



INTERIOR BOARD OF INDIAN APPEALS

Estate of Martha Marie Vielle Gallineaux and
Estate of Thomas Pambrun Gallineaux

44 IBIA 230 (04/13/2007)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF MARTHA MARIE VIELLE : Order Affirming Decisions
GALLINEAUX :
: Docket No. IBIA 05-63
ESTATE OF THOMAS PAMBRUN :
GALLINEAUX : April 13, 2007

Appellant Thomas D. Gallineaux appeals two decisions, both issued on March 22, 2005, by Administrative Law Judge Robert G. Holt, in the estates of Appellant's parents, Martha Marie Vielle Gallineaux (Martha), deceased Blackfeet Indian (Probate No. RM-201-0373), and Thomas Pambrun Gallineaux (Thomas), deceased Blackfeet Indian (Probate No. SL-015-F-96-BF).

In Estate of Thomas Pambrun Gallineaux, Judge Holt denied reopening on the grounds that Appellant had notice of and participated in the original proceedings held to probate Thomas's estate and therefore was not entitled to seek reopening under 43 C.F.R. § 4.242(h) (2003). ^{1/} Judge Holt's order let stand a February 26, 1998 decision entered in Thomas's estate by Administrative Law Judge Nicholas Kuzmack, in which Judge Kuzmack determined that Thomas was survived by a wife, Martha, who was his sole heir. In 2004, as part of the probate of Martha's estate, Appellant argued that his parents never married, that his mother only served as a "caretaker" for Thomas, and, therefore, Appellant and Thomas's two daughters, Bonnie Cecelia Gallineaux Edwards (Bonnie) and Martina Gallineaux (Martina), are Thomas's heirs.

In Estate of Martha Marie Vielle Gallineaux, Judge Holt found that Appellant had failed to allege proper grounds for rehearing. The order denied rehearing from a January 5, 2005 decision by Judge Holt, distributing Martha's estate equally among her ten children,

^{1/} In 2005, 43 C.F.R. § 4.242 was reorganized and § 4.242(h) is now located at 43 C.F.R. § 4.242(i).

including Appellant, with the issue of Martha's predeceased children taking by representation. In his petition for rehearing, Appellant challenged the inclusion in Martha's estate of the land interest(s) she inherited from Thomas. Alternatively, Appellant argued that at her death, Martha intended to leave the land she inherited from Thomas to Appellant and his sisters, Bonnie and Martina.

The Board of Indian Appeals (Board) concludes that Appellant has not met his burden of showing that either of the March 22, 2005 decisions was in error and therefore affirms both decisions.

Background

Thomas died intestate on November 18, 1994, at Great Falls, Montana. At the time of his death, Thomas owned interests in trust or restricted property on the Blackfeet Reservation in the State of Montana. On August 27, 1997, Judge Kuzmack held a hearing to probate Thomas's estate. Appellant attended and testified at the hearing. Also in attendance at the hearing were Appellant's mother, Martha Gallineaux; Thomas's two daughters, Bonnie and Martina; and three other persons.

On February 26, 1998, Judge Kuzmack issued his decision in Thomas's estate. He determined that Thomas was survived by his wife Martha and three children, including Appellant. Judge Kuzmack also determined that under Montana laws on intestate succession, Thomas's sole heir was Martha. Decedent does not dispute that he received a copy of the February 26 decision. 2/ No petitions for rehearing were filed. 3/

2/ The Notice attached to the decision shows that Appellant was mailed a copy. At the December 8, 2004 hearing held to probate Martha's estate, Appellant stated that Judge Kuzmack mailed the decision to an incorrect, former address, but acknowledged that he received a copy of the decision from his sister. Appellant and his sister discussed the decision at or about the time his sister received her copy.

3/ Thomas's probate file contains a copy of his death certificate. The "informant" who provided the family history for Thomas on his death certificate is identified as "Martha Gallineaux." On the death certificate, at Item no. 9, there are four boxes for the decedent's marital status: "Never Married," "Widowed," "Married," and "Divorced." The box next to "Married" is checked. The next item, Item no. 10, requests the name of any surviving spouse. In this box, the name "Martha Vielle" is written.

