



INTERIOR BOARD OF INDIAN APPEALS

Estate of Edith Walker Brown

43 IBIA 221 (08/09/2006)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF EDITH WALKER BROWN : Order Affirming Decision
:
: Docket No. IBIA 05-21
:
: August 9, 2006

Helen Sue Brown Sanchez (Appellant), pro se, seeks review of an Order of Modification on Petition to Reopen, entered on October 1, 2004, in the estate of Edith Walker Brown (Decedent), deceased Sac and Fox Nation of Oklahoma Indian, Probate No. IP OK 89 P 98 - 1, by Administrative Law Judge Richard Reeh. The October 1, 2004 order affirmed Judge Reeh's determination in a January 7, 2000 Order Approving Will and Decree of Distribution, that a will executed by Decedent on May 1, 1996 was valid. The October 1, 2004 order also modified legal descriptions contained in the earlier order; withdrew a statement in that order that had concluded that Decedent's house was not subject to the probate proceedings; and recommended that the Secretary's representative determine and grant rights-of-way that would best protect the interested parties. Appellant, who is Decedent's daughter, alleges that the May 1, 1996 will should be set aside. Appellant alternatively requests that she be declared as Decedent's sole heir. For the reasons stated below, the Interior Board of Indian Appeals (Board), affirms Judge Reeh's October 1, 2004 decision.

Factual and Procedural Background

Decedent was born on September 16, 1922 and died, a resident of Oklahoma, on July 31, 1997. Decedent was survived by three children — Appellant, Connie L. Schrader, and Gary L. Brown, a.k.a. John James Spoon. ^{1/} At the time of her death, Decedent owned interests in trust property in Oklahoma.

^{1/} Another child, Herman Brown, Jr., predeceased Decedent. Decedent had apparently been married to Herman Brown, Sr., the father of her children, whom she later divorced.

An initial probate hearing was conducted on July 15, 1998. A supplemental hearing was held on December 17, 1999. In attendance were Appellant; Robert Nelson Meek, Jr. and Harold Meek, two of Appellant's children; Chenenia LaDeaux, the Sac and Fox Nation (Tribe) realty officer who drafted the May 1, 1996 will; and another tribal realty officer, identified in the transcript only as Carrie, but apparently Carrie LaDeaux, a witness to Decedent's 1996 will. At the hearing, Appellant testified that Decedent had given her up at birth, but that they were "brought * * * together" sometime after May 1996 when Appellant's brother was murdered. Dec. 17, 1999 Transcript at 6. Appellant further testified that Decedent had stated that "now [that Appellant was] around, I want it in the Will." Id. at 13. Appellant testified that Decedent had gone to the tribal realty office in November 1996 for purposes of making a new will, but that no such will was ever drafted by the realty office or presented to Decedent for her signature before Decedent died.

Appellant's son, Robert Nelson Meek, Jr., testified at the hearing that Decedent was thinking clearly on the day that she executed the May 1, 1996 will. Id. at 16. Chenenia LaDeaux also testified at the hearing that Decedent had seemed capable of making important personal and business decisions on her own on that date. Id. at 20. She further testified that the Tribe's records do not reflect any later will either made or signed after May 1, 1996 or a formal revocation of the May 1, 1996 will. Id. at 23. Carrie LaDeaux then testified that she had witnessed the May 1, 1996 will and that Decedent knew what she was doing. Id. at 28. 2/

Carrie LaDeaux also testified that, prior to Decedent's death, she and another tribal realty officer visited Decedent in the hospital on two occasions. She testified that at the first visit, Decedent had been lucid and had stated that she "didn't want to be bothered" with signing a new will. Id. at 30. She further testified that at the second visit, which took place

2/ Appellant's son Harold Meek testified that Decedent was "forced to make [the May 1, 1996] will" and that Decedent had told him that "she got slapped and be forced and threatened to make this Will and she got scared, so she went ahead and did it." Id. at 18. No other evidence was presented at the hearing to support this contention, however. And when Judge Reeh asked Chenenia LaDeaux and Carrie LaDeaux at the hearing if, at the time Decedent signed the May 1, 1996 will, there was "any hint or suggestion * * * that [Decedent] was under anyone's unlawful or undue influence," id. at 20, both responded "no." Id. at 20, 28.

several days before Decedent's death, Decedent "wouldn't even open her eyes" and "there was no way that I would get her to sign anything on that day." Id. at 31. ^{3/}

On January 7, 2000 Judge Reeh issued an Order Approving Will and Decree of Distribution in which he determined that the will executed by Decedent on May 1, 1996 was valid. He noted that one objection had been made to the will, but concluded that it should be admitted and approved. The January 7, 2000 order directed that Decedent's interest in the Dora Benson Allotment, #174-E, be distributed according to the will, described in the order as follows: to Appellant, NW/4 NE/4 NW/4 SW/4 SW/4 of Section 29-T11N-R4E in Pottawatomie County, consisting of 2.5 acres, more or less; to Harold Meek, SW/4 SE/4 NW/4 SW/4 SW/4 of Section 29-T11N-R4E, in Pottawatomie County, consisting of 2.5 acres, more or less; to Robert Nelson Meek, Jr., SW/4 SW/4 NE/4 E/2 W/2 W/2 AND SW/4 SW/4 NE/4 E/2 AND SW/4 SW/4 NE/4 NE/4 NW AND SW/4 SW/4 NW/4 SE/4 SW/4 of Section 29-T11N-R4E, in Pottawatomie County, consisting of 6.25 acres, more or less; and all of Decedent's remaining trust estate to Robert Nelson Meek, Jr. The January 7, 2000 order also approved a claim made by Appellant for \$4,900.00, for expenses related to Decedent's care. No party sought rehearing.

In a letter dated June 14, 2002 to Judge Reeh, the Tribe requested that Decedent's estate be reopened due to discrepancies in the legal descriptions of Decedent's trust property (a block of land consisting of a contiguous set of properties) made in the will. Apparently the legal descriptions in the will included property not owned by Appellant, and omitted much of Decedent's interest in the Dora Benson Allotment. In a Notice of Petition to Reopen and Order Inviting Comment issued on June 20, 2002, Judge Reeh stated that the parcels described in Decedent's will needed to be more specifically described and that "the issue of access to partitioned parcels must also be addressed." Judge Reeh then ordered any party who wished to "express views regarding the proposed Reopening" to file correspondence. Appellant filed a letter dated July 18, 2002 stating that she wanted to have the legal description for the parcel devised to her in Decedent's will modified so that the description read as: NE/4NW/4SW/4SW/4 of Section 29, Township 11 North, Range 4 East, 2.5 acres more or less. In a letter dated August 6, 2002, Harold Meek stated that he "accept[s] the decision that judge Richard L. Reeh move forward with the modification of Edith Brown's Will * * * and that I will Inherit 2.50 Acres." Appellant later sent another letter to Judge Reeh stating that under Decedent's May 1, 1996 will, Appellant was to receive 2.5 acres. In her letter, Appellant also stated that in November 1996 Decedent "changed her Will to show that she intended to leave her entire estate to [Appellant]."

^{3/} The record includes contemporaneous notes supporting this testimony.

Sept. 15, 2002 Letter from Appellant to Judge Reeh. Appellant requested that Decedent's entire estate be left to Appellant because she has "the best interests of [her] family in mind and will make sure that each child receives a fair and reasonable sum." Id.

Judge Reeh conducted a supplemental hearing on October 23, 2003. In attendance were Appellant and her husband, Sylvester Sanchez, and tribal employees Chenenia LaDeaux, Carrie Hunter and Carrie LaDeaux. At the hearing, testimony was presented in an attempt to discern Decedent's intent with respect to distributing her trust property as described in the May 1, 1996 will. Judge Reeh questioned the tribal employees, in particular Chenenia LaDeaux, the will's scrivener, and Appellant with respect to the discrepancies between Decedent's apparent actual intent and the legal descriptions in Decedent's will, and rights-of-way and easements that would allow ingress and egress to each of the parcels. 4/

On October 1, 2004, Judge Reeh issued an Order of Modification, the decision now on appeal. Before discussing the Tribe's petition to reopen, Judge Reeh first stated that "certain language in the [January 7, 2000] Decision was deficient" because it did not include "specific findings and conclusions regarding why the [May 1, 1996] will was admitted." Oct. 1, 2004 Order at 1. He then described in detail the evidence supporting his determination that the will was valid. First, he noted that Decedent had signed the will in front of independent witnesses at the tribal realty office and that this fact was supported by a letter from Cory J. Standing, in which she stated that she remembered the will's execution. Judge Reeh further noted that various witnesses had testified that Decedent had a clear mind at the time she signed the May 1, 1996 will. Second, Judge Reeh noted that although Decedent had a "will-interview" with a tribal employee in November 1996, the will was not made that day, and Decedent became incapacitated and died before any new will could be signed. Id. Judge Reeh also noted that neither the Tribe nor Decedent's family members have been able to find any record of a later will.

