



INTERIOR BOARD OF INDIAN APPEALS

Estate of Ethel Emily Gilbert

36 IBIA 268 (08/14/2001)



United States Department of the Interior

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

ESTATE OF ETHEL EMILY GILBERT : Order Docketing Appeal, Vacating Order,
: and Remanding Matter to the
: Administrative Law Judge
:
: Docket No. IBIA 01-151
:
: August 14, 2001

Appellant Mary Jewett seeks review of a May 24, 2001, order denying rehearing issued in the estate of Decedent Ethel Emily Gilbert by Administrative Law Judge Marcel S. Greenia. For the reason discussed below, the Board of Indian Appeals (Board) vacates the May 24, 2001, order and remands this matter to Judge Greenia for further consideration.

In support of her notice of appeal, Appellant furnished copies of two documents entitled "Grant of Exchange Assignment of Tribal Land" and "Deed to Restricted Indian Land." Appellant contends that these documents were only recently discovered, and asks that they be considered in determining the distribution of Decedent's trust real property.

It appears that these documents were not before Judge Greenia when he denied rehearing in this estate, because the May 24, 2001, order states that the petition for rehearing "is not substantiated with any specific and new evidence." However, even though the documents were first presented to the Board, their existence cannot be overlooked or ignored.

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; Judge Greenia's May 24, 2001, order is vacated; and this matter is remanded to the Judge for consideration of the documents provided with Appellant's notice of appeal. The Judge shall require Appellant to substantiate her assertion that the documents were only recently discovered. If necessary, he shall request information from the Bureau of Indian Affairs and/or the Cheyenne River Sioux Tribe in order to determine the authenticity and present validity of the documents.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge