



INTERIOR BOARD OF INDIAN APPEALS

Estate of Eddie Welch Aleck

18 IBIA 22 (10/16/1989)



United States Department of the Interior

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

ESTATE OF EDDIE WELCH ALECK

IBIA 89-31

Decided October 16, 1989

Appeal from an order denying rehearing issued by Administrative Law Judge William E. Hammett in Indian Probate IP SA 267N 88.

Affirmed.

1. Indian Probate: Wills: Failure to Mention Child

Bureau of Indian Affairs instructions to will drafters concerning omitted heirs are not Departmental regulations and are advisory only.

APPEARANCES: William C. Murphy, Esq., Toppenish, Washington, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

On May 1, 1989, the Board of Indian Appeals (Board) received a notice of appeal from Leah Sue Aleck (appellant), seeking review of a March 8, 1989, order denying rehearing issued by Administrative Law Judge William E. Hammett in the estate of Eddie Welch Aleck (decedent). For the reasons discussed below, the Board affirms that decision.

Background

Decedent, Unallotted Yakima No. 124-U00523, was born on April 14, 1933, and died on April 14, 1988. A hearing to probate his trust or restricted property was held before Judge Hammett on August 25, 1988. A will executed by decedent on August 29, 1974, was admitted at the hearing. Testimony at the hearing indicated that decedent had seven children with three wives: Joe Aleck with Viola Charley; Beatrice Aleck, Eddie W. Aleck, Jr., and Leah Sue Aleck, all with Virginia Wyena; and Arnold Aleck, Elizabeth Aleck, and Denver Aleck, all with Pauline Watlamet. Joe Aleck was adopted away from decedent by order of the Yakima Tribal Court approved by the Yakima Agency Superintendent. Decedent's will, which was written before the birth of Denver Aleck and before his divorce from Pauline Watlamet, left a life estate in all of his property to Pauline and the remainder to Arnold Aleck and Elizabeth Aleck. Decedent specifically stated that it was his intention to leave nothing to Joe Aleck, Eddie W. Aleck, Jr., and Beatrice Aleck.

The will did not mention Leah Sue Aleck. Beatrice Aleck and Leah Sue Aleck objected to the will on the grounds that it was unfair to decedent's other children.

By order dated February 10, 1989, Judge Hammett approved decedent's will. The Judge concluded that decedent had testamentary capacity when the will was written. He further held that the will was not revoked by operation of law upon decedent's divorce from Pauline Watlamet or the birth of Denver Aleck. Both of these latter holdings were based upon the conclusions that there is no Federal law or regulation requiring the disapproval of a will under these changed circumstances and that state laws invalidating wills after a divorce or providing for pretermitted heirs do not apply to Indian wills. As further support for his holdings, Judge Hammett cited Toahnippah v. Hickel, 397 U.S. 598 (1970).

Appellant filed a timely petition for rehearing, alleging that she was decedent's natural daughter; he had recognized her as such since her birth; and she was omitted from decedent's will without any statement as to why he was disinheriting her, in violation of the instructions to field officers printed on the Bureau of Indian Affairs' affidavit to accompany Indian will, which was used in preparing decedent's will. By order dated March 8, 1989, Judge Hammett denied rehearing, stating that appellant's belief that she was unfairly excluded from decedent's will was not sufficient to prove undue influence in the execution of the will.

Appellant filed an appeal from this order, which the Board received on May 1, 1989. Only appellant submitted a brief on appeal.

Discussion and Conclusions

On appeal, appellant argues that the instructions to field officers on the affidavit to accompany Indian will indicate that if a decedent is not leaving property to a probable heir, the reason for such disinheritance should be set forth. Appellant contends that "[i]f the above cited instructions were prescribed by regulations promulgated by the Secretary of the Interior, then the decedent's property was not disposed of by Will in accordance with regulations as required by 25 CFR Section 373" (Opening Brief at 1-2).

[1] The Board held in Estate of Alexander Charette, 15 IBIA 92 (1987), that the instructions to field officers were not regulations and were advisory only. At 15 IBIA 95 n.3, the Board stated it was uncertain of the origin of these instructions, but speculated they were intended to ensure that wills passing both trust and non-trust property met the more stringent requirements of state or tribal laws concerning will execution. See also Estate of Alice Jackson (John), 17 IBIA 162, 164 n.4 (1989). Accordingly, the Board holds that decedent's will was not invalid because it failed to name appellant and state why she was being disinherited.

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 March 8, 1989, decision is affirmed.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed

Anita Vogt
Administrative Judge