Judge Reeh therefore concluded that Decedent's May 1, 1996 will "was her last will and testament," that it "had been signed before two independent witnesses," and that Decedent "was thinking clearly at the time she signed it and that the will distributed her

4/ Although Appellant apparently re-iterated her objections to the May 1, 1996 will at the hearing, Judge Reeh stated that "based on what I've heard, this Will was a valid Will," and that the purpose of the hearing was to "fix the * * * errors" in the will's legal descriptions. Oct. 23, 2003 Transcript at 26.

Indian trust property in accordance with her personal testamentary desires.” Id. at 2. He stated that the fact that Decedent “told some family members that she wanted to make a later will does not authorize the Department to disapprove a properly made testamentary document.” Id. Even if Decedent had changed her mind about the distribution of her estate, Judge Reeh explained that “a changed intent would not be sufficient to alter or revoke her May 1, 1996 will.” Id.

Judge Reeh then turned to the issue presented by the Tribe’s petition for reopening — interpreting the dispositive provisions of Decedent’s will in light of inconsistent or erroneous legal descriptions. Specifically, Judge Reeh stated that the will’s second paragraph, which devised property to Appellant, Harold Meek, and Robert Nelson Meek, Jr., describes parcels that Decedent never owned and that were not contiguous. Based on re-examination of the will, Decedent’s property, and testimony by the will’s scrivener that errors in the legal description were her own, among other things, Judge Reeh determined that Decedent had intended to distribute her interest in the Dora Benson Allotment as follows: (1) to Appellant, 2.5 acres described as NE/4 NW/4 SW 4 SW/4, Section 29-T11N-R4E, Pottawatomie County of the SF-174-E; (2) to Harold Meek, 2.5 acres described as SE/4 NW/4 SW/4 SW/4, Section 29-T11N-R4E, Pottawatomie County of the SF-174-E; and (3) to Robert Nelson Meek, Jr., the house and remaining 6.25 acres described as W/2 NE/4 SW/4 SW/4 and W/2 W/2 E/2 NE/4 SW/4 SW/4, Section 29-T11N-R4E, Pottawatomie County of the SF-174-E, with ingress and egress to be provided to the two tracts mentioned above. Id. at 4.

In his order, Judge Reeh also noted that evidence presented at the hearing on reopening showed that the house mentioned in the will is a permanent improvement, which is considered part of the real property. He therefore withdrew a statement in his previous order that had concluded that Decedent’s house was not subject to the probate proceedings. Finally, Judge Reeh stated in his order that because “the family members have been unable to resolve issues relating to location of necessary easements,” he recommended that “after appropriate consultations, the Southern Plains Regional Office determine and grant common rights of way that will best protect the interested parties.” Id. at 5. He further stated that “[a]ccomplishing these acts will implement the decedent’s intent as it was expressed in her will.” Id.

Appellant appealed Judge Reeh’s October 1, 2004 decision to the Board and filed an opening brief. No other briefs were filed.

Discussion

On appeal, Appellant does not challenge Judge Reeh's findings concerning errors in the legal descriptions contained in Decedent's May 1, 1996 will or the determination as to how Decedent intended to distribute her property in that will. Nor does she claim that the May 1, 1996 will was flawed at the time it was signed and executed. Rather, she argues that subsequent "gross incompetence and mismanagement on the part of the Sac and Fox Realty Department result[ed] in major errors that actually invalidates the purported Will of May 1, 1996." Opening Brief at 1. Appellant argues that the Tribe's realty employees should have drafted a new will for Decedent shortly after Decedent met with them in November 1996, and that their failure to do so invalidates the May 1, 1996 will. 5/

Although Appellant does not dispute that Decedent never signed a will post-dating the May 1, 1996 will, Appellant nevertheless requests that the Board set the will aside and order a hearing to determine the "proper heirs," or, in the alternative, declare Appellant as the sole heir "since she has shown proper interest in this Estate to ensure that it is handled properly and that her Mother's wishes are carried out, meaning that she did want Appellant to receive ALL of her Estate since Appellant provided care and comfort in the last remaining months of her life." Id. at 2. In support of her request, Appellant cites to a litany of "errors" made by the Tribe, including the Tribe's alleged failure to maintain the

5/ Appellant also makes arguments with respect to two other issues. Neither issue, however, is within the scope of this appeal. First, Appellant states that Decedent had inherited an interest in another Tribal allotment (#SF-170, Sarah Mack) that was not mentioned in the May 1, 1996 will. Appellant claims that to distribute this property under the will's provision for "Rest and Residue" is a "gross error" because the property "will lose its identification" and because the property "was plainly stated in [Decedent's] earlier Will of April 9, 1984 and should have been picked up by the Sac and Fox Realty Department in the Asset Inventory to be presented to the Court." Id. at 2. Judge Reeh's order on reopening did not address this issue; therefore, it is not within the scope of this appeal. We note, however, that failure to describe all of a testator's property in a will does not render the will invalid. The purpose of a "rest and residue" clause is to dispose of such property.

Second, in her opening brief Appellant states that "Appellant hereby re-submits the claim of \$4,900.00 to this Court for approval." Id. This issue similarly was not within the scope of the October 1, 2004 order and therefore is not within the scope of this appeal. In any event, Judge Reeh approved Appellant's claim in his January 7, 2000 order as a general claim, although it appears that there may not be funds in the estate to satisfy the claim.

tribal “will log” so that it reflected Decedent’s November 1996 meeting with tribal employees to make a new will and the Tribe’s alleged failure to prepare a new will for Decedent based on the November 1996 meeting.

We face an initial question as to whether it is even proper for the Board to consider Appellant’s challenge to the May 1, 1996 will in this appeal. The petition for reopening and all notices issued pursuant to that petition were expressly limited to reopening the estate in order to correct certain discrepancies in the legal descriptions in the will and make modifications to those descriptions to effectuate Decedent’s intent as expressed in the 1996 will. At the October 23, 2003 hearing, however, Judge Reeh accepted, and in some instances solicited, additional evidence regarding Appellant’s objections to the 1996 will. Moreover, in Judge’s Reeh’s October 1, 2004 Order of Modification, he determined that “findings and conclusions regarding why the will was admitted * * * should be addressed.” It therefore appears that Judge Reeh, on his own motion, reopened the issue of the validity of the May 1, 1996 will in order to supplement his prior order, even though Appellant would not have had standing to do so on her own. ^{6/} We will therefore resolve Appellant’s appeal.

While the Board acknowledges Appellant’s apparent frustration that Decedent never signed a new will, assuming she desired to do so, the Board must give effect to the wishes stated in a valid will. It is immaterial whether Decedent desired to execute a new will — intent alone is not sufficient to create, alter, or revoke an Indian will. See Estate of Henry Beavert, 18 IBIA 73, 75 (1989); Estate of Ella Sarah Case Barnes, 17 IBIA 72, 76 (1989). Appellant does not dispute Judge Reeh’s finding that there is no evidence that Decedent “either made a new will or revoked her May 1, 1996 will.” Oct. 1, 2004 Order at 2. Under these circumstances, Judge Reeh correctly concluded that the Department has no authority to disapprove or otherwise invalidate the will. See id.

^{6/} Under 43 C.F.R. § 4.242, a petition for reopening requires, among other things, that the petitioner had no actual notice of the original proceedings. Here, Appellant was present at all of the hearings; she therefore is not eligible to petition for reopening.

Conclusion

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 the October 1, 2004 Order of Modification. 7/

I concur:

// original signed
Amy B. Sosin
Acting Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

7/ On July 31, 2006, the Board received from Appellant a request to withdraw that portion of her appeal relating to the tract of land devised to her by Decedent's May 1, 1996 will, and as clarified in Judge Reeh's October 1, 2004 order. Appellant's letter stated that she plans "to sell the land to assist with my son who is quite ill." Because we affirm Judge Reeh's decision in its entirety, that tract of land will be distributed to Appellant. Appellant's request is therefore moot.