



INTERIOR BOARD OF INDIAN APPEALS

Estate of Robert Henry Moran, Sr.

44 IBIA 245 (04/16/2007)

Reconsideration denied:

45 IBIA 26

Second petition for reconsideration dismissed:

46 IBIA 76



## 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 ROBERT HENRY : Order Docketing and Dismissing  
MORAN, SR. : Appeal  
: :  
: Docket No. IBIA 07-95  
: :  
: April 16, 2007

Appellant Michael H. Moran appeals a December 13, 2006 decision by Administrative Law Judge Marcel S. Greenia in which Judge Greenia denied Appellant's petition to reopen the estate of his father, Robert Henry Moran, Sr. (Decedent), deceased Rosebud Sioux Indian, Probate No. IP TC 418 S 85. The decision let stand an Order Determining Heirs entered on March 28, 1986, in Decedent's estate. Judge Greenia denied Appellant's petition to reopen on the grounds that Appellant had notice of and participated in the hearing held to probate Decedent's estate, see 43 C.F.R. § 4.242(i) (2005), 1/ and on the grounds that no "manifest injustice" would occur if the petition were denied because Appellant had been determined to be one of his father's heirs in the 1986 Order. 2/ The Board of Indian Appeals (Board) received Appellant's notice of appeal on April 12, 2007. We docket this appeal, but dismiss it because it is untimely.

---

1/ The Order Denying Petition for Reopening cites 43 C.F.R. § 4.242(h). This subsection was renumbered as subsection 4.242(i) in 2005 when section 4.242 was reorganized.

2/ Although it is not entirely clear, it appears that Appellant may be seeking a determination that his father wanted Appellant alone to inherit his ranching/farming business. If so, to the extent that the business includes or consists of non-trust assets, the Department of the Interior (Department) has no authority or jurisdiction to make such a determination. The Department is authorized only to conduct probate proceedings for trust or restricted assets and does not have jurisdiction to probate non-trust assets of Indian-owned businesses. See Estate of Florence Whiteman, 39 IBIA 180, 183 (2003); Estate of Pansy Jeanette (Sparkman) Oyler, 16 IBIA 45, 47 (1988). Non-trust assets are subject to probate in the appropriate tribal or state court. Estate of Oyler, 16 IBIA at 47.

Pursuant to 43 C.F.R. § 4.320(b), appeals from decisions denying petitions to reopen a closed probate must be filed “[w]ithin 60 days from the date of the decision.” The 60-day deadline for filing an appeal is jurisdictional. Id. § 4.320(b)(3); Estate of Edward Benedict Defender, 44 IBIA 8 (2006). The effective date for filing a notice of appeal is the date of mailing or the date of personal delivery. 43 C.F.R. § 4.310(a).

Included with Judge Greenia’s Order Denying Petition for Reopening was a document entitled Judge’s Notice to All Persons Having an Interest in the Subject Matter of this Proceeding (Notice), which was mailed to the Appellant on December 13, 2006. Appellant enclosed a copy of the Notice with his appeal to this Board. The Notice clearly informed Appellant that any appeal must be filed within 60 days with the Board and provided correct instructions for sending an appeal to the Board. According to the postmark on the envelope that contained Appellant’s notice of appeal to the Board, the appeal was mailed on April 10, 2007. Because Appellant filed his appeal after the 60-day time period expired, this appeal must be dismissed. 3/

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 docket this appeal but dismisses it for lack of jurisdiction.

I concur:

\_\_\_\_\_  
// original signed  
Debora G. Luther  
Administrative Judge

\_\_\_\_\_  
// original signed  
Steven K. Linscheid  
Chief Administrative Judge

---

3/ Judge Greenia construed the thrust of Appellant’s petition for reopening as one to change Appellant’s designation in Decedent’s probate records from Decedent’s adopted son to Decedent’s biological son, which Judge Greenia noted would not change the heirship determination. Order Denying Petition for Reopening at 1-2. On February 8, 2007, Appellant provided Judge Greenia with a state-certified copy of a paternity affidavit in which Decedent certified under oath in 1966 that he was Appellant’s father. We note that Judge Greenia appropriately added the paternity affidavit to Decedent’s probate file. See Estate of Harry J. Crebassa, 44 IBIA 84, 86 n.4 (2007). Thus, this evidence is now part of Decedent’s probate records and may be reviewed in the event it becomes relevant.