Martha died intestate on August 24, 2003 at Browning, Montana. At the time of her death and relevant to this appeal, Martha owned interests in trust or restricted property on the Blackfeet Reservation in the State of Montana that she inherited from Thomas. 4/

In October 2004 and prior to the probate hearing in Martha's estate, Appellant wrote to BIA and asserted that Martha and Thomas were never married. Appellant averred that Martha was a "caretaker [to Thomas] since his head injury in WWII." Appellant's October 2004 Letter to BIA at 2. 5/ Appellant asserted that his mother always maintained that she was married to his uncle, John Gallineaux; that she was to not to be buried at death with Thomas; and that Martha received "V.A. death benefits" for John Gallineaux until she died. Id. 6/ Appellant argued that Thomas's heirs were Thomas's three children: Appellant, Bonnie and Martina.

On December 8, 2004, Judge Holt held a hearing to probate Martha's estate. Appellant, Bonnie, Martina, and four of Martha's granddaughters attended the hearing. Appellant testified that Martha and John Gallineaux never divorced, that Martha never claimed to be married to Thomas, and that Martha maintained that she was only a "caretaker" of Thomas. Dec. 8, 2004 Transcript at 8. 7/ Appellant admitted that he participated in the probate proceedings for Thomas, and acknowledged that he did not petition for rehearing from Judge Kuzmack's decision finding that Martha was Thomas's wife and sole heir. Appellant asserted that he did not file a petition for rehearing because he was not "familiar with probates." Id. at 11. Appellant also testified that, shortly after Thomas died, Martha requested him to "help[] [her] get the land [from Thomas] so that she'd have something to live on, that she'd give it back to us kids * * * that she'd leave it back to [Appellant], Martina, and Bonnie," and that the discussion was witnessed by a BIA employee. Id. at 31. Appellant stated that, relying on Martha's promise, he "went ahead and let her keep that land without contesting it * * * with the understanding that she was going to give it back." Id. Appellant submitted to Judge Holt a letter in which he "put in a claim for all lands * * * [Martha] received from [Thomas]."

4/ It appears from the inventory of Martha's estate that she owned additional interests in trust or restricted land on the Blackfeet Reservation in which Appellant has also inherited interests. Appellant only appeals the inclusion in Martha's estate of her interest(s) in land that she inherited from Thomas.

5/ Appellant's letter is undated but was received by BIA on October 5, 2004.

6/ John Gallineaux died in 1971.

7/ Appellant's sisters also testified that Thomas and Martha were never married.

On January 5, 2005, Judge Holt issued his decision in Martha's estate. Judge Holt found that Appellant, in essence, was attempting to reopen Thomas's estate to question whether Thomas was married to Martha. Judge Holt determined that, because Appellant had notice of and was an active participant in the original proceedings for Thomas, he was not eligible to petition to reopen Thomas's estate under 43 C.F.R. § 4.242(h). ^{8/} Judge Holt rejected Appellant's argument that he was entitled to the interests Martha inherited from Thomas because Martha promised to "give back" those interests. In particular, Judge Holt observed that no documents were presented to show that Martha "made this intent effective through deeds or a written will." Jan. 5, 2005 Decision at 3. Judge Holt concluded that, in accordance with Montana laws on intestate succession, Martha's estate should be distributed equally between Martha's ten children, including Appellant, with the children of Martha's predeceased children taking by representation.

On February 22, 2005, Judge Holt's office received a letter from Appellant, in which Appellant stated that he was "appealing" the decision in Martha's estate and "requesting a new hearing on propert[ies] [his] mother * * * received from [his] father." Feb. 15, 2005 Letter from Appellant to Judge Holt's office at 1. Appellant repeated his arguments that (1) Martha considered herself to be Thomas's caretaker, not his wife, and (2) Martha promised Appellant that if he did not contest a decision awarding Thomas's estate to her, she would give Thomas's property to Appellant. Appellant stated that he had hired legal counsel and "inten[ded] to prove judg[ment] is made in error * * * to [Thomas's] true heirs." *Id.* at 2. Judge Holt treated Appellant's February 15, 2005 letter as another petition for reopening in Thomas's estate and a petition for rehearing in Martha's estate.

On March 22, 2005, Judge Holt again denied Appellant's petition for reopening in Thomas's estate for the same reason set forth in his January 5 decision in Martha's estate: He had notice of and participated at the hearing held in Thomas's estate on August 27, 1997. Judge Holt noted that the record in Estate of Thomas Pambrun Gallineaux reflected that Appellant attended and testified. Judge Holt also noted that, at the hearing held to probate Martha's estate, Appellant conceded that he had participated in the earlier probate proceedings for his father's estate. Therefore, Judge Holt denied Appellant's petition,

^{8/} In pertinent part, 43 C.F.R. § 4.242(h) (2003) provided that

If a petition for reopening is filed more than 3 years after the entry of a final decision in a probate, it will be allowed only upon a showing that * * * the petitioner had no actual notice of the original proceedings; and that the petitioner was not on the reservation or otherwise in the vicinity at any time while the public notices were posted.

(Emphasis added.)

concluding that, because Appellant had actual notice of the original proceedings and was an active participant in the original proceedings, “the regulations [43 C.F.R. § 4.242(h)] do not permit this estate to be reopened at this late date to consider the current claims of [Appellant].” Order Denying Reopening at 2.

Also on March 22, 2005, Judge Holt denied Appellant’s petition for rehearing in Martha’s estate. Judge Holt found that Appellant had not provided any written documents to show that Martha promised to leave the property she inherited from Thomas to Appellant. Judge Holt stated that, if the agreement were construed as a promise that Martha would convey land to Appellant before she died, it would be barred by the Statute of Frauds. ^{9/} Judge Holt also found that, if the agreement were construed as a promise that Martha would give Appellant land after she died, it would not comply with the requirements for wills established in 43 C.F.R. § 4.260(a). Judge Holt concluded that Appellant had failed to allege proper grounds for rehearing and dismissed Appellant’s petition. ^{10/}

Appellant mailed a notice of appeal to Judge Holt’s office, which Judge Holt forwarded to the Board. No briefs were filed.

Discussion

An appellant bears the burden of showing that a denial of rehearing or reopening was in error. See Estate of Samuel R. Boyd, 43 IBIA 11, 15 (2006); Estate of Woody Albert, 14 IBIA 223, 230 (1986). We conclude that Appellant has failed to satisfy his burden of showing that Judge Holt’s order denying reopening in Thomas’s estate and order denying rehearing in Martha’s estate were in error.

Estate of Thomas Pambrun Gallineaux

In his notice of appeal, which is styled “Submission of New Evidence to be Considered,” Appellant asserts that he “recently acquired proof from the Veteran

^{9/} The Statute of Frauds refers to a longstanding rule in English law, which most if not all states have adopted in this country, pursuant to which agreements respecting land must be in writing. See generally Black’s Law Dictionary 1450 (8th ed. 2004).

^{10/} Judge Holt also concluded that, because Appellant had not submitted his petition under oath as is required under 43 C.F.R. § 4.241(a), his petition must also be denied on that basis.

Admin[istration]” that Martha “receiv[ed] an allotment as surviving wife of John Gallineaux [until her death in 2003] * * * which supports my claim my mother never considered herself the wife of [Thomas,] only a caretaker.” Notice of Appeal at 1. Appellant attached a copy of “Compensation and Pension Veteran Information,” dated March 23, 2005, which shows that Martha received payments through “J J Galli” until August 1, 2003. Appellant again argues that Thomas’s only heirs were Bonnie, Martina, and Appellant. Id.

