



INTERIOR BOARD OF INDIAN APPEALS

Estate of Peter Chatelaine, a.k.a. Shotley

40 IBIA 160 (12/13/2004)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF PETER CHATELAINE, : Order Docketing Appeal, Vacating Decision,
a.k.a. SHOTLEY : and Remanding
: :
: :
: Docket No. IBIA 05-16
: :
: December 13, 2004

On November 15, 2004, the Board of Indian Appeals (Board) received an appeal dated November 10, 2004, from Theron J. Shotley (Appellant), pro se. Appellant seeks review of the denial of a petition for reopening dated September 23, 2004, and entered in the estate of Peter Chatelaine, a.k.a. Shotley (Decedent), deceased Fond du Lac Indian, Probate No. 99192-13, by Administrative Law Judge David A. Clapp (ALJ). For the reasons discussed below, the Board docketed this appeal but vacates the ALJ's September 23, 2004, order, and remands this matter to him for further consideration.

Decedent, Peter Chatelaine, a.k.a. Shotley, died in 1894. An heirship determination was entered in his estate by the Secretary of the Interior on October 13, 1913. Decedent was found to have died single and without issue. As a result of this finding, the heirs of Decedent were determined to be the heirs of Decedent's father.

On July 21, 2004, Appellant filed a petition to reopen this estate, alleging that his grandfather, Alexander Shotley, was the sole legal presumptive heir of Decedent and was inadvertently omitted from Decedent's estate.

In reviewing the petition to reopen, the ALJ acknowledged that there was "some evidence" supporting the proposition that Alexander Shotley may have been Decedent's illegitimate son. However, referring to section 66 of the 1889 Probate Code of Minnesota, the ALJ held that Appellant's evidence did not satisfy the legal requirement that there be a written acknowledgment of paternity in order for an illegitimate child to be considered a person's heir. In denying the petition to reopen, the ALJ added that the estate had been closed for approximately 91 years, that no parties having knowledge of the relevant facts asserted their

right in Decedent's estate prior to the petition to reopen, and that the public interest requires that there be finality to probate proceedings. The ALJ made no further findings.

Appellant now seeks to appeal the denial of the petition for reopening to the Board on the basis that he has "newly-discovered church records" proving that Decedent was the father of his grandfather, Alexander Shotley. It appears that the ALJ did not have the opportunity to review this additional evidence because Appellant discovered the church records after or during the time that the ALJ denied his petition for reopening.

Normally, the Board will not consider evidence presented for the first time on appeal. Estate of Louise (Louisa) Mike Sampson, 29 IBIA 86, 88 n.2 (1996). Thus, if the only issue raised by this appeal was whether the ALJ's denial of Appellant's petition for reopening should be reversed based on Appellant's purported "newly-discovered evidence," the Board might have summarily dismissed this appeal.

In the present case, however, it is unclear why the ALJ applied Minnesota law in evaluating the evidence presented by Appellant that his grandfather should be determined to be Decedent's son and sole heir. Generally, state law is inapplicable to determinations of paternity and the inheritance rights of illegitimate children in an Indian probate proceeding. E.g., Estate of Emerson Ekiwaudah, 27 IBIA 245, 248 (1995). Instead, 25 U.S.C. § 371 applies. See, e.g., Estate of Francis Rock 38 IBIA 297, 299-300 (2003), and cases cited therein. The Board notes that 25 U.S.C. § 371 was enacted three years before Decedent's death, and the order denying reopening provides no explanation for applying state, rather than Federal, law. It appears that the order denying reopening relies heavily on the application of Minnesota law, and it is unclear how the ALJ might evaluate the evidence if, as appears to be the case, the underlying substantive issue is governed by Federal law. Because the ALJ failed to consider the likely applicability of 25 U.S.C. § 371, the Board concludes that the order denying rehearing should be vacated and remanded for further consideration, including consideration — if appropriate — of the "newly-discovered church records" that Appellant proffered for the first time in this appeal.

The Board notes that on remand, it may be appropriate for the ALJ to consider whether Appellant's petition satisfies the regulatory standard for reopening an estate after three years, and whether he exercised due diligence in bringing his petition. The Department's regulations require that petitions for reopening filed more than three years after the final probate decision must include "a showing that manifest injustice will occur" in the absence of reopening, and that "a reasonable possibility exists for correction of the error." 43 C.F.R. § 4.242(h). In addition, it is a long-standing Departmental requirement that a person seeking reopening must show that he exercised due diligence in pursuing his claims. See, e.g., Estate of Francis Rock, 38 IBIA at 298; Estate of Louise (Louisa) Mike Sampson, 29 IBIA at 88.

The Board also notes, from Appellant's notice of appeal, that Appellant does not appear to have served all interested parties. Given the Board's decision to vacate the appeal and remand the matter, the Board finds that this issue is now moot.

Therefore, pursuant to the authority delegated to the Board by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed, the Administrative Law Judge's denial of the petition for reopening dated September 23, 2004, is vacated, and this matter is remanded for further consideration in accordance with this opinion.

// original signed
Colette J. Winston
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge