INTERIOR BOARD OF INDIAN APPEALS

Estate of Mary Louise Houle

47 IBIA 181 (08/15/2008)

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 MARY LOUISE HOULE	)	Order Docketing and Dismissing
	)	Petition to Reopen Estate and
	)	Remanding Matter to Probate
	)	Hearings Division
	)	
	)	Docket No. IBIA 08-121
	)	
	)	August 15, 2008

On July 16, 2008, the Board of Indian Appeals (Board) received a memorandum from Indian Probate Judge James Yellowtail, transmitting to the Board a February 14, 2008, Petition to Reopen (Petition) the estate of Mary Louise Houle (Decedent), deceased Turtle Mountain Chippewa Indian, Probate No. P000031161IP. The Petition was submitted to Judge Yellowtail by the Superintendent, Turtle Mountain Agency, Bureau of Indian Affairs (Superintendent; BIA). Judge Yellowtail's memorandum to the Board provides some background and analysis related to the Petition, expresses doubts about his jurisdiction as a probate judge over the matter, and requests that the Board treat the Petition as an "appeal" to the Board from an inventory recommendation that was included in an Order Determining Heirs and Decree of Distribution (Order Determining Heirs) for Decedent's estate, entered on September 30, 2005, by Indian Probate Judge P. Diane Johnson.[1] The inventory recommendation made by Judge Johnson concerned a gift conveyance from Decedent to Joan Azure, and was issued pursuant to the procedures established by the Board in *Estate of Douglas Leonard Ducheneaux*, 13 IBIA 169 (1985).[2]

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[1] Judge Yellowtail understood that the Board lacks original jurisdiction to review a petition to reopen an Indian estate. Relevant to this case, the Board's jurisdiction is limited to appeals "from an order of an administrative law judge or Indian probate judge on a . . . petition for reopening." 43 C.F.R. § 4.320(a). Judge Yellowtail's memorandum to the Board does not purport to be such an order, and we do not construe it as such.

[2] In *Ducheneaux*, the Board issued a standing order to allow a probate judge handling an Indian probate proceeding to also consider questions concerning BIA's inventory of a decedent's trust estate during the proceeding, and to issue a recommended decision on disputed issues concerning the inventory. BIA is afforded an opportunity to participate in the process.

The Order Determining Heirs stated that approval of the conveyance was the rationale for Azure disclaiming any further interest, as an heir, in Decedent's estate.

Upon review of the Petition and the materials provided by Judge Yellowtail, we conclude that it would be premature for the Board to deem the Petition as a direct appeal to the Board from the inventory recommendation, even assuming that we could treat it as timely.[3] To the extent that Judge Yellowtail refrained from considering the Petition because it was related to an inventory recommendation made under *Ducheneaux*, the Board does not read the *Ducheneaux* decision as necessarily precluding him, on that ground alone, from exercising jurisdiction over the Petition, particularly where, as here, the inventory recommendation appears to be related to the determination of heirship. Therefore, we conclude that the petition should first be addressed by the probate judge and a formal ruling issued accordingly, whether on the merits or on jurisdictional grounds, which then will be subject to appeal to the Board.[4]

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 dockets the Petition but dismisses it as an appeal and remands the matter to the Probate Hearings Division for issuance of an order granting or denying the Petition.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

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[3] Judge Johnson advised interested parties that they could seek rehearing from her Order Determining Heirs, which incorporated her inventory recommendation. BIA apparently did not do so. Because we conclude on other grounds that the petition should be dismissed as an "appeal" to the Board, we express no opinion on whether BIA's petition could otherwise be treated as a timely appeal from the inventory recommendation portion of the Order Determining Heirs.

[4] We note that none of the real parties in interest apparently objected to or sought review of Judge Johnson's Order Determining Heirs, including her inventory recommendation. We also note that the materials submitted to the Board do not indicate whether BIA consulted with any of the real parties in interest before seeking to reopen the estate. Depending on the precise source of BIA's concern, it may be that resolution of this matter could be achieved by agreement of all interested parties.