



INTERIOR BOARD OF INDIAN APPEALS

Estate of Joseph Dupoint

15 IBIA 59 (11/28/1986)

Related Board case:

13 IBIA 6

Overruled, 32 IBIA 108



# United States Department of the Interior

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

## ESTATE OF JOSEPH DUPOINT

IBIA 86-44

Decided November 28, 1986

Appeal from an order denying reopening issued by Administrative Law Judge Sam E. Taylor in IP OK 240 P 84, IP OK 57 P 84, H-38-64.

Affirmed.

1. Indian Probate: Evidence: Generally--Indian Probate: Reopening: Generally

The person seeking reopening of an Indian probate bears the burden of proving error in the initial decision, even where reopening is sought for the sole purpose of establishing Indian blood quantum or Indian status.

APPEARANCES: Geneva Sue Dupoint Jenkins, pro se.

### OPINION BY ACTING CHIEF ADMINISTRATIVE JUDGE VOGT

Appellant Geneva Sue Dupoint Jenkins seeks review of a March 28, 1986, order issued by Administrative Law Judge Sam E. Taylor denying reopening of the estate of Joseph Dupoint (decedent). For the reasons discussed below, the Board affirms that order.

#### Background

Decedent, an unallotted Kiowa Indian, died on September 6, 1963, at the age of 47. 1/ Probate of his Indian trust estate was concluded on February 20, 1964, with the issuance of an order determining that his heirs were his six surviving children with his former wife, Georgia Botone Dupoint. 2/

On November 17, 1983, appellant requested that decedent's estate be reopened for the purpose of determining that her mother, Betty Sue Dupoint Geimausaddle, was a daughter of decedent, born out of wedlock. Appellant stated that she did not seek to alter the distribution of decedent's estate

---

1/ The record in the estate of decedent's father, Joseph Topoie, IP TU 83P 73, indicates that decedent was 49 at the time of his death.

2/ The six children were: Hazel Celia Dupoint Kaudlekaule, Donald Earl Dupoint, Loretta Joyce Dupoint Bread, Sheila Ann Dupoint, Christina Sue Dupoint, and Phil Raymond Dupoint.

but only to establish her own correct blood quantum. On December 6, 1983, Judge Taylor denied reopening on the grounds that appellant had failed to show due diligence in pursuing the matter.

Appellant appealed Judge Taylor's order to the Board, which vacated the order and ordered decedent's estate reopened for the sole purpose of considering whether appellant could establish that decedent was her grandfather. Estate of Joseph Dupoint, 13 IBIA 6 (1984). The Board held that

[w]hen reopening of a closed Indian estate is sought for the sole purpose of establishing Indian blood quantum or Indian status, and not for the purpose of altering the distribution of the decedent's estate, reopening should be granted under 43 CFR 4.206, [3/] without regard to the restrictions set forth in 43 CFR 4.242 and in previous Board decisions interpreting that regulation.

13 IBIA at 7.

On remand, Judge Taylor held a hearing, at which only appellant was present. In support of her claim that decedent was her grandfather, appellant submitted the following documents: (1) a birth certificate for her mother showing decedent as the father; (2) an April 13, 1976, affidavit from Georgia Dupoint, which states, "To my knowledge, Betty Sue Dupoint was the daughter of [decedent]. Betty Sue was our daughter along with the other children we had. \* \* \* Before Joseph and I married, he told me he had a daughter;" (3) affidavits from Donald E. Dupoint, Sheila A. Dupoint, and Phil R. Dupoint, stating that they had studied documents showing that Betty Sue was the daughter of decedent; (4) the will of appellant's grandmother, Eva Geimausaddle Eckiwaudah, dated February 4, 1974, which states: "I have been married twice. My first marriage was an Indian custom marriage to [decedent]. Betty Sue Dupoint Geimausaddle was born of that marriage. That marriage was terminated by Indian custom;" and (5) an excerpt from the testimony of Donald Dupoint at decedent's probate hearing, wherein Donald was asked, "Was your father ever married to anyone besides your mother?" and he responded, "Well, I wouldn't say legally."

In his order denying reopening, Judge Taylor concluded that the evidence submitted was not sufficient to support a finding that decedent was the father of Betty Sue Dupoint Geimausaddle and therefore appellant's grandfather. He noted that the birth certificate was from the Anadarko Agency, Bureau of Indian Affairs, that it was unsigned, and that it lacked

---

3/ 43 CFR 4.206 provides:

"In cases where the right and duty of the Government to hold property in trust depends thereon, administrative law judges shall determine the nationality or citizenship, or the Indian or non-Indian status, of heirs or devisees, or whether Indian heirs or devisees of United States citizenship are of a class as to whose property the Government's supervision and trusteeship have been terminated (a) in current probate proceedings or (b) in completed estates after reopening such estates under, but without regard to the 3-year limit set forth in § 4.242."

evidence of who prepared it and who furnished the information. He considered the information in the birth certificate relating to the alleged father to be hearsay.

Judge Taylor also found the affidavits of Georgia Dupoint and decedent's children unpersuasive. At page 1 of his order, he states:

The affidavits of decedent's 3 children, Donald E. Dupoint, Phil L. Dupoint and Sheila A. Dupoint, do not set forth the source of their knowledge. They have not stated therein what documents they studied. Further, Donald E. Dupoint was present when his older sister, Hazel Dupoint Kaudlekaule testified at decedent's hearing that decedent's only children were those by their mother, Mrs. Georgia Dupoint. He was not present at the hearing herein to explain the reason for changing his previous statement. Similarly, Mrs. Georgia Dupoint was not present to explain why she now acknowledges that Betty Sue Dupoint was decedent's daughter and did not when she confirmed the testimony of her eldest daughter, Hazel Dupoint Kaudlekaule in the decedent's father's estate. Estate of Joseph Topoie, (IP TU 83P 73, October 31, 1973).

Further, Judge Taylor noted that the statement made by Eva Geimausaddle Eckiwaudah in her will that she was married to decedent by Indian custom conflicted with the birth certificate, which identified appellant's mother's birth as illegitimate, and with the testimony of Hazel Dupoint Kaudlekaule at both her father's and grandfather's probate hearings.

The Board received appellant's appeal from this order on June 16, 1986. No briefs were filed on appeal.

#### Discussion and Conclusions

[1] The person seeking reopening of an Indian probate bears the burden of proving error in the initial decision. Estate of Wilma Florence First Youngman, 12 IBIA 219 (1984); Estate of Jason Crane, 12 IBIA 165 (1984); Estate of Joseph Wyatt, 11 IBIA 244 (1983). Cf. Estate of Charles James Roane, 14 IBIA 265 (1986). Although the Board held in its earlier decision in this case that appellant's disclaimer of an interest in decedent's estate relieved her of the burden of proving she had pursued her claim with due diligence, appellant cannot be relieved of her burden of proving, by a preponderance of the evidence, see Crane, supra, 12 IBIA at 170, that decedent is her mother's father. A person who seeks to reopen a closed Indian probate for the sole purpose of establishing Indian blood quantum or Indian status, like anyone else seeking to reopen a closed estate, bears the burden of proving that the initial decision was incorrect.

Appellant has not met that burden here. As Judge Taylor noted, there are unexplained discrepancies between appellant's affidavits from Georgia Dupoint and Donald Dupoint and the previous testimony of these two individuals at the probate hearings for Joseph Topoie and decedent. At Joseph Topoie's hearing in 1973, Georgia Dupoint confirmed her daughter Hazel's testimony that decedent had no children other than those he had with Georgia. At

decedent's hearing, Donald Dupoint confirmed Hazel's testimony that the six children of decedent and Georgia were decedent's only living children. The affidavits submitted by appellant do not explain why Georgia and Donald altered their previous testimony. <sup>4/</sup> Appellant's burden to prove error in the initial probate decision required her to produce some explanation, at least, for these discrepancies.

The affidavits of decedent's three children are unpersuasive because they do not identify the documents the affiants studied prior to concluding that Betty Sue was decedent's daughter. Donald Dupoint's affidavit contains the further statement that Georgia Dupoint told him Betty Sue was decedent's daughter. However, this second-hand report of Georgia Dupoint's statement suffers the same infirmities as her direct statement.

