



INTERIOR BOARD OF INDIAN APPEALS

Estate of Shirley Lavina Johns Burdeaux

39 IBIA 82 (06/30/2003)

This decision has been redacted under 5 U.S.C. § 552(b)(6) by substituting initials for certain names.



# 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 SHIRLEY LAVINA JOHNS : Order Affirming Decision  
BURDEAUX :  
: Docket No. IBIA 02-66  
:  
: June 30, 2003

Appellant Thomas T. Corpuz Freeman sought review of a January 9, 2002, order after rehearing issued in the estate of his mother, Decedent Shirley Lavina Johns Burdeaux, by Administrative Law Judge Robert G. Holt. IP SA-197-N-88 (001-124-121S). The January 2002 order affirmed in part and modified in part Judge Holt's July 30, 2001, order determining Decedent's heirs and approving her will. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Decedent, a member of the Yakama Nation, executed a will as Lavina Corpuz Burdeaux <sup>1/</sup> at the Blackfeet Agency, Bureau of Indian Affairs (BIA), on August 19, 1985. In that will, Decedent devised all of her trust estate to her husband, H. L. B., a member of the Blackfeet Tribe; the six children she had with H. L. B.; and a child whom she raised. Decedent did not mention Appellant, her oldest child, who was not H. L. B.'s son.

Decedent died on December 30, 1997. On February 12, 2001, Administrative Law Judge William E. Hammett to whom this estate was originally assigned, sent a notice to Appellant and the named beneficiaries in Decedent's 1985 will, asking them to indicate where they preferred the hearing to be held. Only Appellant stated he wished to have the hearing in Toppenish, Washington, and the rest preferred Browning, Montana. By memorandum dated March 2, 2001, Judge Hammett transferred the case to Judge Holt for the convenience of the parties.

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<sup>1/</sup> The record contains a copy of Decedent's birth certificate. Her name on it was Lavina Shirley Corpuz, and her father was listed as Abe Corpuz. In a 1974 order determining the heirs of Wilford G. Johns, Sr., Decedent was found to be his daughter. It appears that her birth certificate was amended on May 14, 1997, to show Wilford Johns to be her father, and her name to be Shirley Lavina Johns.

Judge Holt held a hearing on June 7, 2001, in Browning, Montana. Apparently, Appellant, a resident of Toppenish, Washington, was delayed in his travel to Browning and did not make it to the hearing, but was able to talk to the Judge that same day. The Judge told him how to request a supplemental hearing. Appellant had not requested a supplemental hearing before the Judge issued a decision on July 30, 2001.

In Judge Holt's July 30, 2001, decision, he found that Appellant was an heir at law, that Decedent's will was self-proving, and that Decedent had testamentary capacity to execute a will and acted free of undue influence. He, therefore, approved the will.

Appellant then sent a letter to the Judge on August 2, 2001. In it, he contested the validity of Decedent's will, alleging that H. L. B. had unduly influenced Decedent to exclude him from the will. Judge Holt treated Appellant's letter as a petition for rehearing and granted rehearing. He held a supplemental hearing on December 4, 2001, in Browning, Montana, which Appellant and some other family members attended.

Judge Holt subpoenaed the will scrivener and two will witnesses, who were employees of the BIA Blackfeet Agency at the time Decedent executed her will. The will scrivener testified that she prepared Decedent's will in her office at Decedent's request; that Decedent apparently was visiting the area serving the Blackfeet Tribe when Decedent decided to make a will; that she prepared the will according to Decedent's instructions; that she gave the will to Decedent to read to make sure it was correct; that she, the two will witnesses, and a notary public were in the room with Decedent when she executed the will; that Decedent executed her will free of any undue influence, duress, menace or fraud; and that Decedent was alone at their office and was mentally capable of disposing of her estate by will. Dec. 4, 2001, Tr. at 5-13.

Only one will witness appeared at the hearing. She testified that she agreed with the will scrivener's testimony; that she observed Decedent the day she executed her will; that Decedent appeared to be normal that day; that Decedent was in a wheelchair; that she was able to talk in complete sentences; and that Decedent was alone and that was why she believed Decedent was mentally competent to execute her will. Id. at 13-20.

Appellant also appeared at the December 4, 2001, hearing. He testified that he was alive at the time Decedent made her will; that he should share equally with Decedent's other children; that the will was invalid according to Montana law because he was not mentioned and this omission was not intentional; that Decedent was unduly influenced when she prepared her will; and that he had no evidence to prove that Decedent was unduly influenced or that she was mentally incompetent to prepare a will. Id. at 22-25.

On January 9, 2002, Judge Holt issued a decision affirming in part and modifying in part his July 30, 2001, decision. He found that the testimony of the will scrivener and will

witness confirmed their affidavits accompanying Decedent's will that "at the time Decedent executed the will, she was mentally capable of disposing of all her estate by will, and that Decedent was not acting under improper influence from any other person." Jan. 9, 2002, Order at 2. He found that Decedent was not required to name or provide for Appellant in her will or to specifically disinherit him; that the Montana law that Appellant relied on to challenge the validity of the will did not apply to him because the statute only applied to children born or adopted after the execution of the will and Appellant was born before Decedent executed her will; and that Appellant failed to meet his burden of proof to show Decedent was under undue influence when she executed her will.

On March 13, 2002, the Board received a notice of appeal from Appellant. The notice stated in its entirety that:

I Thomas Theodore Foreman would like to appeal the judgement because I am the eldest son of Shirley Lavina Johns Burdeau and I was also left out of her will. Because of this - I am questioning her competency [sic] at the time this will was made.

I haven't had time to consult with my lawyer due to the surgery I went through recently and also a copy of the courts decision on the probate of Shirley Lavina Johns Burdeau was not sent to my lawyer, Mr. Jack Fiander. I would appreciate another probate hearing concerning my mother Shirley Lavina Johns Burdeau.

On March 18, 2002, the Board received a second notice of appeal, filed on Appellant's behalf by Jack Fiander, Esq. It stated in its entirety that:

PLEASE TAKE NOTICE, that Thomas Foreman appeals the attached decision of the Administrative Law Judge to the [Board].

Specifically, Mr. Foreman appeals that portion of the decision affirming his exclusion as a beneficiary under the will of [Decedent].

The Board found the appeal was timely in its March 20, 2002, pre-docketing notice. In orders dated April 22 and September 9, 2002, the Board advised Appellant that he could file an opening brief to support his position on appeal. In a September 9, 2002, order, the Board stated that Appellant's opening brief was due by October 18, 2002, and reminded him that he bore the burden of proving the error in the decision he was appealing. The Board has received no opening brief from Appellant.

In probate matters, the Board has consistently held that an appellant bears the burden of proving the error in an Administrative Law Judge's decision. An appellant who fails to make any allegation concerning how a probate decision is in error or make any argument in support of such an allegation, has not carried his burden of proof. Estate of Charles Walton Austin, 37 IBIA 56 (2001), and cases cited there. Neither Appellant's, nor his counsel's, notice of appeal allege how the Judge erred in his January 9, 2002, decision. Thus, Appellant has failed to carry his burden of proof.

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 Holt's January 9, 2002, order is affirmed.

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//original signed  
Kathleen R. Supernaw  
Acting Administrative Judge

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge