



INTERIOR BOARD OF INDIAN APPEALS

Estate of Charles James Roane

14 IBIA 265 (09/25/1986)

Reconsideration denied:
16 IBIA 124



United States Department of the Interior

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

ESTATE OF CHARLES JAMES ROANE

IBIA 86-5

Decided September 25, 1986

Appeal from an order denying rehearing issued by Administrative Law Judge William E. Hammett in Indian probate No. IP SA 54N 85.

Affirmed.

1. Indian Probate: Appeal: Generally

The person challenging an Administrative Law Judge's decision in the Departmental probate of a deceased Indian's trust estate bears the burden of proving error.

APPEARANCES: LeRoy T. Ortez and Elizabeth Ungehajer, appellants, pro sese; Jack G. Cheepo, appellee, pro se.

OPINION BY ADMINISTRATIVE JUDGE LYNN

By order dated October 23, 1985, Administrative Law Judge William E. Hammett transmitted to the Board of Indian Appeals (Board) a pleading entitled "petition for writ of certiorari" that had been filed in his office by LeRoy T. Ortez and Elizabeth Ungehajer (appellants). Appellants sought review of an August 21, 1985, order denying rehearing issued by Judge Hammett in the estate of Charles James Roan (Roane) (decendent), their great-uncle. ^{1/} This order let stand a May 6, 1985, order determining decendent's heirs. For the reasons discussed below, the Board affirms that order.

Background

Decendent, Cassons (Yokut) Allottee Sac-80, was born on May 25, 1878, and died intestate on May 19, 1964. Judge Hammett received the information necessary to begin probate from the Bureau of Indian Affairs (BIA) on January 4, 1985, and held a hearing to probate decendent's Indian trust estate on February 26, 1985.

Testimony at the hearing suggested that decendent may have been married to a Mysie McDonald at the time of his death. The Judge found, however, that no credible evidence of a marriage was presented. Accordingly, he found that decendent was not married when he died.

^{1/} Different spellings of several names appear in the record. The Board has used those spellings which appear most frequently.

It was further shown that decedent had no natural or adopted children, and his parents had predeceased him. Thus, Judge Hammett found that decedent's siblings were his closest relatives. Two of decedent's sisters predeceased him without issue. A third sister, Lizzie Roane (Oliver) (Saragosa) Graham was alive at the time of decedent's death and of the hearing. She died on April 27, 1985, 9 days before Judge Hammett issued his order determining heirs. 2/

Decedent's brother, Dick Roane, died in 1906. The testimony showed that Dick Roane and Matilda Oliver had a daughter, Mae (Mamie) Alice Roane Cheepo. The data sheet for determining heirs prepared by BIA for use in decedent's probate hearing shows Mae's date of birth as March 11, 1909. Mae was killed in an accident on May 4, 1961. Judge Hammett took official notice of the probate record and the June 14, 1984, order issued in Mae's estate by Administrative Law Judge S. N. Willett. 3/ Judge Willett's order showed a conflict in the evidence as to Mae's date of birth. Again, BIA records showed the date as March 11, 1909, while the 1928 census of California Indians listed the date as March 13, 1906. Because Mae's date of birth was not necessary to a decision, Judge Willett properly declined to make a finding on this point. See Estate of Rena Marie Edge, 7 IBIA 53, 56-57 (1978). As to Mae's heirs, Judge Willett found that Mae's husband, John Bernard Cheepo, survived her, but died before an order could be issued in the estate. She further found that Mae was survived by three children, Laverne Margaret Cheepo Gonzales, Jack Gene Cheepo, and Bernard Wilson Cheepo.

Accordingly, in his May 6, 1985, order determining heirs, Judge Hammett found decedent's heirs to be his sister, Lizzie Roane (Oliver) (Saragosa) Graham, and Laverne Margaret Cheepo Gonzales, Jack Gene Cheepo, and Bernard Wilson Cheepo, the children of Mae Cheepo, the predeceased daughter of decedent's predeceased brother Dick Roane. He ordered the estate to be distributed 1/2 to Lizzie Graham and 1/6 each to the other three heirs.

On June 28, 1985, appellants filed a pleading which Judge Hammett properly treated as a petition for rehearing. The petition essentially challenged the finding that Mae was Dick's daughter on the grounds that Dick died three years before Mae's birth. If appellants were able to show that Mae was not Dick's daughter, Lizzie should have been found to be decedent's sole heir. In that event, appellants might be entitled to receive all or some portion of decedent's estate, depending upon the outcome of the upcoming probate of Lizzie's estate.

In his August 21, 1985, order denying rehearing, the Judge cited the probate record in the estate of John Westfall, Probate No. 33739-45 (Aug. 21, 1945). According to the testimony at that hearing, John Westfall was a first cousin to Lizzie, being the son of Lizzie's uncle, Peter Westfall. The testimony cited by the Judge was given by Louise Westfall Hillard, Lizzie's aunt

2/ Judge Hammett informed the Board that Lizzie Graham's estate is pending before him, but that a hearing could not be scheduled and probate concluded before issuance of this decision.

3/ BIA provided the information to probate Mae Cheepo's estate on Sept. 12, 1983.

and Peter Westfall's sister. That testimony indicated that Mae was 39 in 1945, making her date of birth 1906. Judge Hammett stated on page 1 of his August 21, 1985, order: "It is noted that this sworn testimony was not contradicted even though Lizzie Graham was in attendance at the hearing. Therefore, it must be presumed that Lizzie Graham heard the testimony given by Louise Westfall Hillard and did not challenge its veracity."

The Board received appellants' notice of appeal from the denial of rehearing on October 21, 1985. Numerous pleadings have been filed in this case, primarily by appellants. Appellee Jack Gene Cheepo filed a statement on his own behalf.

Discussion and Conclusions

On appeal appellants continue to argue that Dick could not have been Mae's father because she was born in 1909, while he died in 1906. They also argue that Lizzie's failure to object to Louise Hillard's statement during the probate of the estate of John Westfall, to the effect that Mae was 39 years old in 1945, was attributable to the fact that in 1945 Lizzie was already senile, blind, and deaf, and had a poor memory.

[1] Initially, the Board notes that the person challenging a Judge's decision in the probate of a deceased Indian's trust estate bears the burden of proving error. Estate of Paul Wilford Hail, 13 IBIA 140 (1985); Estate of Pearl Asepermy Werqueyah, 13 IBIA 49 (1984); Estate of Fred Redstone, Sr., 13 IBIA 44 (1984). Thus, appellants must show that the initial decision is not supported by substantial evidence.

In reaching its decision, the Board has taken official notice of five additional Departmental records: (1) the 1928 census roll of California Indians; (2) Mae Cheepo's March 9, 1929, application for enrollment with the Indians of the State of California under the Act of May 18, 1928, 45 Stat. 602, and its supporting documents; and the Departmental probate records in the estates of (3) John Westfall, Probate No. 33739-45; (4) Mae Cheepo, Probate No. SA 236N-83, and (5) Jimmy Roane, Probate No. 49587-27. Copies of these records have been made part of the record in the present case. Each of these documents will be discussed as it relates to the present case.

Page 102 of the "Census Roll of the Indians of California Under the Act of May 18, 1928 (45 Stat., P. 602)" shows Mae Alice Cheepo as Roll No. 3405, Application No. 2528. It further shows her as the wife of John Cheepo and the mother of Margaret Cheepo. ^{4/} Mae is listed as age 22 in 1928, being born on March 13, 1906.

Mae's March 9, 1929, application for enrollment, Application No. 2528, lists her date of birth as March 13, 1906, her parents as Dick and Matilda Roane, and her paternal grandparents as Jim and Betty Roane. The application is accompanied by an affidavit signed by Bill Sherman and Frank Tex. Sherman,

^{4/} Judge Willett's order in Mae's estate shows that her other two children, Jack Gene and Bernard Wilson, were born in mid-1928 and 1930, respectively.

whose relationship, if any, to Mae is not disclosed in any of the documents before the Board, states that he had known Mae for 15 years, and that the information provided in her application was correct to his personal knowledge. Tex states that he had known Mae for 21 years and that the information she had given was correct. Two men by the name of Frank Tex appear in a family history chart entered into the record by appellants. The elder Frank Tex is shown as the father of appellants' maternal grandfather, or Lizzie's father-in-law; the younger as appellants' maternal grandfather, Lizzie's husband. If this relationship is correct, the younger Frank Tex would have been Dick's brother-in-law. The closest family relationship of the elder Frank Tex would have been as Lizzie's father-in-law. In either case, each of the men could be expected to know Dick's family relationships.

John Westfall has previously been identified as Lizzie's first cousin. His estate was probated by the Department in 1945. Louise Hillard, Lizzie's aunt, testified at that hearing that Mae was 39 in 1945. It is this testimony upon which Judge Hammett relied in verifying that Mae was born in 1906, rather than 1909. Lizzie also testified at John Westfall's probate hearing. Her testimony was not lengthy, but involved numerous family relationships. At one point she specifically stated: "We have a niece, Mae Cheepo." Mae was found to be an heir of John Westfall as a "daughter of previously deceased son (Dick Roane) of previously deceased brother (Jimmy Roane) of said subsequently deceased wife (Josie Roane Westfall)." Mae and Lizzie each received an undivided 1/9 interest from the estate of John Westfall. Lizzie's testimony that she had a niece can only be described as an admission against interest, because if Mae had not been an heir, Lizzie's own inherited interest would have been greater.

As noted earlier, Mae's own probate record provides little assistance in determining her date of birth, because the Judge declined to make a finding as to the date of birth.

Jimmy Roane, the father of decedent, Lizzie, and Dick, and therefore appellants' great-grandfather, died intestate on July 22, 1927. A Departmental hearing to probate Jimmy Roane's estate was held on September 24, 1927. Lizzie testified at Jimmy Roane's probate. The following exchange between the Examiner of Inheritance and Lizzie appears in the transcript.

- Q. How old was Dick Roan when he died? A. He was about 25.
 Q. Did Dick Roan have any children? A. He had one child, May Roan. She lives at Nipinnawasse, California. She is now Mrs. Cheepo.
 Q. How old is May? A. About 21.
 Q. Who was her mother? A. Her mother was named Matilda.
 Q. Was Matilda the wife of Dick Roan? A. Yes, in the Indian way.
 Q. Was May the only child that Dick Roan had? A. Yes.

Lizzie and Mae each inherited an undivided 1/3 of Jimmy Roane's estate. Again, Lizzie's testimony can only be described as an admission against her own interest.

Based on the Board's review of these documents, it concludes that Lizzie was not senile in 1927 or 1945 when she testified as to the relationship between her brother and Mae, and that Mae has consistently been found to be Dick's daughter in Departmental probate proceedings concerning this family. ^{5/} The only suggestion that Mae was not Dick's daughter is found in the BIA records indicating her date of birth as March 11, 1909. The Board finds that the weight of the evidence, being the consistent testimony of family members, is that Mae was born in 1906 and was Dick's daughter. It, therefore, concludes that the BIA records suggesting a 1909 date of birth are erroneous, and that appellants have not carried their burden of proving error in the Judge's decision.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Hammett's August 21, 1985, order denying rehearing is affirmed.

//original signed
 Kathryn A. Lynn
 Administrative Judge

I concur:

//original signed
 Anita Vogt
 Acting Chief Administrative Judge

^{5/} The Portland Land Titles and Records Office, BIA, was unable to locate a probate record for Dick Roane. The logical conclusion to be drawn from this lack of Departmental records is that he died without an Indian trust estate.