



INTERIOR BOARD OF INDIAN APPEALS

In the Matter of the Will of Mary Gladys Hall

25 IBIA 82 (12/15/1993)



United States Department of the Interior

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

IN THE MATTER OF THE WILL OF : Order Affirming Decision
MARY GLADYS HALL :
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:
: Docket No. IBIA 93-105
:
: December 15, 1993

Appellant Mary Ann Hansen seeks review of a May 5, 1993, order issued by the Superintendent, Osage Agency, Bureau of Indian Affairs (Superintendent), approving the will of Mary Gladys Hall (testatrix). For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Testatrix, Osage Allottee No. 1786, died testate on June 19, 1992. A hearing to consider her May 1, 1991, will was held on March 31, 1993. As a result of that hearing, the Superintendent approved testatrix's will pursuant to section 8 of the Act of April 18, 1912, 37 Stat. 86, 88, as amended by section 5(a) of the Act of October 12, 1978, 92 Stat. 1660, 1661, and regulations published in 25 CFR Part 17. Specifically, the Superintendent concluded that the will met the requirements of the laws of the State of Oklahoma for a valid will; at the time of the execution of the will, testatrix possessed testamentary capacity; and there was no evidence that the will was executed as a result of fraud, duress, menace, coercion, or undue influence.

In a May 12, 1993, letter to the Superintendent, appellant, testatrix's daughter, indicated a desire to appeal the order, but also stated that she was in poor health and lacked financial and emotional resources. The letter recites family history relative to the last few years of testatrix's life and the relationships between appellant and her siblings and testatrix and her children. The letter states at page 3:

[Superintendent], I WISH YOU COULD HELP ME!! Please, at least take a closer look at Mother's signature on the will . . . if Mother made the correction [to the spelling of her middle name], why wasn't she asked to initial the change? PLEASE read the enclosed progression of events. It reads like a novel. On paper what was happening now seems apparent. I was naive. What my brothers did to Mother and me will always hurt. But, God help Me, I still love my little brothers and wonder how they can live with themselves.

The Superintendent treated appellant's letter as an appeal from his order. He informed appellant of the proper procedures to be followed in filing an appeal.

The appeal was opposed by Tex J. Hall, Rex W. Hall, and Douglas Ferris, Jr. (appellees), who filed a document entitled "Motion to Dismiss (Alleged Appeal)." Appellees contended that the appeal should be dismissed because appellant had simply written a letter to the Superintendent; appellant had not attended the hearing in this matter or presented any evidence in support of her position; and if the letter was treated as an appeal, the appeal should be dismissed because appellant did not follow the proper procedures for filing an appeal.

The Board received the record in this matter on July 19, 1993. Although given a right to do so, no party filed any additional information with the Board.

The Board first addresses appellees' motion to dismiss. Appellees contend that appellant simply wrote a letter to the Superintendent. The Board disagrees. The letter clearly shows that appellant disagreed with the approval of testatrix's will, and sought to have that approval reversed.

Appellees also seek dismissal on procedural grounds, namely, that appellant failed to serve them with her notice of appeal or any other documents. In a May 24, 1993, letter to the Superintendent, appellant indicates that appellees were served copies of her letter. In light of this disagreement, the Board declines to dismiss this matter on procedural grounds.

Accordingly, appellees' motion to dismiss is denied.

Therefore, the Board reaches the merits of the matter. Appellant essentially contends that it is unlikely that testatrix would, of her own volition, have left her estate to her sons, Tex J. Hall and Rex W. Hall, considering the way in which appellant states they had treated her. Appellant also notes that, in the signature on testatrix's will, Gladys was initially written as "Gladis." Appellant asks that a closer look be taken at the signature, presumably on the assumption that testatrix would be unlikely to misspell her own name, or if she did so, may have been under some form of pressure.

The record contains a February 24, 1993, letter from the Special Attorney, Office of the Solicitor, giving notice of the hearing in this matter. The notice shows that it was sent to appellant and that a copy of the will was enclosed. Appellant does not dispute receiving this notice, and in fact states in her notice of appeal that she had intended to be represented by an attorney at that hearing.

Appellant presents no reasons why the questions she now raises could not have been raised prior to or at the hearing. That was the time at which all questions relating to the execution of testatrix's will were to be considered. The February 24, 1993, notice of hearing clearly indicated that objections to the will were to be raised at the hearing.

As a general rule, the Board does not consider issues and arguments raised for the first time on appeal. See Estate of Herbert Brant, Sr., 23 IBIA 97 (1992), and cases cited therein (applying this rule in probate

cases arising under 25 U.S.C. §§ 372 and 373 (1988) and 43 CFR Part 4, Subpart D); All Materials of Montana, Inc. v. Billings Area Director, 21 IBIA 202, 212 (1992), and cases cited therein (applying the same rule in cases arising under 25 CFR Chapter I). It sees no reason why a different rule should be followed in Osage will cases. Accordingly, in the absence of any indication that the issues appellant now raises could not have been raised prior to or at the hearing, the Board declines to consider them for the first time on appeal.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, DM Release No. 2937, 1/ the Superintendent's May 5, 1993, order approving will is affirmed.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Anita Vogt
Administrative Judge

1/ Departmental Manual Release No. 2937 revised the Delegations of Authority in Parts 209 and 211 of the Departmental Manual to transfer responsibility for appeals from decisions of the Superintendent, Osage Agency, Bureau of Indian Affairs, on the approval of Osage Indian wills from the Office of the Solicitor to the Board of Indian Appeals.