



INTERIOR BOARD OF INDIAN APPEALS

Estate of David John

25 IBIA 178 (02/15/1994)



United States Department of the Interior

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

ESTATE OF DAVID JOHN : Order Affirming Decision
:
: Docket No. IBIA 93-104
:
: February 15, 1994

Alice D. Blakely sought review of a May 20, 1993, order declining probate of will and affirming order determining heirs issued by Administrative Law Judge William E. Hammett in the estate of David John (decedent), Probate # E-57-67. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Decedent, an Athabascan, died on August 5, 1964. A hearing to probate his trust or restricted estate was held in Juneau, Alaska, before Examiner of Inheritance R.J. Montgomery on December 9, 1964. No will was presented at that hearing. The evidence presented indicated that decedent was survived by a daughter, Alice John Blakely, and a granddaughter, Sarah Enoch Williams. Williams was the daughter of decedent's predeceased daughter, Mary John Williams. The evidence also indicated that other children and grandchildren had predeceased decedent without issue. In an order dated May 26, 1967, the Examiner determined that Blakely and Williams were decedent's heirs. The women shared equally in the estate.

In 1983, the Tanana Chiefs Conference, Inc. (TCC), a P.L. 93-638 contractor, discovered a will apparently executed by decedent in 1956. Under the will, which showed no month or day of execution, decedent bequeathed \$1 to Williams, and devised all of his trust or restricted property to Blakely. Initial inquiries were made concerning reopening the estate to probate the will, but a formal petition for reopening was not filed until February 28, 1992. Although he expressed concerns about whether Blakely, the petitioner, had pursued her claim with due diligence, by order dated March 20, 1992, Judge Hammett reopened the estate, explaining that:

[t]he purpose of the hearing * * * will be to take evidence pertaining to issues of due diligence, laches, validity of the will, testamentary capacity of the testator and freedom from undue influence, and any other relevant issue which may be raised.

Both Blakely and Williams attended and testified at the April 21, 1992, hearing. One of the will witnesses was deceased, and the second lived in a remote area and did not attend the hearing. Judge Hammett sent that witness written interrogatories concerning execution of the will.

The will witness did not answer the interrogatories, but returned them with one handwritten statement: "David John signed his name on this paper in 1956. I signed too. Some of old people they read [illegible] language learn to write their name. David Salmon." The Judge sent the interrogatories to the will witness a second time, but received no further response.

By order dated May 20, 1993, Judge Hammett, declined to probate the will. Blakely appealed from this decision. Her notice of appeal to the Board states in its entirety:

I have received your decision regarding my father's last will and testament. I do disagree with your decision and wish to appeal this decision.

I have attempted several times through the years, with no help or success to retrieve from BIA and Juneau a copy of my fathers will. Mysteriously it showed up at Tanana Chiefs Conference Realty Office, stamped from Barrow, Alaska.

Normally I would have no problem with this decision, but I was approached by Sarah [Williams] to sell this property. I feel she only wants the monetary value of this property. This property has been in my family for many years and I plan to keep this land in our family for many years to come.

On August 25, 1993, before the Board reached this case, TCC submitted a copy of Judge Hammett's interrogatories that had been completed by the will witness. The transmittal letter stated that it was completed by the witness during a visit by a TCC staff member. By Order dated August 2, 1993, the Board remanded this matter to Judge Hammett for his initial consideration of the answers to his interrogatories.

By order dated December 7, 1993, Judge Hammett held that the answers to the interrogatories did not cause him to change his decision to decline probate of the will. The Judge stated:

Upon reviewing the completed interrogatory, I find that the answers * * * appear to be conflicting and that a question of possible undue influence may have been raised by the fact that the will witness admitted that both he and Alice John, now Blakely, instructed [decedent] as to disposition of his property in favor of Alice John.

Although given an opportunity to do so, neither Blakely nor Williams responded to Judge Hammett's order.

The Board has frequently stated that an appellant bears the burden of proving error in the Administrative Law Judge's decision in an Indian probate matter. See, e.g., Estate of Thomas Sun Goes Slow, 23 IBIA 99 (1992), and cases cited therein. Here, Blakely's notice of appeal does not even allege any error in Judge Hammett's May 20, 1993, order, and she has filed

nothing in response to his December 7, 1993, order. If anything, Blakely's notice of appeal raises questions about her knowledge of decedent's will, which could tend to support Judge Hammett's decision.

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 orders declining to probate decedent's will are affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge