



INTERIOR BOARD OF INDIAN APPEALS

Estate of Mabel Opal Beach

39 IBIA 111 (09/09/2003)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF MABEL OPAL BEACH : Order Affirming Decision
:
: Docket No. IBIA 03-33
:
: September 9, 2003

Appellant Candice LaMott sought review of a September 30, 2002, order after rehearing issued in the estate of Decedent Mabel Opal Beach by Administrative Law Judge Robert G. Holt. Probate 001-201--211E. For the reasons discussed below, the Board of Indian Appeals (Board) affirms Judge Holt's decision.

Decedent died on January 12, 1998. An initial hearing to probate her trust or restricted estate was held on December 3, 2001. A supplemental hearing was held on March 8, 2002. A document dated January 6, 1973, and purported to be a copy of Decedent's last will and testament was introduced at the hearing. Testimony taken at the hearing showed that Decedent's husband had predeceased her, that Decedent had no natural or adopted children, and that Decedent's heirs at law were the children of her predeceased sister, including Appellant. Under the terms of the January 6, 1973, will, Decedent left all of her estate to Jack Connolly, who is apparently Decedent's cousin.

The will was challenged, among other reasons, on the grounds that Decedent lacked testamentary capacity. In an April 12, 2002, decision, Judge Holt found that Decedent had reduced mental capacity, but that the will contestants had not carried their burden of proving that she lacked testamentary capacity. He therefore approved her will.

On June 11, 2002, Appellant filed a petition for rehearing. Judge Holt stayed distribution of Decedent's estate and held a hearing on the petition for rehearing on September 11, 2002. Following that hearing, Judge Holt issued the September 30, 2002, order under review here. He discussed allegations that Decedent lacked testamentary capacity and was unduly influenced in the execution of her will by her late husband. He also addressed the fact that the document presented for probate was a copy of the will rather than the original and a claim to mineral interests in Decedent's estate raised by an individual who had not filed a petition for rehearing.

Appellant appealed to the Board. Although advised of her right to do so, Appellant did not file an opening brief. Therefore the Board addresses the arguments Appellant raised in her notice of appeal. That notice states in pertinent part:

1. The Judge made an error of law in deciding that the large volume of evidence of the decedent's low mental capacity was insufficient to demonstrate that she was incompetent to prepare the will.

2. The Judge made an error of fact in determining that the will was witnessed by two disinterested persons as required by 43 C.F.R. Section 4.260(a). A review of the testimony shows that the will was only witnessed by one person, Victor Connelly, who is the nephew of the beneficiary of the will Jack [Connolly].

No other briefs were filed.

Judge Holt thoroughly discussed the evidence presented in regard to Decedent's testamentary capacity. He again found that there was evidence that Decedent had reduced mental capacity, but that Appellant had not carried her burden of proving that Decedent lacked testamentary capacity. On appeal, Appellant makes an unsupported statement that the Judge erred in concluding that the evidence failed to show that Decedent lacked testamentary capacity. Appellant bears the burden of proving the error in Judge Holt's decision. See, e.g., Estate of Shirley Lavina Johns Burdeaux, 39 IBIA 82, 85 (2003), and cases cited there. Her statement on appeal shows that she disagrees with the Judge's weighing of the evidence, but does not carry her burden of proving error.

Appellant also asserts that testimony shows that the will was witnessed by only one person, who was not a disinterested witness. The copy of the will in the probate record is signed by Victor Connelly and Gerald Parrent. The Board was unable to determine precisely what testimony Appellant believes shows that there was only one will witness, since both Connelly and Parrent testified during the various hearings that they were will witnesses. Appellant does not allege that Parrent is not a disinterested witness. Her objection to Connelly as a will witness is based on the fact that he is related to the sole beneficiary under the will. Appellant appears to state that Victor is Jack Connolly's nephew. However, the testimony indicated that Victor was Jack's uncle through adoption. See Sept. 11, 2002, Tr. at 30; Mar. 8, 2002, Tr. at 16. In either case, the Board has previously held that even close relatives of a will beneficiary are not automatically precluded from being disinterested will witnesses as long as they do not personally take under the will. See Estate of Orville Lee Kaulay, 30 IBIA 116, 117 (1996), and cases cited there. The Board rejects Appellant's assertion that Victor Connelly was not a disinterested witness.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board affirms Judge Holt's September 30, 2002, decision.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Kathleen R. Supernaw
Acting Administrative Judge