INTERIOR BOARD OF INDIAN APPEALS

Estate of Marjorie Jean Rider Bull Bear

49 IBIA 1 (03/03/2009)

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 MARJORIE JEAN RIDER BULL BEAR	)	Order Affirming Decision
	)	
	)	Docket No. IBIA 07-117
	)	
	)	March 3, 2009

Albert Yellowbird (Appellant or Albert) appeals to the Board of Indian Appeals (Board) from an Order Denying Rehearing entered May 31, 2007, by Indian Probate Judge James Yellowtail (Judge Yellowtail or IPJ), in the Estate of Marjorie Jean Rider Bull Bear (Decedent), deceased Blackfeet Tribe Indian, Probate No. P-0000-17013-IP. Judge Yellowtail's Decision, dated May 16, 2007, distributed approximately 77% of Decedent's trust assets to her surviving spouse, Davis Joseph Bull Bear (Davis), and divided the remainder into equal approximate 7% shares for each of her three children: Albert, his brother Lloyd Francis Yellowbird (Lloyd), and their half-sister Angelina Ann Bull Bear (Angelina). The ALJ rejected Appellant's Petition for Rehearing of this Decision, in which Albert objected to the distribution of 77% of his mother's estate to Davis, and sought a distribution based on a proposal that had been submitted earlier by Davis. Judge Yellowtail denied rehearing. Because Appellant has failed to show that Judge Yellowtail erred either in following Montana law or in determining that no settlement could be compelled, we affirm the decision.

Background

Decedent was born on March 15, 1949, resided in Montana, and died intestate in Browning on December 17, 2005. She married Albert Jacob Yellow Bird (also Yellowbird) and bore two children (Albert and Lloyd) during that marriage, before divorcing. She then married Davis, a Canadian Indian, and legally adopted his biological granddaughter, Angelina.

At the time of her death, Decedent owned trust or restricted real property on the Blackfeet Reservation valued at $182,530.89, and an Individual Indian Money (IIM) account with a balance of $312.76. By the time of the probate hearing, the IIM account had grown to at least $7,847.30. Pursuant to 43 C.F.R. § 4.250, the Blackfeet Tribal Credit Department submitted a claim against the estate in the amount of $8,883.60, for principal and interest on ten promissory notes executed by Decedent.

Prior to the probate hearing, Decedent's widower, Davis, and their daughter signed and submitted a letter to the Bureau of Indian Affairs (BIA) asserting that they understood that Decedent's real property interests were to be divided "three ways," that they would accept this outcome, and that they understood the effect of this division to be that the estate would be split among Davis and his daughter Angelina on the one hand, and Albert, on the other. Letter from Davis to BIA, Mar. 29, 2007. It is not clear to us whether Davis anticipated that Albert's share would be split between the brothers. In any event, this is the last communication in the record from Davis or Angelina.

Judge Yellowtail conducted a hearing on March 29, 2007; only Albert attended. At the hearing, Judge Yellowtail addressed two central issues: (1) the claims against the estate submitted by the Blackfeet Tribal Credit Department; and (2) the potential for settlement of the estate among the heirs.

As to the former, Judge Yellowtail approved the submitted claims for $8,883.60, but stated that the maximum he could release for payment of the claim was the amount in the IIM account at the time of Decedent's death. Accordingly, he stated to Albert that at most the debt would be repaid from Decedent's trust estate to the extent of the $312 balance in her IIM account when she died. The Tribe did not seek rehearing on these determinations.

As to the settlement, Judge Yellowtail explained that to avoid splitting land interests into smaller fractions, it would be advantageous for the various heirs to enter into an agreement over property. Transcript of Hearing, Mar. 27, 2007 (Tr.), at 14-15, 19. Albert expressed an interest in such an agreement but claimed that Davis would not communicate with him and suggested that working out such an agreement would be unlikely. *Id.* at 15. Judge Yellowtail offered to develop proposals for consideration of the heirs by which Decedent's real property interests could be assigned among the heirs without further fractionation. *Id.* at 15-20. He stated: "I'm sure willing to work with you . . . if that's what you want to do." *Id.* at 17. Albert expressed interest in the IPJ's offer of assistance.

If Judge Yellowtail actually attempted to arrange an agreement among the interested parties and their guardians, there is no documentation of such action in the record. The next event in the record is the IPJ's issuance, on May 16, 2007, of his Decision which distributed Decedent's estate.

The Decision is silent regarding the subject that comprised the bulk of the hearing -- Judge Yellowtail's offer to assist the parties in resolving the probate by agreement. Instead, he applied the law of the State of Montana governing intestacy to order distribution of Decedent's trust estate. He explained that because Decedent had two children by a father who was not her surviving spouse, Montana Code Ann. § 72-2-112(4) required that the

surviving spouse must receive the first $100,000 of the entire estate plus 50% of the remainder, and that the balance would be divided equally among Decedent's children. He made mathematical calculations to determine the shares to be distributed to Decedent's widower and three children.[1] He concluded that

> the funds in the Decedent's I.I.M. account and Decedent's trust or restricted real property located on the Blackfeet Reservation . . . shall be distributed as follows:

NAME . . .	RELATION	SHARE
Davis Joseph Bull Bear . . .	Spouse	77.39262 percent
Albert Mark Yellow Bird . . .	Child	7.53579 percent
Lloyd Francis Yellow Bird . . .	Child	7.53579 percent
Angelina Ann Bull Bear . . .	Child	7.53579 percent

Decision at 3 (birth dates and enrollment numbers omitted). He explained that Davis's interest would pass to him in non-trust status because he is a Canadian Indian and not a citizen of the United States. *Id.*

Albert submitted a Petition for Rehearing on May 22, 2007. He asserted that he "do[es] not want Davis Joseph Bull Bear to receive 77.3 percent of [his] mother's estate." Seemingly confused as to why the discussion at the hearing regarding settlement of the probate among the interested parties had not been factored into the outcome, he asked that the distribution be made in accordance with Davis's March 29, 2007, letter and proposed a distribution that Albert believed would be consistent with Davis's position.

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[1] Considering the entire value of the trust estate at the time of death to be the value of Decedent's real property trust interests, $182,530.89, the IPJ determined that of this amount, Davis would receive $100,000 plus one-half of the remainder, or $41,265.45. The ratio of $141,265.45 to the total $182,530.89, was 77.39262%. He divided the remainder, $41,265.45, by the number of offspring (3), and ascertained, employing the ratio of individual receipts per child to total trust real estate value, that each of Decedent's offspring would receive 7.53579% of her estate.

Judge Yellowtail denied the Petition in his Order Denying Rehearing on May 31, 2007. Citing the letter submitted and signed by Davis and his daughter, he expressed concerns about it, including that it does not address the IIM account or mention Lloyd or identify lands that Davis wanted to keep for himself and Angelina. Referring both to that letter and Albert's proposal, the IPJ asserted that "there is no agreement between the parties" and explained that the proposal suggested by either one would substantially alter what all four heirs are entitled to receive by law. "That disparity in the relative benefits each would receive raises a serious concern as to whether Albert and Davis are fully informed of the ramifications of their respective proposals." Order Denying Rehearing at 2. He also noted that he, as IPJ, was in no position to address any agreement the other heirs (Angelina and Lloyd), who were not present at the hearing, might have been willing to consider. *Id.* Noting that Albert had not sufficiently identified any error in the computation of respective shares granted to Decedent's heirs in the Decision, he explained that Albert was not entitled to relief. *Id.*

Albert submitted his Notice of Appeal to the Board on July 23, 2007. He repeats his objection to Davis's inheriting over 77% of Decedent's estate and requests that the distribution follow the general suggestion Davis and his daughter made at the beginning of the probate proceeding in their March 29, 2007, letter. He asks that any funds in the IIM account be divided equally between himself and his brother. In a subsequent pleading, dated August 1, 2007, he repeats his proposal for the best way to divide the trust interests in land, and explains his concern that, because Decedent's real property interests would pass out of trust status when distributed to Davis, Davis is planning to sell any interests he receives. According to Albert, he and his brother want the lands that came into their mother's possession through the Rider family to stay in their possession.

No other briefs were submitted.

Discussion

Appellant bears the burden of showing that an order on rehearing is in error. *Estate of Verna Mae Pepion Hill Hamilton*, 45 IBIA 58, 63 (2007). Simple disagreement with or bare assertions concerning a challenged decision are insufficient to carry this burden of proof. *Id.* Appellant has not met his burden and thus we affirm.

The IPJ was correct that Montana law requires that when a decedent dies without a will, the surviving spouse receives "the first $100,000, plus one-half of any balance of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse." Montana Code Ann. § 72-2-112(4). Appellant does not argue

that the IPJ applied the wrong law, misapplied Montana law, or miscalculated the heirs' shares of Decedent's estate.

We recognize that confusion was generated by Judge Yellowtail's emphasis at the hearing on the possibility of settling the estate, and offering to craft an agreement to avoid fractionation of interests. Nonetheless, the IPJ was not empowered to force such an outcome. Though the heirs were free to enter into any legal agreement amongst themselves, *see, e.g., Estate of Ernest Wilkinson, Jr.,* 41 IBIA 280 (2005), Judge Yellowtail has no authority to order the heirs to agree to terms that would require any of them to give up that to which they are entitled. Similarly, this Board is not free to revise the distribution of property of a trust estate because an heir is dissatisfied with the distribution. Moreover, it was in Decedent's power to control the descent of her property by executing a will, but she did not do so.

In sum, Appellant does not argue that the mathematical analysis was incorrect or that Judge Yellowtail's legal conclusion was wrong. He does not contend that Decedent's estate contained assets, whether trust or non-trust, that were excluded from the value of Decedent's total estate, yet should have been included, which might have reduced Davis's share of the estate. In addition, as we explained, neither Judge Yellowtail nor this Board can require parties to settle to avoid fracturing land interests or for any other reason. Accordingly, we find that Appellant has not shown error in Judge Yellowtail's Order Denying Rehearing.

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, we affirm the May 31, 2007, Order Denying Petition for Rehearing.

I concur:

// original signed	// original signed
Lisa Hemmer	Debora G. Luther
Administrative Judge*	Administrative Judge

*Interior Board of Land Appeals, sitting by designation.