



INTERIOR BOARD OF INDIAN APPEALS

WELSA Heirship Determination of Lawrence Edward Wadena

32 IBIA 145 (04/20/1998)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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WELSA HEIRSHIP DETERMINATION : Order Vacating Decision
OF LAWRENCE EDWARD WADENA : and Remanding Case
: :
: Docket No. IBIA 98-7
: :
: April 20, 1998

The Minneapolis Area Director, Bureau of Indian Affairs (Area Director; BIA), seeks review of a September 18, 1997, heirship determination made for Decedent Lawrence Edward Wadena, No. WC 97-0029, by Administrative Judge Larry Meuwissen under the White Earth Reservation Land Settlement Act (WELSA), 25 U.S.C. § 331 note (1994). ^{1/} For the reasons discussed below, the Board vacates that decision and remands this matter for redetermination of Decedent's heirs.

Judge Meuwissen based his determination that Lawrence Earl Wadena, Linda Sue Wadena Londo, and Sonia Jean Vik Wadena were Decedent's heirs on his conclusion that 25 U.S.C. § 371 applies in WELSA heirship proceedings. The Judge set forth this conclusion in his decisions in the WELSA heirship determinations of Esther Bellecourt Smith and Thomas J. Shingobe. On October 15, 1997, the Board disapproved Judge Meuwissen's conclusion that 25 U.S.C. § 371 applies in WELSA heirship proceedings. WELSA Heirship Determinations of Thomas J. Shingobe and Esther Bellecourt Smith, 31 IBIA 201. The Area Director cited the Board's decision in Shingobe as the reason for his appeal.

By order dated November 19, 1997, the Board gave interested parties an opportunity to respond to the Area Director's filings. Responses were received from Sonia J. Wadena and Linda S. Londo.

Wadena, appearing pro se, contends that Decedent was her father. She states that Decedent and her mother had lived together since 1974, they were later married under the laws of the State of Minnesota, and were living together at the time of Decedent's death in 1994. Wadena further contends that Decedent acknowledged her as his daughter in his Last Will and Testament. A copy of that will appears in the record. Article III states in pertinent part: "I have intentionally omitted from this, my Last Will and Testament, my children, LINDA LONDO, LAWRENCE WADENA, JR., * * * SONIA WADENA * * *."

In his Order Determining Heirs, Judge Meuwissen found that Wadena was born more than 5 years prior to the marriage of Decedent and Wadena's mother,

^{1/} All further citations to the United States Code are to the 1994 edition.

but he concluded that Wadena was an heir of Decedent under 25 U.S.C. § 371. The Judge also noted in a footnote that Decedent had acknowledged that Wadena was his child.

Londo, appearing through counsel, first seeks reconsideration of the Board's decision in Shingobe. In the absence of a reversal of Shingobe, Londo contends that she is an heir of decedent under Minnesota law because Decedent acknowledged her as his child in his Last Will and Testament. Alternatively, she argues that this matter should be remanded for a determination of whether Decedent and her mother were married by Indian custom. Londo contends that Indian custom marriages were recognized in In the Matter of the WELSA Heirship Determination of Clara Lizzie Pemberton, No. WC 94-0017 (Dec. 6, 1994).

In arguing for reconsideration of Shingobe, Londo relies on the briefs submitted to the Board in that appeal. The Board has thoroughly considered the arguments presented in those briefs. Nothing raised in this appeal causes it to reconsider Shingobe.

The Board finds, however, that this matter must be remanded for consideration of the questions of whether Wadena, Londo, and Lawrence Earl Wadena are Decedent's heirs based on his acknowledgement of them as his children in his will. Furthermore, if Londo is not found to be an heir based on Decedent's acknowledgement of her in his will, the Judge must determine whether Londo is an heir by virtue of the alleged Indian custom marriage between Decedent and Londo's mother.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Judge Meuwissen's September 18, 1997, decision is vacated and this matter is remanded for redetermination of Decedent's heirs and, if necessary, recalculation of the shares taken by each heir.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge