



INTERIOR BOARD OF INDIAN APPEALS

In the Matter of the Will of Abe M. Conklin

31 IBIA 87 (07/28/1997)

Judicial review of this case:

Affirmed, *Conklin v. United States*, No. 97-789 (N.D. Okla. May 29, 1998)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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IN THE MATTER OF THE WILL : Order Affirming Superintendent's  
OF ABE M. CONKLIN : Order  
:   
: Docket No. IBIA 97-44  
:   
: July 28, 1997

This is an appeal from an October 24, 1996, Order Approving Will issued by the Superintendent, Osage Agency, Bureau of Indian Affairs. While approving a will executed on December 6, 1994, by Abe M. Conklin (Decedent), the Superintendent's order declined to recognize an August 22, 1995, letter as a holographic codicil to Decedent's will. Appellant is Decedent's widow, Victoria LaMarr Conklin. She appeals the order only insofar as it did not approve the August 22, 1995, letter as a holographic codicil. For the reasons discussed below, the Board affirms the Superintendent's order.

In his 1994 will, Decedent provided that his .38889 interest in an Osage headright was to be divided into six equal shares, with one share going to Appellant for life. On August 22, 1995, in a handwritten letter to his attorney, Decedent stated:

I would like to make a codicil to my Last Will and Testament of December 6, 1994, to give and devise my Osage headright interests that I now have or may have in the future that is remaining in my estate at the time of my death to my wife as life tenant and upon her death to go as directed to my children in the Last Will and Testament.

Decedent died on December 1, 1995. On January 22, 1996, Appellant filed a petition with the Superintendent, seeking approval of the December 6, 1994, will and the August 22, 1995, letter, which Appellant presented for approval as a holographic codicil. Hearings in the matter were conducted by the Special Attorney for the Osage Indians on April 26, 1996, August 30, 1996, and September 27, 1996.

On October 24, 1996, the Superintendent issued the order on appeal here. Concerning the purported codicil, he stated:

The Special Attorney took judicial review of the letter dated August 22, 1995. It is presented as a holographic codicil. In that respect, it is entirely written, dated and signed in the hand of the decedent. However, there is some question whether that document is sufficient under the law to constitute a codicil. The document is a letter to the decedent's attorney requesting that the attorney draft a codicil to the will. Two cases appear to discuss this issue. In Hooker v. Barton, 284 P.2d 708 ([Okla]

1955), the Court discussed the necessity of the document evidencing testamentary intent. The Court stated that a document could serve as a will, but "it must be plainly apparent that it was the intention of the decedent that the paper should stand for her last will & testament and such intent must be plainly apparent." The Court also said that the testamentary intent must occur at the time of the writing. A prior case did state that if the testamentary disposition was the main subject of the writing, that it was more likely that the document was a will. Nevertheless, the Court in Craig v. McVey, 195 P.2d 753 ([Okla] 1948), did hold that the document was not a will, rather general statements regarding the disposition of her property.

In this case, I do not believe that this document can be considered a will. It requests his attorney to draft a will; it does not directly state that the property is distributed. It is clear that the decedent did not intend this document to be the will; rather it was only the basis for what he expected to be a later document. As a consequence, this document does not constitute a will.

Superintendent's Oct. 24, 1996, Order at 2.

On appeal, Appellant contends: (1) No timely contest to the August 22, 1995, letter was made under 25 C.F.R. § 17.3(b), 1/ and therefore the letter must be approved as a holographic codicil; and (2) on the merits, the letter should be approved as a holographic codicil.

Appellant's first argument suggests that the Superintendent has no authority to consider the validity of a purported testamentary document on his own initiative. Such a suggestion must be firmly rejected. The Superintendent exercises the trust responsibility of the United States when he approves or disapproves Osage wills. The proper discharge of his duty in this regard requires that he exercise independent judgment. Accordingly, he cannot be shackled by a requirement, such as Appellant proposes here, that he approve a purported testamentary document unless an objection is timely raised by a party. Nothing in 25 C.F.R. § 17.3(b), or in any other provision in 25 C.F.R. Part 17, can be read to stand for such a proposition.

The Board finds it unnecessary to consider whether a timely contest to the August 22, 1995, letter was made. The Superintendent had ample authority to determine the validity of the letter as a holographic codicil in any case.

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1/ Subsection 17.3(b) provides:

"Any interested party desiring to contest approval of the will may, not later than 5 days before the date set for hearing, file written objections in triplicate, showing that a copy thereof was served upon attorneys for proponent and other attorneys of record in the case. Such contestant shall clearly state the interest he takes under the will and, if a presumptive heir, the interest he would take under the Oklahoma law. The contestant shall further state specifically the ground on which his contest is based."

On the merits, Appellant argues that, because the August 22, 1995, letter clearly expresses Decedent's intent to devise a life estate in his headright interest to Appellant, it is entitled to recognition as a holographic codicil. She contends that the Oklahoma cases relied upon by the Superintendent may be distinguished from this case because they involved documents which did not express such a clear intent.

Appellant ignores critical language of the Oklahoma cases relied upon by the Superintendent. The Superintendent quoted from Hooker v. Barton. Virtually identical language appears in Craig v. McVey, in which the Oklahoma Supreme Court stated: "We are committed to the rule that: 'Where an instrument is tendered for probate as an holographic will, it must be plainly apparent that it was the intention of the deceased that the paper should stand for her last will and testament. [Emphasis added.]" 195 P.2d at 754. The court's meaning (seems obvious)) the tendered instrument itself must have been intended to effect a testamentary disposition. If that meaning were not clear enough from the language just quoted, it is made absolutely clear by the court's reliance upon an annotation on the subject of letters as testamentary dispositions. Among the portions of the annotation quoted by the court is the statement: "'If the alleged testamentary statement refers to something which the deceased intended to do in the future, as opposed to something then being done by him, the statement is not a testamentary disposition.' [54 A.L.R. at] 922." 195 P.2d at 754.

The August 22, 1995, letter expresses an intent to make a testamentary disposition in the future. It does not express an intent that the letter itself effect a testamentary disposition.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Superintendent's October 24, 1996, order is affirmed.

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//original signed  
Anita Vogt  
Administrative Judge

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge