case are sufficient to show that: a special confidential relationship, here involving financial matters, existed between appellant and decedent; appellant actively participated in the preparation and execution of decedent's will; and appellant was the principal beneficiary under the will. Thus, a presumption of undue influence arises. To rebut this presumption, appellant must show that decedent received independent advice regarding the execution of the will. Isadore, *supra*; Green *supra*. There has been no such showing. The fact that decedent probably could read and understand English does not require a contrary result. In order to rebut the presumption, there must be a showing that an objective, independent person discussed the effect of the will with the decedent. Judge Willett properly found that appellant did not sustain her burden of proof.

Appellant raises two other arguments, discussed below, both of which were addressed by Judge Willett in her order denying rehearing. Because the Board finds that Judge Willett ruled correctly on each of these arguments, they are mentioned here only briefly.

Appellant argues that because decedent's will was self-proved, due execution is conclusively presumed under Arizona law. A.R.S. § 14-3406B. However, an Indian will disposing of trust property is controlled by Federal, not state, law. Estate of William Mason Coltee, 9 IBIA 43 (1981), *aff'd sub nom.*, Cultee v. United States, No. 81-1164 (W.D. Wash. Sept. 14, 1982), *aff'd*, 713 F.2d 1455 (9th Cir. 1983), *cert. denied*, 104 S. Ct. 2150 (1984). Under 43 CFR 4.233(a), self-proved wills are not conclusively presumed valid if they are contested.

Appellant further argues that Judge Willett improperly gave no credence to her testimony. Administrative Law Judges, as the triers of fact, are required to make determinations concerning witness credibility. The Board will not normally disturb findings of credibility where the Judge had the opportunity to observe the demeanor of the witnesses as they testified. See, e.g., Day v. Navajo Area Director, 12 IBIA 9 (1983). The Board sees no reason in this case to disturb Judge Willett's findings concerning appellant's credibility.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Willett's March 23, 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