



INTERIOR BOARD OF INDIAN APPEALS

Estate of Clifford Barney Tulee, Sr.

37 IBIA 235 (04/26/2002)



# United States Department of the Interior

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

ESTATE OF CLIFFORD BARNEY TULEE, SR. : Order Reversing Order on Reopening  
: :  
: :  
: Docket No. IBIA 01-145  
: :  
: :  
: April 26, 2002

This is an appeal from a June 28, 2001, order on reopening issued by Administrative Law Judge William E. Hammett in the estate of Clifford Barney Tulee, Sr. (Decedent). For the reasons discussed below, the Board reverses that order.

Decedent died intestate on December 10, 1996, owning trust property on the Yakama Reservation. He was survived by his second wife, Oralia Cantu Tulee (Oralia), and eight children, including Leonard Tulee (Appellant). All of Decedent's eight surviving children are also the children of his deceased first wife.

Oralia executed a disclaimer on January 15, 1997, in which she stated:

3. The affiant states that she is not of Indian descent. That she desires that all \* \* \* Indian trust/restricted property which the decedent \* \* \* owned at the time of his death[ ] remain in trust/restricted status for the benefit of the decedent's surviving children.

4. The affiant therefore renounces and disclaims pursuant to the appropriate federal regulations any and all right, title, and interest in any \* \* \* trust/ restricted property of decedent which she might otherwise have owned or been entitled to.

Judge Hammett issued an order determining Decedent's heirs on June 26, 2000. He rejected Oralia's disclaimer, stating that, under the Board's decision in Estate of Donna Gottschalk, 30 IBIA 82 (1996), "the interests which she disclaimed would descend to her lineal descendants and not to the estate of [Decedent], and the disclaimer discloses that this

was not her intention.” Order Determining Heirs at 2. He therefore found that Oralia was entitled to inherit 1/2 of Decedent’s estate and that Decedent’s children were each entitled to inherit 1/16 of the estate.

Appellant sought rehearing concerning the disclaimer. Judge Hammett denied rehearing on October 6, 2000. No appeal was filed from the October 6, 2000, order.

On June 28, 2001, Judge Hammett reopened the estate on his own motion, stating:

To prevent the possibility of manifest injustice should this forum have misinterpreted the ruling of the Board in Gottschalk, this forum hereby reopens the estate pursuant to the authority vested under 43 CFR 4.242, and, after review finds that it has correctly interpreted the Board’s decision and that if it had approved the disclaimer, the interests which the disclaimant disclaimed would have passed to her potential heirs (at least one daughter) and not to the decedent’s eight children.

Appellant appealed the June 28, 2001, order to the Board, contending that Judge Hammett misinterpreted Gottschalk. Upon reviewing Gottschalk, the Board finds that it requires clarification.

In Gottschalk, the Board held that certain disclaimants, who clearly misunderstood the consequences of their disclaimers, must be given an opportunity to withdraw those disclaimers. The disclaimants in that case were the spouse of the decedent and two of the decedent’s children, who argued that their intent in executing disclaimers, *i.e.*, to vest the decedent’s entire estate in one of the decedent’s children, had been frustrated when the decedent’s other three children failed to execute disclaimers.

In addition to addressing the argument made by the disclaimants, the Board stated more broadly:

[T]he Department’s regulation concerning renunciation of interests, 43 CFR 4.208, provides that “the property so renounced passes as if the person renouncing the interest has predeceased the decedent.” Had any of the disclaimants predeceased decedent, his or her share in decedent’s estate would have passed to that disclaimant’s heirs. \* \* \*

\* \* \* 43 CFR 4.208 does not permit an heir to renounce an interest in trust or restricted property in favor of a particular person or persons. Estate of Gus Four Eyes, 20 IBIA 22 (1991). Thus, even if all of decedent’s heirs but

Michael had renounced their interests in decedent's estate, they would not have accomplished the result of consolidating all interests in Michael. [Footnote omitted.]

30 IBIA at 85-86.

This statement was overly broad. One of the disclaimants in Gottschalk was the decedent's spouse. Under Alaska law, had the decedent's spouse predeceased her, the decedent's entire estate would have passed to her descendants. Alaska Stat. § 13.12.103. Further, as to the decedent's disclaiming children, their interests would have passed to their heirs only if their heirs were also their descendants.

Therefore, Gottschalk is clarified to state that, as to trust property in Alaska, where a disclaimant is a descendant of the decedent, and where that disclaimant has descendants, the disclaimant's interest passes to the disclaimant's descendants.

In this case, the disclaimant is Decedent's spouse. Washington law, like Alaska law, provides that, where there is no surviving spouse, a decedent's entire estate passes to the issue of the decedent, if there is issue. Wash. Rev. Code § 11.04.015(2)(a). Thus, had Oralia predeceased Decedent, all of Decedent's estate would have passed to his children.

Judge Hammett based his disapproval of Oralia's disclaimer entirely on the Board's decision in Gottschalk. As clarified in this decision, Gottschalk does not preclude the approval of Oralia's disclaimer. The Board therefore finds that Oralia's disclaimer should be approved.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Judge Hammett's June 28, 2001, and October 6, 2000, orders are reversed, and his June 26, 2000, order is reversed insofar as it disapproved Oralia's disclaimer. This matter is returned to him with a direction that he approve the disclaimer.

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Anita Vogt  
Administrative Judge

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge