



INTERIOR BOARD OF INDIAN APPEALS

Estate of Pansy Jeanette (Sparkman) Oyler

16 IBIA 45 (03/17/1988)

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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 PANSY JEANETTE (SPARKMAN) OYLER

IBIA 87-48

Decided March 17, 1988

Appeal from an order denying petition for rehearing issued by Administrative Law Judge Sam E. Taylor in Indian Probate IP OK 131 P 86, IP OK 1 P 87.

Affirmed.

1. Indians: Lands: Fee Lands--Indians: Lands: Non-Indian Acquisition

Non-Indians who inherit interests in Indian trust or restricted property take those interests in fee simple, rather than trust or restricted status. Once the interests have passed out of trust or restricted status, they remain in nontrust, nonrestricted status even if they are later inherited by an Indian.

2. Indian Probate: Nonrestricted Property--Indian Probate: Secretary's Authority: Generally--Indian Probate: State Law: Generally

The Department of the Interior has no authority to probate fee simple interests in land, even if they are owned by an Indian. Nontrust assets owned by Indians are subject to probate in the appropriate state or tribal court.

APPEARANCES: Jimmie D. Oyler, pro se.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Jimmie D. Oyler seeks review of a July 31, 1987, order denying rehearing issued by Administrative Law Judge Sam E. Taylor in the estate of Pansy Jeanette (Sparkman) Oyler (decedent). For the reasons discussed below, the Board affirms that order.

Background

Decedent, an unallotted Cherokee-Shawnee Indian, was born on February 19, 1905, and died on February 3, 1986, in Miami, Oklahoma. She left a will, executed on June 6, 1983, in which she devised all her property to her two sons, Donald R. Oyler and appellant. The inventory of decedent's trust lands prepared by the Horton Agency, Bureau of Indian Affairs (BIA), showed that, at her death, decedent possessed a 15/2816 trust or restricted

interest in land originally allotted to Newton McNeer, Shawnee Reserve No. 206, Johnson County, Kansas. The inventory showed that decedent had inherited this interest in part from her mother, Annie (Nanny) Sparkman (5/2304), and in part from Phoebe Crotzer Cooley (15/4752).

Judge Taylor held a hearing to probate decedent's trust or restricted property on May 14, 1986, at Horton, Kansas. On August 28, 1986, he issued an order approving decedent's will. 1/ He attached to the order a copy of the inventory of decedent's trust or restricted property prepared by BIA. Appellant sought rehearing on the grounds that decedent owned additional interests in the Newton McNeer allotment, which she had inherited from her grandfather, R.H. Crotzer, and her father, Augustus Henry Sparkman. He sought to have these interests pass to him in trust or restricted status. He also sought to have a house which he had built on the property transferred to him in trust or restricted status. 2/

On May 12, 1987, Judge Taylor held a hearing on rehearing at Horton, Kansas. At the hearing, the Judge explained to appellant that, while the title abstract of the Newton McNeer allotment showed that R. H. Crotzer and Augustus Henry Sparkman had inherited fractional interests in the Newton McNeer allotment, those interests had passed out of trust or restricted status because both individuals were non-Indians. He further explained that he had no jurisdiction to probate property that was not in trust or restricted status. On July 31, 1987, Judge Taylor issued an order denying rehearing, stating: "The interests in said property inherited by decedent's father and grandfather passed out of trust status as both were non-Indian. Furthermore, there is no evidence that the estates of either of them were ever probated. Therefore, there is no evidence that decedent did or would share therein."

Appellant filed a notice of appeal to the Board, which the Board received on August 27, 1987. No briefs were filed on appeal.

Discussion and Conclusions

In his notice of appeal, appellant notes that decedent's will stated that she owned interests in the Newton McNeer allotment which she had inherited from R. H. Crotzer and Augustus Henry Sparkman, and that she wanted all her interests in the allotment to pass to her sons in restricted status. Appellant argues that, in declining to probate the Crotzer and Sparkman interests, Judge Taylor failed to carry out decedent's wishes. He also argues that the Judge erred in stating there was no evidence that the

1/ Judge Taylor noted that decedent's interest in the land was less than 2 percent and, under other circumstances, would have escheated to an Indian tribe under 25 U.S.C. § 2206 (Supp. II 1984). However, the interest did not escheat because the land was neither located within a tribe's reservation nor otherwise subject to a tribe's jurisdiction.

