



INTERIOR BOARD OF INDIAN APPEALS

Estate of Thomas Sun Goes Slow

23 IBIA 99 (11/23/1992)



United States Department of the Interior

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

ESTATE OF THOMAS SUN GOES SLOW : Order Affirming Decision
:
: Docket No. IBIA 92-115
:
: November 23, 1992

This is an appeal from a December 10, 1991, Order Denying Petition for Rehearing entered in this estate by Administrative Law Judge Keith L. Burrowes. IP BI 70A 90. Appellants are Martha Sun Goes Slow Beaumont and Ruby Sun Goes Slow Simpson, sisters of Thomas Sun Goes Slow (decedent).

Judge Burrowes found that Rebecca Lynne Sun Goes Slow Jefferson was decedent's daughter and sole heir. Appellants evidently seek to challenge that finding. In their brief before the Board, they argue that, because they were not represented by counsel at the two hearings held by Judge Burrowes, they were not able to present their case effectively. They appear to contend that they did not realize the real issue was the paternity of Rebecca, rather than whether or not decedent was married to Rebecca's mother. Appellants urge the Board to order a rehearing so that they may present their case properly.

Judge Burrowes held hearings in this matter on May 7 and 29, 1990. The transcripts of those hearings make it abundantly clear that appellants, as well as others in attendance, were aware that the matter at issue was Rebecca's paternity. Appellant Ruby Sun Goes Slow Simpson acknowledged at the outset of the first hearing that she was disputing the statement made in the "Data for Heirship Finding and Family History," prepared by the Bureau of Indian Affairs, that Rebecca was decedent's daughter. Tr. of May 7, 1990, hearing at 1. Some of the testimony at the hearings concerned the circumstances surrounding a possible marriage between decedent and Rebecca's mother. However, Judge Burrowes emphatically advised the parties that such testimony was irrelevant and that the only question was whether decedent was the biological father of Rebecca. E.g., Tr. of May 29, 1990, hearing at 35-37. After reviewing the entire transcripts, including the testimony of appellants, the Board rejects any suggestion that appellants may have misunderstood the point at issue during the hearings.

Further, the fact that appellants were not represented by counsel at the hearings did not relieve them of the obligation to present all of their evidence and arguments at that time. E.g., Estate of Henry Beavert, 18 IBIA 73 (1989). The Board stated in that case:

The rules of practice before the Department of the Interior specifically recognize the right of an individual to represent him or herself. See 43 CFR 1.3(b)(3). The fact that a person appears in a probate proceeding without counsel does not mean that any decision rendered in the proceeding will not be binding upon that person, or that the person need not raise all of his or her issues or arguments at that time. [Estate of Wesley Emmett Anton, 12 IBIA 139 (1984)]; [Estate of Ralph James (Elmer) Hail, 12 IBIA 62, 65 n.2 (1983).

18 IBIA at 75. When the parties are not represented by counsel, the Administrative Law Judge is under a greater obligation to ensure that the record is fully developed but is not required "to anticipate what issues [a party] might have raised or to discover additional legal arguments or evidence that might have been beneficial to [the party's] case." Id. The transcripts here show that Judge Burrowes gave all parties ample opportunity to present their evidence and arguments, while assisting them to focus their testimony upon relevant matters. The Board finds that Judge Burrowes fully met his obligation concerning development of the record.

The Board has stated on a number of occasions that an appellant bears the burden of proving error in the Administrative Law Judge's decision in an Indian probate matter. E.g., [Estate of Herbert Brant, Sr., 23 IBIA 97 (1992)]; [Estate of Jerry Elmer Coppock, 20 IBIA 212 (1991)]; [Estate of Donald Paul Lafferty, 19 IBIA 90 (1990)], and cases cited therein. Appellants here do not even allege any error on the part of Judge Burrowes, much less prove it.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Burrowes' December 10, 1991, order is affirmed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge