



INTERIOR BOARD OF INDIAN APPEALS

Estate of Mary Standing Bull Curtis

15 IBIA 213 (06/12/1987)



# United States Department of the Interior

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

## ESTATE OF MARY STANDING BULL CURTIS

IBIA 87-13

Decided June 12, 1987

Appeal from an order denying rehearing issued by Administrative Law Judge Sam E. Taylor in Indian probate Nos. IP OK 132 P 86, IP OK 136 P 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: Nathan G. Graham, Esq., Clinton, Oklahoma, for appellant.

### OPINION BY ADMINISTRATIVE JUDGE LYNN

On December 8, 1986, the Board of Indian Appeals (Board) received a notice of appeal from Laura Ann Curtis Morin (appellant). Appellant sought review of an October 3, 1986, order denying rehearing issued in the estate of Mary Standing Bull Curtis (decendent) by Administrative Law Judge Sam E. Taylor. Denial of rehearing let stand a February 12, 1986, order approving decendent's last will and testament. For the reasons discussed below, the Board affirms those orders.

#### Background

Decendent, a Cheyenne Unallottee, was born December 26, 1903, and died September 9, 1984, in Oklahoma City, Oklahoma. A hearing to probate her Indian trust or restricted estate was held before Judge Taylor on August 6 and November 20, 1985. Evidence presented at the hearing showed decendent had no natural children, but had two adopted daughters: Diana Gerlene Hill Lonebear (appellee), adopted June 10, 1941; and appellant, adopted December 4, 1968. A document dated September 1, 1983, and purported to be decendent's last will and testament was also introduced at the hearing. Under this will, appellant received \$10 and appellee received the rest of decendent's trust estate. Appellant contested this will, alleging decendent was not competent when the document was executed.

By order dated February 12, 1986, Judge Taylor found that, had decedent died intestate, her heirs would have been appellant and appellee. However, he also found there was no evidence that decedent was incompetent when the will was executed. Therefore, he approved the will and ordered distribution of decedent's trust estate in accordance with its terms.

By letter dated April 14, 1986, appellant petitioned for rehearing, again alleging decedent's incompetence. Her petition was accompanied by affidavits from decedent's conservator and a physician who attended her before she was admitted to a nursing home.

Judge Taylor held a hearing on July 30, 1986, to assist in his determination of whether or not rehearing should be granted. Only appellee and her attorney appeared at this hearing. Appellee submitted affidavits contradicting those submitted by appellant. Rehearing was denied in a written order dated October 3, 1986, on the grounds that appellant had not sustained her burden of proving error.

Appellant's appeal from this order, dated December 3, 1986, and filed pro se, was received by the Board on December 8, 1986. The appeal states in pertinent part:

The reason that I wish to appeal this matter is that a will was admitted for probate in my mother's estate, which was prepared after my mother was incompetent. I know and have witnesses that know that she was not mentally capable of making a will at that time and I feel that the witnesses that said she was capable in the decision made on October 3rd, 1986, were dishonest in their testimony. It is my feeling that the will should be considered void and that the estate should be divided equally between the heirs of my mother.

Notice of appeal at 1.

Appellant later obtained counsel and was granted an extension of time in which to file an opening brief. Appellant informed the Board that no additional brief would be filed. No briefs were filed by opposing parties.

#### Discussion and Conclusions

[1] The person challenging an Administrative Law Judge's decision in the probate of a deceased Indian's trust estate bears the burden of proving error. Estate of Henry W. George, 15 IBIA 49 (1986); Estate of Charles James Roane, 14 IBIA 265 (1986), and cases cited therein. Thus, appellant must show that the Judge's decision was not supported by substantial evidence.

Appellant's arguments on appeal consist only of her statements that she considered decedent incompetent and believed those people who said she was competent were dishonest. This is the same essentially unsupported allegation she has made throughout this proceeding. Under these circumstances, appellant has clearly failed to carry her burden of proving the error in the Judge's original decision. See Estate of Andrew Jackson, 12 IBIA 39 (1939).

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 February 12 and October 3, 1986, orders are affirmed.

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//original signed  
Kathryn A. Lynn  
Administrative Judge

I concur:

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//original signed  
Anita Vogt  
Acting Chief Administrative Judge