



INTERIOR BOARD OF INDIAN APPEALS

Estate of Sharon Lee Bennett

26 IBIA 279 (10/21/1994)



United States Department of the Interior

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

ESTATE OF SHARON LEE BENNETT : Order Affirming Decision
:
: Docket No. IBIA 91-88
:
: October 21, 1994

Appellant Quileute Indian Tribe sought review of a March 26, 1991, order denying rehearing entered by Administrative Law Judge William E. Hammett in Estate of Sharon Lee Bennett, IP SA 14N 90. Denial of rehearing let stand Judge Hammett's September 10, 1990, determination that certain interests in trust property held by decedent Bennett escheated to the Quinault Indian Nation (Nation) under the Indian Land Consolidation Act (ILCA), 25 U.S.C. § 2206(a) (1988). ^{1/} The Board of Indian Appeals (Board) finds that this appeal is ready for decision and, for the reasons discussed below, affirms Judge Hammett's order.

Appellant's notice of appeal alleged that the interests which were found to escheat under section 2206(a) should have escheated to it, rather than to the Nation. The Board had previously held in Estate of Peter Alvin Ward, 19 IBIA 196, 212 (1991), that "Congress intended * * * to restrict escheats of interests in trust or restricted land within an Indian reservation to the governing tribe of that reservation," and had concluded that all interests in land located on the Quinault Indian Reservation that escheat under ILCA, escheat to the Nation. Appellant was given an opportunity to show cause why its appeal was not governed by Ward.

Appellant responded that it was seeking judicial review of Ward, and requested that this case be stayed until review was concluded. By order dated July 1, 1991, the Board granted an indefinite stay pending completion of judicial review of Ward. The Board also authorized distribution of decedent's remaining trust assets, which were not affected by this appeal.

^{1/} All further citations to the United States Code are to the 1988 edition.

At all times relevant to this appeal, section 2206(a) provided:

"No undivided interest in any tract of trust or restricted land within a tribe's jurisdiction or otherwise subject to a tribe's jurisdiction shall descend by intestacy or devise but shall escheat to that tribe if such interest represents 2 per centum or less of the total acreage in such tract and is incapable of earning \$100 in any one of the five years from the date of decedent's death."

This section was amended on Nov. 29, 1990. 104 Stat. 4666, P.L. 101644, Title III, § 301(a).

On August 28, 1992, the United States District Court for the Western District of Washington dismissed appellant's appeal from Ward. Quileute Indian Tribe v. Lujan, No. CV-91-558-JCC. Dismissal was affirmed by the Ninth Circuit Court of Appeals on March 16, 1994. Quileute Indian Tribe v. Babbitt, 18 F.3d 1456. The courts concluded that the Nation was an indispensable party to the litigation that could not be joined because of its sovereign immunity. Appellant did not seek certiorari. Thus, although the Board's decision in Ward stands, appellant did not have an opportunity to litigate the substantive issues.

By order dated July 15, 1994, appellant was given another opportunity to show cause why this appeal was not governed by Ward. The Board received appellant's response on October 14, 1994.

Appellant argues that Ward should not control this case because of factual differences, *i.e.*, the original owner of the lands held by decedent was clearly established to be a member of appellant, and decedent and two of her three heirs were members of appellant. The Board's decision in Ward was not based on the particular facts of that case, but rather was based on an interpretation of the law as established by ILCA. Although there may be factual differences between this case and Ward, those differences do not alter the Board's conclusions as to the proper legal interpretation of ILCA.

Appellant contends that another factual difference is that decedent was not informed of the possible impacts of the escheat provisions of ILCA. This argument does not address the sole issue appellant raised on appeal, *i.e.*, whether decedent's interests should escheat to appellant or to the Nation. Instead, it addresses whether the interests should escheat at all. The persons adversely affected by an escheat are decedent's heirs and/or devisees. Appellant is not before the Board as a representative of decedent's heirs and/or devisees, but instead as a party representing its own interests in being the recipient of an escheat. Decedent's heirs and/or devisees did not appeal from Judge Hammett's finding that certain of decedent's interests were subject to escheat, and the time for filing such an appeal has long since passed. See 43 CFR 4.320(a) (requiring the filing of an appeal from a probate decision within 60 days of the date of the Judge's decision). Assuming arguendo that appellant would have standing to raise this issue on its own, the Board concludes that this is an untimely attempt to appeal from the finding that certain of decedent's interests were subject to escheat.

Taking a different approach, appellant contends that "[c]onfirmation of an escheat in this case would breach the board's trust responsibility" (Response at 3), because it would violate a duty to individual Indians and to tribes with treaty rights, presumably appellant itself. Appellant asks the Board to "weigh the duties imposed by the Constitution and the treaty [of Olympia, 12 Stat. 971] against the statutory (ILCA) mandate" (Ibid.).

Appellant's argument suggests that it believes the Board has discretion not to escheat property interests otherwise covered by section 2206(a). The

Board does not have such discretion; rather, it is bound to carry out mandates contained in legislation unless and until that legislation is struck down by a court of competent jurisdiction or changed by Congress.

Furthermore, to the extent relevant to escheats under ILCA, the Board considered the Treaty of Olympia in Ward. It also considered Congress' intent in amending section 2206(a) in 1990 to clarify that interests in land located on a reservation would escheat "to the reservation's recognized tribal government." Congress has already done the balancing appellant would now have the Board do, and has reached a result opposite the one appellant urges.

The Board concludes that any escheat in this case should be to the Nation.

Appellant also specifically argues against escheat, contending that the Board should grant a new stay pending completion of judicial review of the decision issued by the United States District Court for the District of Montana in Youpee v. Babbitt, CV-93-21-BLG-JDS, 21 Indian L. Rptr. 3058 (Mar. 3, 1994). The court there found unconstitutional the 1984 version of section 2206.

As discussed supra, assuming appellant has standing to contest escheat, it did not file a timely appeal from the determination that certain of decedent's interests were subject to escheat.

Appellant has raised no arguments which cause the Board to reconsider its decision in Ward.

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 26, 1991, order denying rehearing is affirmed.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Anita Vogt
Administrative Judge