



INTERIOR BOARD OF INDIAN APPEALS

Estate of John Squally Kalama

49 IBIA 201 (05/07/2009)



# 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 JOHN SQUALLY ) Order Affirming Decision  
KALAMA )  
) Docket No. IBIA 08-10  
)  
) May 7, 2009

Alaina Medicine Bull (Appellant or Alaina) appeals to the Board of Indian Appeals (Board), in her capacity as guardian ad litem on behalf of her grandchildren, Keoni Ikaika Kalama (Keoni) and Kahelelani Hokukomohana Kalama (Kahelelani) (collectively, the children), from an Order Denying Rehearing entered August 20, 2007, by Indian Probate Judge James Yellowtail (IPJ or Judge) in the Estate of John Squally Kalama (Decedent), deceased Nisqually and Northern Cheyenne Indian, Probate No. P-0000-23901-IP. Keoni and Kahelelani are Decedent's minor children. The Judge's Order Denying Rehearing let stand a decision dated June 15, 2007, in which he ordered the distribution of Decedent's interests in trust or restricted real property to Decedent's widow and to the two children, but distributed Decedent's Individual Indian Money (IIM) account exclusively to his widow.

The IPJ rejected Appellant's Petition for Rehearing (Petition), which sought reimbursement either from Decedent's estate or from his widow for Appellant's past and future costs of raising the children. The IPJ stated that a probate hearing was not a proper forum for pursuit of a child support claim against Decedent's widow, and that a financial claim against the estate, under 43 C.F.R. § 4.250, was untimely.<sup>1</sup>

In her appeal to this Board, Appellant acknowledges that a claim for child support must be pursued elsewhere and asks instead that Decedent's children be permitted to inherit part of Decedent's estate. The children did, in fact, inherit half of Decedent's trust or restricted real property interests. And, to the extent Appellant's argument pertains only to the IIM account, she has not asserted any legal error in the IPJ's distribution of the estate, a failure calling for affirmance of the IPJ's denial of rehearing. In any event, Appellant's claim

---

<sup>1</sup> All references in this decision to the probate regulations are to the rules in effect when Judge Yellowtail issued his decision. Our decision would be no different under the regulations in effect at the time of Decedent's death. The probate rules were amended again after the IPJ issued his 2007 order. *See* 73 Fed. Reg. 67,256 (Nov. 13, 2008).

is presented for the first time to the Board, and is therefore outside the scope of matters properly considered on appeal. 43 C.F.R. § 4.318 (except where manifest error or injustice is evident, appeal is limited to issues that were before the IPJ in the petition for rehearing or reconsideration); *Estate of Donald E. Blevins*, 44 IBIA 33, 34 (2006). Accordingly, we affirm the IPJ's denial of rehearing.

### **Background**

Decedent was born on November 8, 1969, and died intestate on May 25, 2002. At the time of his death, he was a resident of Montana and a member of both the Nisqually Tribe of Washington and also the Northern Cheyenne Tribe of Montana. Decedent fathered two children with his first wife, Amber Nohealani Kinney. The couple divorced in 1996, and the record contains no information regarding Kinney, her whereabouts or status, or her continued involvement with her children. The children — Keoni, born May 17, 1992, and Kahelelani, born July 21, 1993 — subsequently went to live with and be raised by Appellant, their paternal grandmother, at a date and for reasons not disclosed in the record. Decedent married Barbara Jean Kalama (Barbara) on February 19, 2002.

At the time of his death, Decedent owned trust or restricted real property interests in land located on the Nisqually Reservation and valued for probate purposes at \$7,257.50. He owned an IIM account with a balance of \$0.03 at the time of death, but which grew to \$16,689.86 at the time the estate was submitted to probate in 2007.<sup>2</sup>

On March 28, 2007, Appellant was appointed guardian ad litem for the children for purposes of probating the estate. Judge Yellowtail conducted a hearing with respect to Decedent's estate on June 5, 2007, after duly notifying interested parties. Alaina appeared, and Barbara attended, represented by a relative. At the hearing, Alaina denied having been aware that her son had married Barbara, and objected to the introduction into evidence of their marriage certificate.

The IPJ issued his decision distributing Decedent's estate on June 15, 2007. He determined that Decedent and Barbara were married at the time of Decedent's death and ordered distribution of Decedent's trust or restricted real property interests on the Nisqually Reservation according to sections 11.04.015(1)(b) and (2)(a) of the Washington Revised

---

<sup>2</sup> The record verifies that the income in the IIM account did not derive from the Nisqually property but from funds inherited by Decedent from the tribal purchase of his grandmother's real property interests on the Yakima Reservation. *See* 25 U.S.C. § 607; 43 C.F.R. § 4.308.

Code. Thus, he directed that Barbara would receive one-half of Decedent's trust or restricted real property interests and that Keoni and Kahelelani would each receive one-quarter of those interests. He explained that distribution of the IIM account would proceed in accordance with the laws of Montana, where Decedent resided at the time of his death. Pursuant to Mont. Code. Ann. § 72-2-112(4), the IPJ directed that the IIM account descend entirely to Barbara as Decedent's surviving spouse.

Alaina submitted her Petition to the IPJ on August 13, 2007. She asserted that she was not aware until the introduction of the marriage certificate at the hearing that Barbara and her son had married. Petition at ¶ 3. She "request[ed] child support" for Decedent's children, *id.* at ¶ 4, and asserted a demand for monthly child care costs she claimed to have incurred since May 25, 2002. *Id.* at ¶ 5. She also asserted a demand for future support "from the June 5, 2007, date of the Probate Court Hearing," for the same monthly amount per child until that child "completes college or trade school." *Id.* at ¶¶ 6-7. In addition, she sought reimbursement of costs incurred for braces for Keoni, for annual visits to the Nisqually Reservation, and for annual clothing and supply needs of each child since 2002. *Id.* at ¶¶ 8-10. In another paragraph, she asserted a total claim for reimbursement of her own past and future expenses until the children reach the age of 25. *Id.* at ¶ 11. Finally, she asked for a rehearing because "[i]t is outrageous for this decision to be final without considering child support." *Id.* at ¶ 12.

Judge Yellowtail denied the Petition by the August 20, 2007, Order challenged in this appeal. He concluded that, to the extent Appellant's asserted claim sought money from Decedent's widow, it was a request for child support filed in the wrong forum. He also concluded:

To the extent Alaina's claim is against the estate, it is clearly not timely. . . .  
[T]o the extent she desires reimbursement from the Decedent's estate for the costs of raising his children, she has always had the necessary information to enable her to file a claim against the trust assets of his estate.

Citing 43 C.F.R. § 4.250(a), the IPJ explained that Appellant was obligated to submit any claim for child care costs within 60 days of the date BIA receives the death certificate, or 20 days of the date the creditor is chargeable with notice of the death, whichever date is later.<sup>3</sup> He thus found Appellant's demands for child support to be untimely under that rule.

---

<sup>3</sup> The rules governing submission of claims have changed, effective December 15, 2008. *See* 73 Fed. Reg. at 67,294-95 (43 C.F.R. §§ 30.140 - 30.148).

Alaina timely appealed to this Board. In her Notice of Appeal (NOA), Appellant explains that the delay in ascertaining the nature of her claim derived from grief and pain surrounding the loss of her son. She clarifies that she did not mean to seek child support, but rather only presented documentation of her costs so that the Department could “make a sound decision.” NOA at 1. She states: “I request that my two grandchildren . . . be given a part of my late son’s estate.” *Id.*

On February 25, 2008, Appellant submitted a Brief, with nine enumerated “Findings and Conclusions” and a request for a rehearing. She asserts that initially she submitted a “petition for a Rehearing and including Child Support for the children and it was approved.” Brief at ¶ 5. She avers that the IPJ “later . . . denied the Rehearing.” *Id.* at ¶ 6.<sup>4</sup> She asserts that Barbara’s act of filing her marriage license at the probate hearing had the effect of “legally claiming a marriage to the Decedent, therefore laying legal responsibility to the Decedent’s children.” *Id.* at ¶ 8. She claims that because Barbara received 100 percent of the IIM account, Barbara should share the funds with the children because the money ultimately is derived from funds left by their great grandmother.

