



INTERIOR BOARD OF INDIAN APPEALS

Estate of Esther Eleanor Trevino

40 IBIA 271 (03/07/2005)



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 ESTHER ELEANOR : Order Affirming Decision
TREVINO :
: Docket No. IBIA 03-134
:
: March 7, 2005

Appellant Connie E. Rocha appealed from a June 25, 2003, Order Denying Petition for Rehearing entered by Administrative Law Judge William E. Hammett in the estate of Esther Eleanor Trevino (Decedent), a Colville Indian (Probate No. IP SA 59 N 02). Judge Hammett's June 25, 2003, order let stand his March 18, 2003, Order Approving [Decedent's] Will and Decree of Distribution. The Board affirms Judge Hammett's decision.

Appellant's notice of appeal listed three grounds for seeking review, with no additional explanation:

- 1) I, as well as my siblings moved to continue the hearing and the judge failed to grant the continuance. This was an abuse of discretion.
- 2) The medical records of [Decedent were] already submitted.
- 3) The original will was not submitted, no chance was given due to no rehearing date set.

The notice of appeal also stated that Appellant reserved the right to add additional grounds.

On December 9, 2003, the Board set a briefing schedule for this case, in which it advised Appellant that "she is responsible for proving the error in the decision under appeal." Appellant did not file a brief, nor did she submit any additional grounds for review of Judge Hammett's order.

Judge Hammett's order denying rehearing specifically addressed each of the three issues raised in Appellant's notice of appeal. In particular, the Judge noted that the parties were given six months following the hearing to produce additional records or a purported later will, that

he had considered the medical records that had been submitted, and that the original of Decedent's will, supported by testimony, was submitted and probated. 1/

The Board has consistently held that an appellant bears the burden of proving error in an Administrative Law Judge's (ALJ) decision in a probate matter. An appellant who fails to make any allegation how a probate decision is in error, let alone make any arguments to support such an allegation, has not carried his burden of proof. Estate of Shirley Lavina Johns Burdeaux, 39 IBIA 82, 85 (2003); Estate of Charles Walton Austin, 37 IBIA 56 (2001). Similarly, an appellant who simply restates issues that were addressed by the ALJ, without providing any argument or explanation, has not carried his burden of proof when the ALJ's decision is supported by the record.

In this case, Appellant simply restates the same issues raised in her petition for rehearing, which also lacked any explanation or argument. She does not explain how Judge Hammett's order denying rehearing was in error. Judge Hammett's order is supported by the record. The Board concludes that Appellant has failed to carry her burden of proof in this case.

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 Hammett's June 25, 2003, order.

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Anita Vogt
Senior Administrative Judge

1/ By referring to an "original" will, Appellant's petition for rehearing and notice of appeal may have been meant to suggest that Appellant believes that another will exists that is earlier in time than the one admitted at probate. Even assuming this is what she meant, Judge Hammett explained in the July 29, 2002, hearing, that Decedent's June 3, 1999, will, which was admitted at probate, revoked prior wills. Therefore, in order to give effect to a prior will, an interested party would first have to prove that the June 3, 1999, will was invalid. Appellant's notice of appeal does not allege that Decedent's June 3, 1999, will was invalid, let alone identify another purported will.