



INTERIOR BOARD OF INDIAN APPEALS

Estate of Eileen June Baker Galloway Hootchew

47 IBIA 54 (05/09/2008)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ESTATE OF EILEEN JUNE BAKER) Order Docketing and Dismissing Appeal
GALLOWAY HOOTCHEW)
) Docket No. IBIA 08-82
)
) May 9, 2008

Appellant Verlo Hootchew appeals to the Board of Indian Appeals (Board) from the “Recommended Decision” portion of a February 21, 2008, Decision Distributing Estate and Recommended Decision by Indian Probate Judge James Yellowtail (IPJ) in the estate of Eileen June Baker Galloway Hootchew (Decedent), deceased Fort Hall Shoshone-Bannock Indian, Probate No. P-0000-21587-IP.¹ The Recommended Decision rejected a challenge by Appellant’s father, Boyd Franklin Hootchew (Boyd), to Decedent’s estate inventory. Boyd died during the pendency of Decedent’s estate and Appellant now seeks review of the Recommended Decision as a probable heir of Boyd. The Board docketed this appeal, but dismisses it because it was filed with the Board more than 60 days after the date of the IPJ’s Recommended Decision and therefore the appeal is untimely.

Boyd, who was Decedent’s widower, challenged the inclusion in Decedent’s estate inventory of Fort Hall Allotment 1275-A. This allotment at one time had been owned entirely by Boyd but he apparently gave his entire interest to Decedent, retaining only a life estate in the property. According to Decedent’s will, the allotment is to pass in two successive life estates, first to Boyd and then to Decedent’s son, Sonny Galloway, by her first husband, Earl Galloway; the remainder is to go to Sonny’s two daughters after his death.

¹ Under procedures established by the Board in 1985, challenges to the trust estate inventory that arise in the course of the probate of an estate are to be considered by the probate judge during the probate proceeding, rather than separately referring inventory questions to BIA for decision. *Estate of Douglas Leonard Ducheneaux*, 13 IBIA 169, 177-78 (1985); *see also Estate of Sandra Kay Bouttier LaBuff Heavy Gun*, 43 IBIA 143, 144 n.3 (2006). BIA participates as an interested party in the proceedings, and the probate judge issues a recommended decision regarding the inventory, which may then be appealed to the Board. *Estate of Samuel Johnson (John) Aimsback (Aims Back)*, 45 IBIA 298, 300 n.4 (2007).

Boyd challenged the inclusion of Allotment 1275-A in Decedent's trust estate inventory, claiming that he did not realize what he was signing when he signed a gift deed in 2002 giving Decedent his remaining interest in the allotment² nor did he appreciate its ramifications.³

Boyd passed away on June 21, 2007, while Decedent's estate remained pending before the IPJ. On February 21, 2008, the IPJ issued the Recommended Decision, in which he determined that Boyd had not been diligent in his pursuit of the revocation or rescission of his gift deed and he confirmed Decedent's estate inventory.⁴ On February 29, 2008, Appellant received his father's copy of the Recommended Decision. Appellant appeals from this decision as a probable heir to Boyd's estate.⁵

Objections to a recommended decision as to a decedent's trust estate inventory must be filed within 60 days from the date of the decision. *See Estate of Ducheneaux*, 13 IBIA at 178. The date of filing is determined by the date of postmark, in the case of appeals that are mailed to the Board, or by the date of personal delivery, in the case of appeals that are hand delivered by courier or by the appellant. 43 C.F.R. § 4.310(a); *Estate of Bernard Charles Little Nest*, 47 IBIA 52, 53 (2008).

The IPJ's Recommended Decision issued on February 21, 2008, and therefore Appellant had 60 days, until April 21, 2008, to file his notice of appeal with the Board.

² According to the Recommended Decision, Boyd deeded a one-half undivided interest in the allotment to Decedent in 1966 as a joint tenant with the right of survivorship. The 2002 deed gave Decedent the remainder of Boyd's interest, out of which Boyd retained a life estate in a brick home on the property.

³ Although the Recommended Decision did not identify the "ramifications" with which Boyd was concerned, it is evident that one such ramification from Boyd's gift of his entire interest was the possibility that the allotment would not remain in the Hootchew family.

⁴ The Board's legal assistant obtained a copy of the Recommended Decision along with a copy of the notice of appeal rights that was mailed with the Recommended Decision. These documents have now been made a part of the record of this appeal.

⁵ Appellant filed his notice of appeal in his own right, as a purported heir of Boyd. According to the records of the Office of Hearings and Appeals, Boyd's estate has not yet been probated, for which reason his actual heirs have not been determined. Therefore, because we dismiss this appeal as untimely, we need not determine whether Appellant would otherwise have standing to bring this appeal.

The notice of appeal rights that accompanied the Recommended Decision contained correct instructions for filing objections to the Recommended Decision with the Board, including the Board's complete address and the 60-day time limit for filing a notice of appeal. In particular, the notice advised recipients that the Recommended Decision "becomes final sixty (60) days from the date of mailing of this notice."

Although Appellant is not identified as a party to whom a copy of the Recommended Decision was sent, he concedes that on February 29, 2008, he received the copy delivered to his father.⁶ In addition, we note that Appellant dated his notice of appeal "April 8, 2008." Therefore, Appellant was aware of the decision well within the time for filing a timely appeal and had, in fact, prepared his notice of appeal. However, Appellant did not file his appeal until April 28, 2008, as determined from the postmark on the envelope containing his notice of appeal. Because it was filed seven days late, Appellant's appeal is untimely.

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 docketed this appeal, but dismisses it because it is untimely.

I concur:

 // original signed
Debora G. Luther
Administrative Judge

 // original signed
Steven K. Linscheid
Chief Administrative Judge

⁶ Decedent was Appellant's stepmother. Because Appellant was not identified as a devisee in her will and was not otherwise an heir at law, he was not an interested party for purposes of inclusion on the distribution list for Decedent's estate. *See Estate of Elvina Shay*, 44 IBIA 133, 135 & n.4 (2007) (discussing standing in the context of probate proceedings).