2/ On appeal to the Board, appellant did not pursue this argument. It is apparent that the house was not decedent's property and therefore could not have been probated in decedent's estate.

estates of either Crotzer or Sparkman had ever been probated. He attaches copies of documents issued by the County Court of Ottawa County, Oklahoma, concerning the estates of these two individuals, which he evidently obtained from the Horton Agency after Judge Taylor's order was issued. ^{3/}

The transcript of ownership of the Newton McNeer allotment prepared by BIA on April 25, 1986, shows that R. H. Crotzer inherited a 150/720 interest in the allotment from his wife, Fannie Todd Crotzer, who died on December 5, 1918. It shows that Augustus Henry Sparkman inherited a 200/11520 interest from his wife, Annie (Nanny) Sparkman, who died on March 21, 1950. It also shows that both R. H. Crotzer and Augustus Henry Sparkman were non-Indians.

[1] Appellant has not shown, or even alleged, that BIA's identification of Crotzer and Sparkman as non-Indians was erroneous. Non-Indians who inherit interests in Indian trust or restricted property take those interests in fee simple, rather than trust or restricted status. Bailess v. Paukune, 344 U.S. 171 (1952). Once the interests have passed out of trust or restricted status, they remain in nontrust, nonrestricted status even if they are later inherited by an Indian. Estate of Dana A. Knight, 9 IBIA 82, 87, 88 I.D. 987, 990 (1981). ^{4/} Thus any interests which decedent may have inherited from R. H. Crotzer and Augustus Henry Sparkman passed to her in fee simple status.

[2] The Department of the Interior has no authority to probate fee simple interests in land, even if they are owned by an Indian. Rather, the Department's probate jurisdiction is limited to property held in trust or restricted status. 25 U.S.C. §§ 372-373 (1982); Estate of Alice Mae Sasse, 12 IBIA 281 (1984); Estates of Edwin (Edward) S. Scarborough & Nora Scarborough Brignone, 11 IBIA 179 (1983). Therefore, Judge Taylor was correct in concluding that he did not have jurisdiction to probate any interests in the Newton McNeer allotment which decedent might have inherited from R. H. Crotzer and Augustus Henry Sparkman.

Nontrust assets owned by Indians are subject to probate in the appropriate state or tribal court. Estate of Sasse; Estates of Scarborough and Brignone. If decedent possessed interests in the Newton McNeer allotment which she inherited from R. H. Crotzer and Augustus Henry Sparkman, those interests, being fee simple interests, are subject to probate only in Kansas state court. ^{5/}

^{3/} These documents are copies of a Decree of Settlement of Final Account and Order of Distribution under the Will in the Estate of R. H. Crotzer, issued on Apr. 5, 1946, and an Order and Decree of Judicial Determination of the Death of A. H. Sparkman, Life Tenant, issued on July 27, 1964.

^{4/} Depending on the circumstances, fee simple interests inherited by an Indian may be eligible for trust acquisition under 25 CFR Part 151. See 25 CFR 151.3(b). Nothing in the record indicates that decedent ever applied to have inherited fee simple interests taken into trust.

^{5/} As stated in footnote 1, there is presently no tribe with jurisdiction over the property, located on the old Shawnee Reserve in Johnson County, Kansas.

It is not clear from the record whether decedent did in fact possess such interests. Appellant has submitted probate documents for Crotzer and Sparkman issued by an Oklahoma county court. Absent a special state statute, however, fee simple interests in real property must be probated in the state where the property is located. *E.g.*, Restatement (Second) of Conflict of Laws § 334 (1971); Albuquerque National Bank v. Citizens National Bank in Abilene, 212 F.2d 943, 948 (5th Cir. 1954). It appears possible, therefore, that the Crotzer and Sparkman interests in the Newton McNeer allotment may never have been probated. In order to determine whether he is entitled to any portion of the Crotzer and Sparkman interests in the Newton McNeer allotment, appellant must first determine whether those interests were probated in the proper state court and whether decedent received any portion of those interests through the state court probate. Then he must have decedent's interests, if any, probated in Kansas state court.

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 July 31, 1987, order denying rehearing is affirmed.

//original signed
 Anita Vogt
 Administrative Judge

I concur:

//original signed
 Kathryn A. Lynn
 Chief Administrative Judge

 6/ A related administrative appeal, Edna S. Marshall v. Acting Deputy Assistant Secretary-- Indian Affairs (Operations), Docket No. IBIA 85-12-A, is disposed of by order published at 16 IBIA 49.