



INTERIOR BOARD OF INDIAN APPEALS

Estate of Leonard Young

32 IBIA 292 (08/18/1998)



## United States Department of the Interior

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

ESTATE OF LEONARD YOUNG : Order Dismissing Appeals  
:  
: Docket No. IBIA 98-55  
:  
: August 18, 1998

Appellants Vivian Young and Lillian Young seek review of a December 2, 1996, order denying rehearing issued by Administrative Law Judge William E. Hammett in the Estate of Leonard Young, IP SA 13N 95. For the reason discussed below, the Board of Indian Appeals (Board) dismisses these appeals.

Decedent Leonard Young, Quinault 117A1450, was born on August 10, 1900, and died on November 29, 1992, at Chehalis, Washington. Judge Hammett held a hearing to probate Decedent's trust estate on April 27, 1995, and issued an order on September 12, 1996, determining that Decedent's heirs were his wife, Lillian; his daughter, Vivian; and his son, Jack. Although noting that Decedent was not married to the mothers of either Vivian or Jack, Judge Hammett found that sufficient evidence of paternity had been shown. Because Decedent owned interests which were subject to the escheat provision of the Indian Land Consolidation Act, 25 U.S.C. § 2206 (1994), Judge Hammett retained jurisdiction over the appeal for the sole purpose of issuing a final order concerning those interests after the constitutionality of section 2206 had been determined.

On November 7, 1996, Lillian filed a petition for rehearing in which she disputed that Jack was Decedent's son. Judge Hammett denied rehearing in an order dated December 2, 1996. The order properly informed interested parties, including both Lillian and Vivian, that it would be final unless a notice of appeal was filed with the Board within 60 days from the date of the order.

On January 21, 1997, the Supreme Court held the escheat provision of 25 U.S.C. § 2206 unconstitutional. Babbitt v. Youpee, 117 S.Ct. 727.

On September 10, 1997, Judge Hammett issued a blanket order instructing Bureau of Indian Affairs (BIA) officials to distribute those interests over which he had retained jurisdiction to the heirs or devisees. That order affected this estate.

Apparently, Lillian subsequently wrote to BIA. Nothing in the materials before the Board indicate the date of that communication. Judge Hammett responded to her by letter dated January 13, 1998, stating:

The papers you recently sent to the Bureau of Indian Affairs do not constitute a Notice of Appeal. If you intend to appeal

from my Order Denying Petition for Rehearing issued December 2, 1997, you must file a Notice of Appeal with the Interior Board of Indian Appeals \* \* \* not later than February 1, 1998. [Emphasis added.]

On February 2, 1998, the Board received documents which it treated as Notices of Appeal from Lillian and Vivian. The documents were transmitted to it by the Administrator of the Confederated Tribes of the Chehalis Reservation. The materials were delivered to Federal Express on January 30, 1998. The Administrator's transmittal memorandum stated that the documents were "in regard to the Order Denying Petition for ReHearing issued on December 2, 1997, by Administrative Law Judge William Hammett." The materials from Lillian do not show any date. Vivian's letter is undated, but her signature was witnessed by a notary public on January 29, 1998.

The Board accepted the Notices of Appeal as being from a December 2, 1997, denial of rehearing. It did not learn that the order was actually issued on December 2, 1996, until it began reviewing the probate record. When it noticed the discrepancy, the Board verified the date of the order with Judge Hammett's office.

Judge Hammett properly informed both Appellants that his order denying rehearing would become final for the Department unless they appealed to the Board within 60 days of December 2, 1996. See 43 C.F.R. § 4.320(a). Neither Appellant filed a notice of appeal within 60 days of December 2, 1996. Assuming for the purposes of this discussion only that the Judge's September 10, 1997, order for the distribution of interests held in abeyance somehow restarted the appeal period, Appellants also did not file their Notices of Appeal within 60 days of September 10, 1997. Neither Appellant has filed a timely notice of appeal.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, these appeals from Judge Hammett's December 2, 1996, denial of rehearing are dismissed as untimely.

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Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Anita Vogt  
Administrative Judge