



INTERIOR BOARD OF INDIAN APPEALS

Estate of Grover Duane Cudmore

39 IBIA 67 (06/16/2003)

Related Board case:

39 IBIA 87

Judicial review of this case:

District Court's granting of summary judgment in favor of government affirmed, *Thorstenson v. Norton*, 440 F.3d 1059 (8th Cir. 2006)



United States Department of the Interior

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ESTATE OF GROVER DUANE : Order Affirming Decision as Modified
CUDMORE :
: Docket No. IBIA 02-49
:
: June 16, 2003

Appellant Craig Thorstenson seeks review of a January 25, 2002, order denying rehearing issued in the estate of Decedent Grover Duane Cudmore by Administrative Law Judge Marcel S. Greenia. IP TC 028 T 98-1. Appellant sought rehearing from an August 30, 2001, order denying his claim against the estate. For the reasons discussed below, the Board of Indian Appeals (Board) affirms the decision as modified here.

The probate record reveals that from 1971 to 1983, Decedent and his non-Indian wife, Virginia, executed several contracts for deed with Appellant and his predecessors-in-interest ^{1/} to sell certain tracts of Decedent's trust and non-trust lands. Decedent also executed a related escrow agreement in 1986.

In 1987, Appellant filed suit against Decedent and his wife in tribal court alleging breach of contract and fraud on the land sale. Decedent's wife was dismissed from the suit, and Appellant withdrew his breach of contract claim. In 1995, the tribal court found in favor of Decedent against Appellant on the fraud claim, and this decision was upheld on appeal by the tribal appellate court in November of 1996. ^{2/}

Decedent died on February 13, 1997, leaving a January 27, 1997, will that made specific devises of tracts of trust land to each of his four Indian children, subject to a life estate in his

^{1/} In this opinion, the Board will refer to both Appellant and his predecessors-in-interest as "Appellant."

^{2/} When Appellant tried to file another claim for breach of contract against Decedent, the tribal appellate court upheld the lower court's finding that he withdrew the claim with prejudice.

wife. Decedent's estate includes the same trust property as identified in Appellant's contracts for deed. Appellant filed a claim against Decedent's estate in the amount of \$37,056.14 plus interest from 1986, for reimbursement of his overpayment for lands not delivered by Decedent under the contracts for deed.

Administrative Law Judge William S. Herbert sent out notice of the hearing, and Judge Greenia held the hearing on Decedent's estate on June 18, 1998. ^{3/} At the hearing, Appellant's contract, escrow agreement, and tribal court judgment were admitted into evidence.

Also in 1998, Appellant filed suit against Decedent's wife in state court for breach of contract. On June 14, 1999, the state court found against Decedent's wife in favor of Appellant for \$126,839 (\$46,123 plus statutory interest). Appellant sent a copy of the judgment to Judge Herbert the next day asking for its consideration in support of his claim.

According to several documents in the record, sometime between 2000 and 2001, Decedent's wife filed for Chapter 7 bankruptcy in the United States Bankruptcy Court, District of South Dakota.

On August 30, 2001, Judge Greenia approved Decedent's will and denied Appellant's claim. He attached a Memorandum of Law to his decision in which he granted full faith and credit to both the tribal and state court judgments. The Judge found that neither judgment supported Appellant's claim in that the tribal court judgment found Decedent not liable for fraud and denied an action for breach of contract, and the state court judgment was against Decedent's wife individually and therefore was not a proper claim against Decedent's estate.

On October 22, 2001, Appellant petitioned for rehearing challenging Judge Greenia's decision to not apply South Dakota state law as provided in the escrow agreement between Decedent and Appellant. He also raised for the first time on rehearing that the South Dakota Uniform Fraudulent Transfer Act prohibited Decedent from devising his trust property included in the contracts for deed to his wife and children.

On January 25, 2002, Judge Greenia denied rehearing and found that federal law, not state law, applied to Indian probate matters. Appellant appealed this decision to the Board, and on February 12, 2002, the Board ordered Appellant to show cause why Judge Greenia's decision should not be summarily affirmed. On March 25, 2002, the Board received Appellant's response, in which he raised the same arguments as he did in his petition for rehearing.

^{3/} There is no order transferring this estate to Judge Greenia for hearing or for decision. It appears that Judge Herbert anticipated that Judge Greenia would only hold a hearing because all subsequent filings up until the issuance of the Jan. 25, 2002, order were made to Judge Herbert.

In its May 29, 2002, order for the probate record, the Board found “it impossible at this point to even understand Appellant’s basic argument. In the interest of fairness, therefore, it finds that it must request the probate record created before Judge Greenia and allow additional briefing.” Only Appellant filed a brief on appeal.

In his August 30, 2001, decision, Judge Greenia gave full faith and credit to both tribal and state court judgments. Appellant argues that the Judge erred by giving the tribal court judgment full faith and credit as he contends that only state law should have been applied.

To the extent either judgment purported to affect, or be able to affect, title to trust land, both courts lacked subject matter jurisdiction because Federal law governs any transaction concerning the sale and conveyance of Indian trust lands. See 25 U.S.C. §§ 372-73, 379, 404-05; 25 C.F.R. Part 152. Under 25 C.F.R. Part 152, application for a fee patent to, or conveyance of, trust land must be approved by the Secretary of the Interior. Estate of Clifford Celestine v. Acting Portland Area Director, 26 IBIA 220, 225 (1994). 4/

“As a person doing business on Indian land, [a]ppellant was responsible for familiarizing [himself] with duly promulgated regulations governing its activities. Under well- established law, [a]ppellant is deemed to have knowledge of regulations published in the Code of Federal Regulations.” Billco Energy v. Acting Albuquerque Area Director, 35 IBIA 1 (2000), and cases cited there. See also Estate of Eugene Patrick Dupuis, 11 IBIA 11 (1982).

To the extent that the contracts for deed and escrow agreement included trust lands, 5/ the Superintendent has stated in a related proceeding that BIA has not approved any transaction affecting Decedent’s trust lands. None of the documents Appellant has submitted in support of his claim show BIA approval. Under these circumstances, Appellant has not shown that he has complied with Federal law necessary to affect title to trust land. Having failed to

4/ Part 152 also provides that individual Indian trust or restricted lands, “[m]ay not be conveyed without the approval of the Secretary.” Moreover, “inducing an Indian to execute an instrument purporting to convey any trust land or interest therein, or the offering of any such instrument for record, is prohibited and criminal penalties may be incurred.” 25 C.F.R. § 152.22(a).

5/ The Board does not have jurisdiction over the non-trust lands included in the contract for deed.

show that Decedent's trust land was properly conveyed to him, Appellant has also failed to show that he has a proper claim against Decedent's estate. 6/

Appellant's tribal and state court judgments sought specific performance and/or damages arising from the unapproved contracts and the agreement. Neither the tribal court nor the state court had jurisdiction over Decedent's trust lands. It follows, therefore, that full faith and credit cannot be extended to a court without subject matter jurisdiction. See, e.g., Estate of Malcolm Muskrat, 29 IBIA 208 (1996), and cases cited there. Thus, the Board modifies the Judge's decision by substituting the discussion in this opinion, but affirms his denial of Appellant's claim.

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 Greenia's January 25, 2002, order denying rehearing is affirmed as modified.

//original signed
Kathleen R. Supernaw
Acting Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

6/ This issue has not previously been raised by the parties or either Judge. If Appellant has proof that his land transaction documents were approved by BIA, he may submit them with a petition for reconsideration.