



INTERIOR BOARD OF INDIAN APPEALS

Estate of Faith Edith Black Horse

49 IBIA 196 (05/06/2009)

Reconsideration denied:

49 IBIA 211



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 FAITH EDITH)
BLACK HORSE)
)
) Docket No. IBIA 09-056
)
)
) May 6, 2009

Demetrius Black Bonnett (Appellant) appeals to the Board of Indian Appeals (Board) from an Order Denying Reopening, entered February 27, 2009, by Indian Probate Judge Michael Stancampiano (IPJ) in the estate of Decedent's mother, Faith Edith Black Horse (Decedent), Probate No. P000069903IP. The Order Denying Reopening let stand a May 26, 1964, Order Determining Heirs (1964 Order) in Decedent's estate. The Board docketed this appeal, but dismisses it for failure to comply with the Board's order to serve interested parties with a copy of Appellant's notice of appeal and to certify that Appellant had complied with the Board's order.

Appellant filed his notice of appeal without certifying or otherwise indicating that he had served a copy of the notice of appeal on all interested parties, as required by 43 C.F.R. § 4.320(c) and as advised in both the Order Denying Petition for Rehearing and in the Notice attached thereto. On March 13, 2009, the Board issued an order requiring Appellant, on or before April 13, 2009, to complete these service requirements and to file a statement with the Board that he had done so. The order advised Appellant that failure to comply with the order could result in dismissal of the appeal without further notice. In this same order, the Board ordered Appellant to show cause why his appeal should not be rejected for lack of diligence because he seeks to reopen an estate that has been closed for over 40 years.

On April 16, 2009, the Board received a letter from Appellant in which he responds to the Board's order to show cause. Nothing in Appellant's letter informs the Board whether he complied with the order to serve his notice of appeal on all interested parties.¹

¹ There is also no indication that Appellant served his response to the order to show cause on any interested parties.

Because Appellant has failed to comply with the Board's order to serve interested parties with a copy of his notice of appeal, we hereby dismiss his appeal.

Alternatively, after reviewing and considering the petition for reopening that Appellant filed with the IPJ,² and Appellant's response to the order to show cause, we conclude that the IPJ's denial of reopening is suitable for summary affirmance. On its face, Appellant's petition to reopen did not demonstrate any error in the 1964 decision, and the IPJ properly found that the petition provided no grounds for reopening the estate. We agree.

According to the 1964 Order, Decedent's estate was distributed to Decedent's surviving spouse and to Decedent's six surviving children, including Appellant and Appellant's half sister, Belva Venita Black Horse. The 1964 Order recorded that Belva was born on December 20, 1948, and that her father was Albert Joseph "according to the evidence." 1964 Order at 2. In his petition to reopen, Appellant argued that Belva Black Horse and Joseph were not entitled to any portion of his mother's estate, including lease income. He produced a birth certificate from the State of South Dakota for "Vernita Belva Fast Horse" born on December 20, 1948, to Decedent. No father is identified on the birth certificate. Appellant relied on the birth certificate to argue that neither "Belva Black Horse" or Joseph should be receiving anything from Decedent's estate. In his order denying reopening, the IPJ carefully explained that

Belva Black Horse died on June 2, 1964 at the age of 15 (Probate No. B-29-67). Since Belva Black Horse died *after* her mother, she properly inherited a 1/9 interest in her mother's estate. Upon Belva's death, her *entire* estate passed to her father, Albert Joseph pursuant to [South Dakota law] which provides that if [a d]ecedent was not married and had no [children], that the estate passes to the *surviving* parents, in this case, Albert Joseph. Furthermore, concerns listed by [Appellant] as to his mother and half sister's last name do not affect the proper distribution of Decedent's estate.

Order Denying Reopening at 2 (emphasis added). Appellant has appealed to the Board from the Order Denying Rehearing. He continues to rely on the birth certificate to assert that his half sister's name is "Vernita B. Fast Horse," not "Belva Black Horse," and that

² The Board's legal assistant contacted the office of the IPJ and obtained a copy of Appellant's petition to reopen, its attachments (which included two pages from the 1964 Order and the birth certificate for Vernita Belva Fast Horse), and a copy of the IPJ's Order Denying Rehearing.

Joseph is not entitled to any funds because no father is shown on the birth certificate for Vernita.

The petition to reopen contains bare allegations and conjecture, questioning both the identity of Belva Black Horse and whether Joseph is Belva's father.³ A petition to reopen that raises allegations of factual error must be properly supported with evidence and affidavit(s). *See* 43 C.F.R. § 4.242(b) (2008); 43 C.F.R. § 30.242(c), 73 Fed. Reg. 67,302 (Nov. 13, 2008). In the present case, the only evidence included with Appellant's petition was a birth certificate, which listed "Faith Edith Black Horse" as the mother of "Vernita Belva Fast Horse" born on December 20, 1948, and did not identify her father. That evidence supports the finding that Belva was Decedent's daughter, and is wholly insufficient to raise any credible issue concerning the distribution of Decedent's estate.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 docketed this appeal but dismisses it for failure to comply with the Board's order to serve interested parties with a copy of Appellant's notice of appeal and to certify that Appellant had complied with the Board's order. Alternatively, we would summarily affirm the IPJ's Order Denying Reopening.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

³ Although we make no determination concerning the paternity of "Belva Venita" or "Vernita Belva," we note that the absence of the name of the father on the birth certificate does not preclude a later determination of paternity.

We also note that, according to the 1964 Order, Decedent was married around the time of Belva's birth to Noah Fast Horse, which would explain the last name on the birth certificate provided by Appellant. The birthdate is the same for both "Belva Venita Black Horse" and "Vernita Belva Fast Horse" and the first and middle names nearly match, albeit in reverse order. Thus it appears reasonable that "Belva Venita Black Horse" and "Vernita Belva Fast Horse" are one and the same person.

⁴ In denying reopening, the IPJ explained that Joseph did not receive any part of Decedent's estate *as an heir of Decedent*. Instead, *as Belva's heir*, Joseph received that portion of Decedent's estate that was inherited by Belva.