Ordinarily, the Board does not consider evidence that is presented for the first time on appeal. Estate of Anthony “Tony” Henry Ross, 44 IBIA 113, 119 (2007). We see no reason to depart from that rule in this case. In any event, the new evidence offered by Appellant does not assist Appellant in showing that Judge Holt’s decision denying reopening in Thomas’s estate, which was based on Appellant’s notice of and participation in the hearing held to probate Thomas’s estate, was in error. 11/

In order for a petitioner to reopen a probate more than three years after the date of the final decision, 43 C.F.R. § 4.242(h) requires that “[t]he petitioner had no actual notice of the original proceedings.” Appellant cannot meet this requirement: It is undisputed that Appellant not only had notice of the original proceedings to probate Thomas’s estate, but that Appellant attended the hearing and acknowledged receiving (through his sister) a copy of Judge Kuzmack’s decision and discussing it with her. In his decision denying reopening, Judge Holt correctly informed Appellant of the rationale behind section 4.242(h):

The rules developed during years of Indian probate decision-making * * * have resulted in an appropriate and fair balance between the need for finality in probate decisions and the need to correct errors in the decisions. Numerous decisions denying reopening, in some cases even though the probable validity of a claim was recognized, have been grounded on a recognition that “[t]he public interest requires that proceedings relative to the probate of estates be brought to a final conclusion sometime, in order that the property rights of the heirs or devisees may be stabilized.”

11/ Even if we were to consider the printout, it establishes only that there was a relationship between Martha and “J J Galli.” The printout does not rule out whether Martha may have remarried after John’s death in 1971 or whether she was entitled to the VA benefits for the remainder of her life regardless of whether she remarried. Therefore, the printout is probative of whether Martha and John were married, but says nothing about whether Martha and Thomas were married at the time of Thomas’s death in 1994.

Order Denying Reopening at 2 (quoting Estate of George Dragswolf, Jr., 17 IBIA 10, 12 (1988)). On appeal, Appellant does not offer any evidence or argument challenging Judge Holt's conclusion that he had notice of the original proceedings — he cannot because, as Appellant testified at the hearing held to probate his mother's estate, he not only had notice, he attended the probate hearing for his father's estate. The Board repeatedly has held that a person who had notice of original probate proceedings and participated in those proceedings lacks standing to reopen the proceedings. See Estate of Baz Nip Pah, 22 IBIA 72, 73 (1992); Estate of Helen Ward Willey, 11 IBIA 43, 47 (1983).

Appellant also asserted that Judge Holt “made a premature decision without giving an opportunity to [him] to gather evidence to support [his] claims.” Notice of Appeal at 2. 12/ We reject this argument. The time for Appellant to have established that Martha and Thomas were not married at the time of Thomas's death was no later than 60 days after Appellant received a copy of Judge Kuzmack's 1998 decision in Thomas's estate, not six years later. See 43 C.F.R. § 4.241. When no petition for rehearing was filed in Thomas's estate in 1998, the decision became final.

At the hearing held to probate his mother's estate, Judge Holt asked Appellant why he waited so long to challenge Judge Kuzmack's determination that Thomas and Martha were married. Appellant explained that his mother wanted to receive the income from the leases on Thomas's land and Appellant and his sisters agreed. However, Appellant and his sisters apparently agreed by permitting their mother, rightly or wrongly, to be declared Thomas's widow, which then entitled her to inherit all of his trust property. Appellant is now bound by this finding. 13/ Therefore, to the extent that Appellant claims that Judge Holt did not allow him enough time to gather evidence that Thomas and Martha were never married, such evidence-gathering is irrelevant — the time for Appellant to challenge their marital status has now passed. 14/

12/ Appellant actually referred to the “Board of Appeals” making the premature decision. We construe Appellant's reference as one to Judge Holt, because the Board had not yet issued any orders or decisions at the time Appellant filed his notice of appeal.

13/ We note that Appellant's mother expressly represented herself to be Thomas's wife at the time of his death when she provided information on her relationship to Thomas for his death certificate.

14/ To the extent that Appellant sought additional time to produce evidence to show that Martha intended to “give back” the property she inherited from Thomas to Appellant, we
(continued...)

Appellant does not deny — as he cannot — that he had notice of the probate proceeding in his father’s estate, that he attended the probate hearing, and that he received a copy of Judge Kuzmack’s decision from his sister. Because of this notice, Judge Holt correctly determined that Appellant did not meet the requirements of section 4.242(h) to reopen his father’s estate and challenge his parents’ marital status. We therefore affirm Judge Holt’s March 22, 2005 decision in Estate of Thomas Pambrun Gallineaux.

Estate of Martha Marie Vielle Gallineaux

In his decision denying rehearing, Judge Holt considered the substantive challenges raised by Appellant in his petition for rehearing and properly denied rehearing. Judge Holt noted that Appellant restated his dispute with his parents’ marital status without offering any new evidence and, with respect to his father’s land interests, Judge Holt correctly found that Appellant had not produced any will or written agreement supporting any intent by his mother to give him the interest(s) in trust lands that she inherited from his father.

The primary thrust of Appellant’s appeal to this Board is that he now has evidence, in the form of the VA printout, to show that his parents were not married at the time of his father’s death and that he is entitled to a hearing on his right to the land interest(s) that his mother inherited from his father. We address these two claims in turn.

Appellant apparently believed that he would be able to challenge his parents’ marital status when his mother died. He may not do so for two reasons. First, he was present and had the opportunity to participate at the hearing held by Judge Kuzmack to probate his father’s estate where he could challenge his parents’ marital status. Appellant chose not to raise the challenge. Second, the determination of Thomas’s marital status was the foundation, as Appellant appears to understand, upon which Judge Kuzmack’s heirship decision rested. That is, the only way Judge Kuzmack could determine that Martha was Thomas’s sole heir was to find that they were married at the time of his death. Thus, this

14/(...continued)

conclude that Appellant had sufficient time between the December 8, 2004 hearing and Judge Holt’s March 22, 2005 orders to locate this evidence. In any event, Appellant appears to have abandoned this argument on appeal and does not argue that any such evidence exists. Appellant’s only argument on appeal relates to Judge Kuzmack’s decision in Thomas’s estate that Thomas’s sole heir was his wife Martha.

fact now has been conclusively established and Appellant is collaterally estopped 15/ from challenging it in a later proceeding, i.e., in Martha's probate.

Appellant also requested a hearing to "release lands * * * to [him] an[d his] sisters." Notice of Appeal at 2. Subsection 4.337(a) of 43 C.F.R. provides that "where the record indicates a need for further inquiry to resolve a genuine issue of material fact, the Board may require a hearing." The Board will not order such a hearing when there is no issue of material fact in question. All Materials of Montana, Inc. v. Billings Area Director, 21 IBIA 202, 212 (1992). The party requesting an evidentiary hearing must affirmatively show the existence of a controversy concerning a genuine issue of material fact, the resolution of which is necessary for a decision in the appeal. Id. Here, Appellant has not identified any disputed material facts to be resolved through a hearing. Assuming that Appellant attempts to create an issue of material fact through the submission of the VA printout and arguing that his parents were not married at the time of Thomas's death, we decline to consider such evidence for the reasons discussed above. First, the VA printout is presented for the first time to this Board and we decline to consider it. Estate of Ross, 44 IBIA at 119. Second, even if we were to consider the printout, the printout does not create a dispute over a material fact. See supra note 11. Finally, as explained above, Appellant is collaterally estopped from challenging his parents' marital status in his mother's probate proceeding.

For the reasons set forth above, we affirm Judge Holt's March 22, 2005 decision to deny rehearing in Estate of Martha Marie Vielle Gallineaux.

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 Judge Holt's March 22, 2005

15/ "Collateral estoppel" or "issue preclusion" means that where the same issue arises in and is material to two (or more) legal proceedings, where the issue is conclusively determined in an earlier proceeding, and where a party was present and had the opportunity to present evidence in the earlier proceeding and now seeks to raise the same issue in the later proceeding, s/he will be "estopped" or "precluded" from raising the "issue" in the later, "collateral" proceeding. See Citizen Potawatomi Nation v. Director, Office of Self-Governance, 42 IBIA 160, 167-68 (2006) ("For the doctrine of collateral estoppel to apply, the issue sought to be precluded must be the same as that involved in the prior litigation; that issue must have been actually litigated; it must have been determined by a valid and final judgment; and the determination must have been essential to the prior judgement").

Order Denying Reopening in the Estate of Thomas Pambrun Gallineaux and his March 22, 2005 Order Denying Rehearing in the Estate of Martha Marie Vielle Gallineaux.

I concur:

// original signed
Debra G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge