



INTERIOR BOARD OF INDIAN APPEALS

Estate of Alfredine Doreen Old Crane

37 IBIA 269 (06/10/2002)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

ESTATE OF ALFREDINE DOREEN : Order Affirming Decision  
OLD CRANE :  
: Docket No. IBIA 01-100  
:  
: June 10, 2002

Appellant Montgomery Lance Worden, a.k.a. Monty Royce Old Crane, through counsel, Angela Russell, Esq., Crow Agency, Montana, seeks review of a January 24, 2001, order denying reopening issued by Administrative Law Judge William S. Herbert in the estate of Appellant's natural mother, Alfredine Doreen Old Crane (Decedent). The order denying reopening let stand a February 22, 1991, order determining Decedent's heirs issued by Administrative Law Judge Keith L. Burrowes. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Appellant was born to Decedent on August 24, 1978. He alleges that he was placed in foster care with a non-Indian family off the Crow Reservation shortly after his birth. On February 12, 1985, the Crow Tribal Court entered an order terminating Decedent's parental rights to Appellant. Although Appellant did not provide a copy of this order either with his petition for reopening or on appeal, he states that it was issued under the Montana child abuse and neglect statutes, and was involuntary. For purposes of this decision, the Board accepts Appellant's characterization of the court order as correct. Shortly after the issuance of the court order, Appellant was adopted by his foster parents.

Decedent died on April 18, 1989. Judge Burrowes sent family members a questionnaire concerning Decedent's family relationships. He held a hearing to probate her trust or restricted estate on May 30, 1990. It appears that no one attended the hearing.

On February 22, 1991, Judge Burrowes entered an order determining Decedent's heirs. He found that her heirs were her five children, not including Appellant. In regard to Appellant, Judge Burrowes stated:

It should be noted that the decedent had another child, Royce Monty Old Crane now known as Montgomery Lance Worden \* \* \*, who was adopted out as more particularly appears in the testimony and evidence of this case. Because

of that fact and by application of Montana law, he is not entitled to inherit any interest in property in this estate.

Feb. 22, 1991, Order at 1.

Appellant sought reopening of Decedent's estate in an undated and unsigned motion, <sup>1/</sup> accompanied by an unsigned cover letter from counsel dated December 30, 1999, both of which were faxed to Judge Herbert. Procedurally, Appellant alleged that he met all of the requirements for reopening in 43 C.F.R. § 4.242. Substantively, he argued that he should have been found to be an heir of Decedent under Mont. Code Ann. § 41-3-611 (2001), which deals with the involuntary termination of parental rights because of abuse and neglect. That statute states in pertinent part: "(1) An order for the termination of the parent-child relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other \* \* \* except the right of the child to inherit from the parent."

By order dated January 24, 2001, Judge Herbert denied reopening. He found that, although Appellant had correctly quoted the Montana law of child abuse and neglect, Appellant's status in respect to Decedent's estate was determined by the Montana adoption law. The Judge concluded that, because of his adoption, Appellant was properly excluded from inheriting from Decedent, his natural mother.

Appellant appealed to the Board. Only Appellant filed a brief.

Although Appellant argued both in his petition for reopening and in his appeal to the Board that he met the standing requirements in 43 C.F.R. § 4.242 for seeking reopening, he has not attempted to show that he exercised due diligence in seeking reopening; *i.e.*, that he acted promptly to protect or establish his rights upon learning of those rights. The due diligence requirement was extensively discussed in Estate of Woody Albert, 14 IBIA 223 (1986).

For purposes of this decision only, the Board will assume that Appellant has standing to seek reopening. Appellant's entire substantive argument is that his right to inherit from his natural mother was not extinguished by the termination of her parental rights. He bases this argument on Mont. Code Ann. § 41-3-611(1) (2001), quoted above. Appellant overlooks Mont. Code Ann. § 72-2-124(2) (2001), which provides in pertinent part: "An adopted individual is the child of an adopting parent or parents and not of the natural parents." Appellant's right to inherit from his natural mother, while not extinguished by the termination of her parental rights, was extinguished by his subsequent adoption.

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<sup>1/</sup> A handwritten notation at the bottom of the motion reads: "signed & sent on 1/00." However, no signed version of the motion appears in the probate record.

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 Herbert's January 24, 2001, order denying reopening is affirmed.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Anita Vogt  
Administrative Judge