



INTERIOR BOARD OF INDIAN APPEALS

Estate of Oscar White

40 IBIA 306 (04/13/2005)



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 OSCAR WHITE : Order Affirming Decision
:
: Docket No. IBIA 03-72
:
: April 13, 2005

Steven J. White (Appellant), pro se, appealed from a January 27, 2003, order issued by Administrative Law Judge (ALJ) Marcel S. Greenia, reopening the Estate of Oscar White (Decedent) (Probate No. IP TC 053 R 96-1). The order reopened Decedent's estate to recognize Appellant as an heir, but limited his inheritance to a life estate. For the reasons discussed below, the Board affirms Judge Greenia's order.

Decedent, a member of the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation (Reservation), died intestate on September 5, 1995, possessing interests in trust property located on the Reservation. On May 9, 1997, ALJ Vernon J. Rausch issued an Order Determining Heirs, which found that Decedent had only one heir, a surviving son, Sylvan White. The order also found that Decedent's only other child, Everette, had died in 1953 without issue.

In a petition dated January 4, 2002, Appellant sought to reopen Decedent's estate, and provided information to show that Everette had not died until 1980, and was Appellant's father. Appellant sought to inherit a share of Decedent's estate as one of Everette's surviving sons. In response, Judge Greenia issued a Notice to Show Cause Why Estate Should Not Be Reopened to Add Heirs, dated November 15, 2002. Judge Greenia's order stated that "it appears that decedent's prior deceased son, Everette White, died on 07/25/1980, not in 1953, and was in fact survived by two children, namely: Steven Jay White [Appellant] and Everette Todd White." The Notice to Show Cause also stated that because Appellant and Everette Todd White were not members of the Sisseton-Wahpeton Tribe, 1/ their inheritance would be limited to a life estate in their share of Decedent's trust property located on the Reservation.

1/ Judge Greenia found that Appellant and Everett Todd White are enrolled members of the Spirit Lake Tribe, North Dakota.

On January 27, 2003, after finding that there were no timely valid objections to the Notice to Show Cause, Judge Greenia issued an order reopening Decedent's estate, which provided as follows:

Trust real property located on the Sisseton-Wahpeton Reservation including any income accrued therefrom after the decedent's death (if any) shall pass to:

Sylvan White, [enrollment number] son [date of birth] All**

****Subject to the 1/4 life estate each of Steven J. White, [enrollment number], born [date] and Everett Todd White, [enrollment number], born [date].**

Judge Greenia limited the 1/4 inheritance each of Appellant and Everett Todd White to a life estate based on the Sisseton-Wahpeton Sioux Act of October 19, 1984, Pub. L. No. 98-513, 98 Stat. 2411 (Sisseton-Wahpeton Act). As explained in Judge Rausch's May 9, 1997, Order Determining Heirs, the Sisseton-Wahpeton Act provides that heirs or devisees of trust real property located on the Reservation, who are not enrolled members of the Sisseton-Wahpeton Tribe, may only receive a life estate interest of their share of that property. 2/

Appellant appealed to the Board from Judge Greenia's order granting reopening, and filed an opening brief. No other briefs were filed.

Appellant contends that Judge Greenia erred in limiting his inheritance to a life estate. He argues that Judge Greenia's order conflicts with 25 U.S.C. §§ 2205 and 2206, which are part of the Indian Land Consolidation Act (ILCA), as amended in 2000. Appellant places particular reliance on two subsections of ILCA:

Notwithstanding any other provision of law, any Indian tribe may adopt a tribal probate code to govern descent and distribution of trust or restricted lands that are * * * located within that Indian tribe's reservation * * *.

2/ The Sisseton-Wahpeton Act provides, in relevant part:

"Sec. 2. (a) Except as provided in section 4 of this Act, only the Sisseton-Wahpeton Sioux Tribe of North Dakota and South Dakota (hereinafter the "tribe") or persons who are enrolled members of the tribe shall be entitled to receive by devise or descent any interest in trust or restricted land within the reservation.

* * * * *

"[Sec. 4.] (b) Notwithstanding the provisions of section [] 2 * * * the nonmember issue of any [pre-deceased] children of [a person who dies intestate, possessed of an interest in trust land within the Reservation] shall be entitled to take only a life estate in [such] interest * * *." 98 Stat. 2411-2412.

25 U.S.C. § 2205(a)(1)(A).

The Secretary [of the Interior] shall not approve a tribal probate code if such code prevents an Indian person from inheriting an interest in an allotment that was originally allotted to his or her lineal ancestor.

25 U.S.C. § 2205(a)(3).

Appellant states that he is a full blooded Indian, of direct lineal descent from Decedent, and argues that Judge Greenia's order is in direct conflict with subsection 2205(a)(3). Appellant apparently interprets that subsection as requiring that Indian lineal descendants be allowed to inherit allotment interests without restriction, such as the life estate imposed on his inheritance. Appellant does not discuss the effect of the Sisseton-Wahpeton Act. He may, however, be contending that ILCA's "[n]otwithstanding any other provision of law" language in 25 U.S.C. § 2205(a)(1)(A) allows the Sisseton-Wahpeton Tribe to enact an ordinance that supersedes the Sisseton-Wahpeton Act, and that 25 U.S.C. § 2205(a)(3) precludes the Secretary from approving such an ordinance if it would interfere with Appellant's ability to inherit trust property without the life estate restriction.

The Board need not decide whether the "notwithstanding" language in ILCA has any effect on the Sisseton-Wahpeton Act, ^{3/} because Appellant's argument fails for at least two other reasons. First, Appellant provides no evidence, and does not suggest, that the Sisseton-Wahpeton Tribe has, in fact, enacted a tribal ordinance under which he would be entitled to inherit more than a life estate interest from Decedent. Second, even if the Tribe has enacted such an ordinance, the ILCA provisions on which Appellant relies were enacted in 2000 — five years after Decedent's death. In 1995, when Decedent died, the Sisseton-Wahpeton Act clearly applied and controlled the disposition of Decedent's estate. In addition, the ILCA amendments make clear that tribal codes enacted pursuant subsection 2205(a)(1) would not apply retroactively. See 25 U.S.C. § 2205(b)(3), (b)(4)(A).

As such, the ILCA provisions on which Appellant relies have no applicability in this case. Because Appellant is not an enrolled member of the Sisseton-Wahpeton Tribe, Judge

^{3/} The Sisseton-Wahpeton Act, although it pre-dates the ILCA amendments enacted in 2000, contains specific language concerning potential inconsistencies with ILCA:

"[T]o the extent that the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.), is inconsistent with this Act, the provisions of this Act shall govern the right to inherit trust or restricted land located within such States and within the original exterior boundaries of the Lake Traverse Indian Reservation * * *."

98 Stat. 2411.

Greenia correctly limited Appellant's inheritance to a life estate, based on the Sisseton-Wahpeton Act.

Therefore, pursuant to the authority delegated to the Board by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board affirms Judge Greenia's January 27, 2003, order granting reopening of Decedent's estate.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Anita Vogt
Senior Administrative Judge