



INTERIOR BOARD OF INDIAN APPEALS

Estate of Frances Ingeborg Conger (Ford)

13 IBIA 361 (12/30/1985)

Also published at 92 Interior Decisions 634

Related Board case:  
13 IBIA 296



# United States Department of the Interior

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

ESTATE OF FRANCES INGEBORG CONGER (FORD)

(ON REVIEW BY DIRECTOR)

IBIA 85-2(D)

Decided December 30, 1985

Review of the decision of the Interior Board of Indian Appeals appearing at 13 IBIA 296 (1985) and styled as above by the Director, Office of Hearings and Appeals.

Modified.

1. Indian Probate: Administrative Law Judge: Authority

An administrative law judge possesses authority under 43 CFR 4.202 to decree the partial distribution of an Indian decedent's trust estate to alleviate hardship or avoid inequity. This authority extends to decreeing the partial distribution to known heirs or devisees where one or more potential heirs or devisees are missing but not presumed dead, after attributing to and setting aside for such missing person or persons the share or shares such person or persons would be entitled to if living.

APPEARANCES: Harold E. Campbell, Esq., and Eric Dahlstrom, Esq., Scottsdale, Arizona, for appellant.

OPINION BY PAUL T. BAIRD, DIRECTOR  
OFFICE OF HEARINGS AND APPEALS

On October 16, 1985, the Interior Board of Indian Appeals (IBIA or Board) issued its opinion in this matter vacating an order of Administrative Law Judge S. N. Willett which denied a request for rehearing and remanding the case to her for further action consistent with the opinion. By letter dated October 23, 1985, Gerald Anton, president of the Salt River Pima-Maricopa Indian Community (Tribe) requested the Secretary of the Interior, Donald Paul Hodel, to expunge footnote 2 from the IBIA opinion, alleging the footnote erroneously implied that the delay in probating the estate of Frances Conger, as well as other estates in which a potential heir or devisee is missing, resulted from a failure of the Tribe to provide probate information in accordance with its P.L. 93-638 contract. By letter dated November 12, 1985, a copy of which was sent to all interested parties, I informed President Anton that I would, pursuant to the authority delegated me by 43 CFR 4.5(b), review the IBIA decision to determine whether footnote 2 should be modified or deleted. None of the parties who received copies of my letter have filed a response to President Anton's request. On November 22, 1985, Administrative Law Judge Willett issued an order on remand complying with the mandate of the IBIA. I received the case file on December 16, 1985.

I hereby adopt and incorporate by reference the Background section of the IBIA opinion dated October 16, 1985, as well as those portions of the Discussion and Conclusions section which are not inconsistent herewith.

The United States is in a peculiar position with respect to the probate of Indian trust estates. Not only does it provide the forum for the probate process, but it is also the trustee for the trust assets. As a result the responsibility of the administrative law judge in this process goes beyond the responsibility of a probate judge in a state probate proceeding. See, e.g., Estate of Charles Webster Hills, 13 IBIA 188 (1985); Estate of Wesley Emmett Anton, 12 IBIA 139 (1984). Despite this responsibility, the administrative law judge does not have direct resources available to conduct substantial investigations. He or she must rely primarily on the resources of the Bureau of Indian Affairs (BIA) and where, as here, the probate-related functions have been assumed by a tribe pursuant to a P.L. 93-638 contract, on the tribe itself. Thus, in this case when it became evident at the initial hearing that the decedent may have been married to a person whose whereabouts were unknown, Judge Willett, by letter dated November 23, 1982, advised the Tribe to perform a check of marriage and divorce records in and around Cook County, Illinois. Later, after the marriage license had been produced, by letter dated April 14, 1983, Judge Willett suggested that the Tribe contact the Immigration and Naturalization Service as a "first step in attempting to locate information about" the missing person. When no additional information had been provided by December 27, 1983, Judge Willett sent another letter to the Tribe asking for a status report. There is no indication in the record that the Tribe ever responded to either the April 14 letter or the December 27 letter. The scope of its efforts to locate Anibal Pineiro are, therefore, unknown. If the Tribe did nothing more to locate Mr. Pineiro than is reflected in the record, then a conclusion that its efforts fell short of what should be expected would not be unwarranted.

As it turned out, the Tribe's diligence--or lack thereof--was not a decisive factor either in Judge Willett's decision to dismiss the proceeding or in her decision to deny the request for rehearing. Her decisions were based on her perceived lack of authority to decree a full or partial distribution in the absence of substantial evidence concerning the status of Mr. Pineiro, not on the extent of the effort to obtain such evidence. Nor was it a factor in the Board's decision reversing Judge Willett. Without deciding whether or not Judge Willett had authority to decree a partial distribution or declare an escheat in the absence of "substantial evidence," the Board reversed her, relying on its own "authority to correct a manifest injustice or error where appropriate."

Footnote 2 was, thus, obiter dictum the primary intent of which was probably not to comment on the conduct of the Tribe in this case, but to notify the BIA concerning negative impacts which the contracting out of realty-related functions may have on the probate process. The Board apparently used the opportunity which this case provided to inform the BIA of its general concern that there may be circumstances in which tribes will not be motivated to find missing heirs and may, in fact, stand to benefit if a missing person is never located. But, the Board implied, that was not the case here since the "failure to provide reliable information concerning this individual's whereabouts \* \* \* will not result in benefits to the tribe, and may cause tribal members not to receive property to which they are entitled." Footnote 2 should be construed as general advice to the BIA. If a tribe does fail to carry out its contractual responsibilities, then the affected administrative law judge, in order to facilitate the completion of the probate process, is entitled to call upon the BIA to conduct any needed investigation.

[1] The IBIA did not indicate in its decision whether it was acting to correct error or to correct manifest injustice. To eliminate uncertainty and obviate the need for further appeals on the issue, I hold that an administrative law judge possesses authority under 43 CFR 4.202 to decree the partial distribution of an Indian decedent's trust estate to alleviate hardship or avoid inequity. This authority extends to decreeing the partial distribution to known heirs or devisees where one or more potential heirs or devisees are missing but not presumed dead, after attributing to and setting aside for such missing person or persons the share or shares such person or persons would be entitled to if living. <sup>1/</sup> It was error for Judge Willett to refuse to exercise that authority in this case.

Therefore, pursuant to the authority delegated to me by the Secretary of the Interior, 43 CFR 4.5(b), the decision of the Board is modified as set out herein.

//original signed

Paul T. Baird  
Director

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<sup>1/</sup> An administrative law judge has authority under 43 CFR 4.204 to "receive evidence on and determine \* \* \* whether persons, by reason of unexplained absence, are to be presumed dead." The authority to decree partial distributions applies in the absence of a presumption of death determination and is not dependent upon the existence of evidence which would support such a determination. Indeed, one would presume that in most cases it will be the absence of such evidence which gives rise to the need for a partial distribution to the known heirs or devisees.