



INTERIOR BOARD OF INDIAN APPEALS

Estate of Wallace Bruce Armstrong

48 IBIA 212 (01/16/2009)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
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ARLINGTON, VA 22203

ESTATE OF WALLACE BRUCE)
ARMSTRONG)
)
)
) Docket No. IBIA 09-34
)
)
) January 16, 2009

On January 13, 2009, the Board of Indian Appeals (Board) received a Notice of Appeal by Tyler Sue Dutton Rauer and Charles Toby Dutton (Appellants), through counsel, in the estate of Wallace Bruce Armstrong, deceased Absentee Wyandotte Indian, Probate No. P000073620IP. The Notice of Appeal states that it is being filed pursuant to 43 C.F.R. § 4.320, which provides a right of appeal to the Board by a party adversely affected “by a decision or order” of an administrative law judge or Indian probate judge issued under 43 C.F.R. Part 30 (Indian Probate Hearings Procedures) “on a petition for reopening.”¹

The Notice of Appeal does not identify the decision or order that is the subject of the appeal, but the Board contacted the Probate Hearings Division and obtained a copy of an Order to Show Cause Why Petition To Reopen Should Not be Denied, issued for this estate on January 6, 2009, by Chief Administrative Law Judge (ALJ) Earl J. Waits. It is apparent that the ALJ’s order to show cause was issued in response to a petition to reopen the estate filed by Appellants. The Board dismisses this appeal as premature because the ALJ’s order to show cause is not a final order that is appealable of right.

The ALJ’s order directed Appellants, among other things, and within 30 days of the ALJ’s order, to show cause why their petition should not be denied for lack of diligence in pursuing relief. The order is an interim order and is not the ALJ’s final resolution of Appellants’ petition to reopen the estate. The reference to an appealable “order” in 43 C.F.R. § 4.320 refers only to *final* orders; that section does not authorize appeals of right from interim orders. *Estate of Chester Brent Spencer*, 40 IBIA 187, 188-89 (2005).

¹ The Notice of Appeal was sent to the Office of Hearings and Appeals, Probate Hearings Division, which transmitted it to the Board.

Thus, Appellants' appeal is premature because they do not have a right to appeal to the Board from the ALJ's interim order.²

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 as premature.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

² An interlocutory order by an ALJ may be appealable to the Board, but only after the requirements of 43 C.F.R. § 4.28 have been satisfied, which is not the case here.