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 this burden and thus we affirm.

In her Notice of Appeal, Appellant argues that the reason for her Petition was her request for the children to receive a portion of their father’s estate. In fact, they did each receive a one-quarter share of his trust and restricted real property interests on the Nisqually Reservation. In her Brief, Appellant acknowledges that only the IIM account was distributed without a share given to the children. Thus, we presume that Appellant only means to challenge the descent of the IIM account to Decedent’s widow.

But she did not raise this issue in her Petition. As an issue presented for the first time on appeal, it is therefore one we normally decline to consider. *Isaac A. Bunney and Cheri L. Bunney v. Pacific Regional Director*, 49 IBIA 26, 31 (2009), citing 43 C.F.R.

---

<sup>4</sup> The basis for these assertions is not clear to us; the IPJ did not ever approve the Petition for Rehearing or the request for child support asserted in it.

§ 4.318. To the extent Appellant does not understand why the IPJ distributed 50 percent of Decedent's real property interests in Washington to the children, but none of the IIM account, she is apparently unaware that different laws apply to the two different types of trust interests. IIM account funds that are part of an estate pass in accordance with the law of the state where the decedent was domiciled. *Estate of Samuel R. Boyd*, 43 IBIA 11, 21 (2006). As Decedent resided in Montana, his IIM account must pass in accordance with Mont. Code Ann. § 72-2-112(4), which requires that the surviving spouse receive the "the first \$100,000, plus one-half of any balance of the intestate estate," with the remainder of the estate divided equally among any children of the decedent. *Estate of Marjorie Jean Rider Bull Bear*, 49 IBIA 1, 4 (2009). Because Decedent's IIM account was valued at less than \$100,000, the trust personalty in the estate (IIM funds) was ordered to be distributed entirely to Barbara.

Appellant has not argued any specific error committed by the IPJ in the Order Denying Rehearing. To the contrary, Appellant concludes her NOA as follows: "For the future resolution of these grand children's care, I will go through the appropriate child support courts as you so clearly recommend." She does not otherwise argue that the IPJ erred in his conclusion that, as a claim against the estate, her request for reimbursement of child care expenses was untimely.<sup>5</sup> Thus, even assuming that Appellant had first raised her claim concerning the IIM account before the IPJ, she fails to make any argument showing that the IPJ erred in determining that Barbara is entitled to all of the funds in the account. Therefore, we affirm the IPJ's Order Denying Rehearing.

---

<sup>5</sup> The IPJ's order should not be read to imply that a claim under 43 C.F.R. § 4.250 was the appropriate route for seeking child care cost reimbursement, in the absence of a decree or provable agreement that such care is to be compensated. Under 43 C.F.R. § 4.250(d) (2007), a claim for care for a decedent must be submitted with "clear and convincing evidence that the care was given on a promise of compensation and that compensation was expected." *Estate of Gus Four Eyes, Jr.*, 20 IBIA 22, 23 (1991) (claim for compensation for care services given a decedent is denied without evidence of a promise to pay the claimant for the services rendered); *see also* 73 Fed. Reg. at 67,294 (43 C.F.R. § 30.143). Therefore, a claim for the cost of the care of a third party would have to be based on contract, and Appellant's claim was not so based.

## 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 Order Denying Rehearing.

I concur:

\_\_\_\_\_  
// original signed  
Lisa Hemmer  
Administrative Judge\*

\_\_\_\_\_  
// original signed  
Debora G. Luther  
Administrative Judge

\*Interior Board of Land Appeals, sitting by designation.