Appellant's excerpt of Donald Dupoint's testimony at decedent's probate hearing, which implies that decedent had a relationship with a woman other than Georgia Dupoint, is also not persuasive as to appellant's claim. Donald's testimony followed testimony of his sister Hazel, and of Evaline Toyekoyah, to the effect that decedent and Evaline lived together following decedent's divorce from Georgia. It appears most likely that it was this relationship to which Donald referred in his testimony. In any event, the testimony is too vague to have any probative value here.

As to the birth certificate of appellant's mother, the Board agrees with Judge Taylor that this apparently unofficial document, standing alone, is not entitled to great weight. <sup>5/</sup> In Estate of Willard Guy, 13 IBIA 252, 255 (1985), the Board noted that documentary evidence should be relied on more heavily than the memory of witnesses in determining paternity and stated that a "birth certificate although by [its] very nature based on hearsay, [is a document] maintained in the regular course of business by disinterested parties, and [is] the kind of evidence normally relied upon to establish [paternity]." In Guy, the birth certificate was only one of several reasonably contemporaneous documents, including an acknowledgment of paternity by the decedent, which supported the finding of paternity. Here, the birth certificate, which, as Judge Taylor notes, is unsigned and lacks evidence concerning the source of the information, is not corroborated by any other contemporaneous documents. <sup>6/</sup>

---

<sup>4/</sup> Georgia Dupoint's conflicting statements, in particular, require clarification. If decedent told her he had a daughter, as her affidavit states, he must have done so before 1973, when she confirmed her daughter's testimony to the contrary.

<sup>5/</sup> The certificate is prepared on a Department of Commerce, Bureau of the Census, form. There is no evidence that it was filed with the State of Oklahoma. No state birth certificate for appellant's mother appears in the record.

<sup>6/</sup> The Board requested the Superintendent, Anadarko Agency, to furnish a certified copy of the page of the agency's registry of births on which appellant's mother's birth is recorded. In this document, which is hereby made a part of the record in this case, decedent's name appears in the "Father"

Eva Geimausaddle's statement in her 1974 will is entitled to some weight. However, it is an essentially uncorroborated statement of the mother, who was not subject to cross-examination or to questioning by the Judge. As such, its probative value in a paternity determination is limited. Cf. Ruff v. Portland Area Director, 11 IBIA 267 (1983), petition dismissed, Ruff v. Watt, Civ. No. 83-1329 (D. Or. March 6, 1984), aff'd sub nom. Ruff v. Hodel, 770 F.2d 839 (9th Cir. 1985); Crane, supra. In Ruff, the Board found a mother's testimony insufficient to prove paternity even though the mother testified under oath and gave detailed statements about her relationship with the decedent. In Crane, the Board made a finding of paternity based primarily on the mother's testimony, which was given at a hearing attended by persons with interests adverse to those of the purported child of decedent. These persons testified at the hearing, and the Board found that the testimony of one of them lent credence to the mother's testimony. Here because the mother is deceased, there was no opportunity for the Judge to elicit a detailed sworn statement from her, to observe her demeanor, or to subject her testimony to the scrutiny of adverse witnesses. Under these circumstances, the mother's statement is insufficient to establish paternity.

Except for Georgia Dupoint's affidavit, the value of which is questionable because of its inconsistency with her prior testimony, appellant has not produced any evidence that decedent ever acknowledged Betty Sue as his daughter. Acknowledgment of paternity by the father, while not essential to finding of paternity, can be persuasive, especially where other evidence is sparse. See Estate of Henry W. George, 15 IBIA 49 (1986).

Although appellant has produced some evidence that decedent was her mother's father, the Board finds that she has not shown by a preponderance of the evidence that this was the case and has, therefore, failed to carry her burden of proof.

Therefore pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of Interior, 43 CFR 4.1, the March 28, 1986, order of Administrative Law Judge Sam E. Taylor denying reopening of this estate is affirmed.

\_\_\_\_\_  
//original signed  
Anita Vogt  
Acting Chief Administrative Judge

I concur:

\_\_\_\_\_  
//original signed  
Kathryn A. Lynn  
Administrative Judge

fn. 6 (continued)  
column for appellant's mother's birth but is followed by the word "alleged" in parentheses. This document, therefore, adds no weight to the information contained in the birth certificate.