



INTERIOR BOARD OF INDIAN APPEALS

First National Bank and Trust Co. of Tulsa, Oklahoma
v. Muskogee Area Director, Bureau of Indian Affairs

17 IBIA 116 (04/17/1989)

Related Board case:
18 IBIA 339



United States Department of the Interior

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

FIRST NATIONAL BANK & TRUST CO.	:	Order Dismissing Appeal
OF TULSA, OKLAHOMA, TRUSTEE	:	
OF THE MARY THOMPSON	:	
WILLIAMS TESTAMENTARY TRUST,	:	
Appellant	:	
	:	Docket No. IBIA 89-13-A
v.	:	
	:	
MUSKOGEE AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	April 17, 1989

On February 27, 1989, the Board of Indian Appeals (Board) received the administrative record in the above case on referral from the Acting Deputy to the Assistant Secretary--Indian Affairs (Operations) under 25 CFR 2.19(a)(2). 1/ The appeal concerned whether appellant First National Bank & Trust Co. of Tulsa, Oklahoma, could serve as trustee for a 1.0000 Osage headright, which was part of the corpus of a testamentary trust created in the January 31, 1962, will of decedent Mary Thompson Williams, an Osage Indian. On November 8, 1988, appellee Muskogee Area Director, Bureau of Indian Affairs, held that only the Secretary of the Interior could serve as the trustee for this headright under the Act of October 30, 1984, P.L. 98-605, section 3(b)(6), 98 Stat. 3163. 2/

1/ Former section 2.19 stated in pertinent part:

"(a) Within 30 days after all time for pleadings (including extension granted) has expired, the Commissioner of Indian Affairs [or Bureau of Indian Affairs official exercising the administrative review authority of the Commissioner] shall:

"(1) Render a written decision on the appeal, or

"(2) Refer the appeal to the Board of Indian Appeals for decision."

Revised 25 CFR Part 2, Appeals from Administrative Actions, became effective March 13, 1989. 54 FR 6478 (Feb. 10, 1989).

2/ Section 3(b)(6) provides in pertinent part:

"In the case of any property or interest in property (including any headright) which was held by any Osage Indian decedent at the time of death of such Indian and is subject to any restriction against alienation, or which was held by the United States in trust for the benefit or any Osage Indian decedent, and which was property, or an interest in property, included in a testamentary trust created by a will of such decedent

"1. Only the Secretary of the Interior may be appointed as, or may serve as, trustee, with respect to any share of such trust property relating to a beneficiary of such trust who is an Indian with respect to whom

"(A) A certificate of competency has never been issued, or

"(B) A certificate of competency has been revoked by the Secretary of the Interior."

By letter received on March 13, 1989, the trust beneficiaries informed the Board that an order had been entered on February 13, 1989, by the District Court in and for Tulsa County, State of Oklahoma, in which appellant agreed that the Secretary of the Interior should be the trustee for the Osage headright at issue here. Therefore, the trust beneficiaries requested that the case be dismissed.

By order dated March 14, 1989, the Board gave appellant until April 7, 1989, in which to raise any arguments against dismissal of this appeal on the grounds that it was moot. Appellant has not filed a response.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is dismissed as moot.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge