



INTERIOR BOARD OF INDIAN APPEALS

Estate of Frances Alfred Graham

34 IBIA 276 (03/17/2000)



United States Department of the Interior

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

ESTATE OF FRANCES ALFRED GRAHAM : Order Docketing Appeal
: and Affirming Decision
:
: Docket No. IBIA 00-45
:
: March 17, 2000

Erin Red Bear (Appellant) has filed a notice of appeal from a January 7, 2000, Order Denying Petition for Rehearing issued in the estate of Frances Alfred Graham (Decedent) by Administrative Law Judge Marcel S. Greenia. Appellant contends that she should have been recognized as Decedent's adopted daughter.

The appeal is docketed under the docket number shown above. However, for the reasons discussed below, the Board summarily affirms Judge Greenia's order.

On July 30, 1999, Judge Greenia issued an order determining Decedent's heirs and approving his will. Appellant sought rehearing, alleging that Decedent had adopted her by Indian custom. Based on 25 U.S.C. § 372a, Judge Greenia held that Appellant could not be recognized as an heir of Decedent because she had not produced any written evidence of her adoption. ^{1/}

^{1/} 25 U.S.C. § 372a provides:

"In probate matters under the exclusive jurisdiction of the Secretary of the Interior, no person shall be recognized as an heir of a deceased Indian by virtue of an adoption))

"(1) Unless such adoption shall have been))

"(a) by a judgment or decree of a State court;

"(b) by a judgment or decree of an Indian court;

"(c) by a written adoption approved by the superintendent of the agency having jurisdiction over the tribe of which either the adopted child or the adoptive parent is a member, and duly recorded in a book kept by the superintendent for that purpose; or

"(d) by an adoption in accordance with a procedure established by the tribal authority, recognized by the Department of the Interior, of the tribe either of the adopted child or the adoptive parent, and duly recorded in a book kept by the tribe for that purpose; or

"(2) Unless such adoption shall have been recognized by the Department of the Interior prior to the effective date of this section [July 8, 1940] or in the distribution of the estate of an Indian who has died prior to that date: Provided, That an adoption by Indian custom made

Before the Board, Appellant again alleges that she was adopted by Indian custom and again fails to produce any written documentation of her adoption. She contends that other Indian custom adoptions have been recognized in tribal court and appears to be arguing that tribal law should be applied in this probate proceeding.

Indian probate proceedings within the Department of the Interior are controlled by Federal law, not tribal law. In this case, as Judge Greenia pointed out, there is a specific Federal statute on point, *i.e.*, 25 U.S.C. § 372a. Thus, the fact that custom adoptions may be recognized under tribal law is of no consequence here.

Appellant argues, "All I am asking is to let his estate go where he wished it to go * * * [T]he only way to do this at this point is to hear testimony from family members who discussed this with him." Notice of Appeal at 2.

Appellant made a similar argument before Judge Greenia, who observed that Decedent made a will and did not include Appellant as a devisee. The will itself was not challenged in the proceedings before Judge Greenia, and Appellant does not attempt to challenge it here. Thus, even if Appellant could be recognized as Decedent's adopted daughter, she would still not receive any part of Decedent's estate. Decedent's will controls the distribution of his estate.

It is clear that there is no set of circumstances under which Appellant can prevail in this appeal. Accordingly, the Board finds that briefing is not necessary and that a decision may be issued at this time. *See, e.g., Estate of Cecile Brockey Tailfeathers*, 25 IBIA 269 (1994), and cases cited therein.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed, and Judge Greenia's January 7, 2000, order is affirmed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

fn. 1 (continued)

prior to the effective date of this section may be made valid by recordation with the superintendent if both the adopted child and the adoptive parent are still living, if the adoptive parent requests that the adoption be recorded, and if the adopted child is an adult and makes such a request or the superintendent on behalf of a minor child approves of the recordation."

For background information on § 372a and its legislative history, *see Estate of Jacob William Nicholaj*, 29 IBIA 157, 165-66 (1996); *Estate of Irene Shoots Another Butterfly*, 16 IBIA 213, 218-19 (1988).