



INTERIOR BOARD OF INDIAN APPEALS

Estate of Clark Valentine Bellonger

49 IBIA 284 (06/24/2009)

effect of his adoption on his right to inherit from Decedent. Appellant does not challenge Judge Yellowtail's Order Granting Reopening or any aspect of the Amended Decision altering the 2004 Decision. Therefore, we dismiss the appeal as outside the scope of an appeal from the Order Granting Reopening or the Amended Decision.

Background

Decedent was born October 3, 1954, and died intestate on December 16, 2001. His parents, his wife, and his only child (an infant) predeceased him. Decedent's mother, Joyce Ann Clark Bellonger, had three children: Decedent Clark Bellonger; Laurel (Laura) Clark, born in 1952; and Appellant Earl Allen Bellonger Miller, born June 1, 1958. Evidence in the record indicates that all three children had different fathers and that the relationship among the three was as half-siblings through their biological mother. There is no dispute that Earl and Laurel are half-siblings of Decedent through their mother. Joyce Ann Clark Bellonger died on October 6, 1962. All three of her children shared equally in her estate. Order Determining Heirs, Estate of Joyce Ann Clark Bellonger, Probate No. K-12466, Aug. 31, 1966. Decedent's father was Rudolph V. Bellonger. It is also not disputed that Appellant was subsequently adopted in or about 1966.

After Decedent's birth, Joyce and Rudolph separated and Rudolph went on to father three daughters with Gladys Cloud: Mavis Bellonger Resemius, born June 15, 1957; Delilah A. Cloud, born December 21, 1958; and Brenda Lee Cloud Gilbertson, born January 11, 1961. There is no dispute that these three of Rudolph's children are also half-siblings of Decedent through their biological father. Rudolph died intestate on October 31, 1980. His estate was divided equally among his four children borne to the two mothers. Order Determining Heirs, Estate of Rudolph Valentino Bellonger, July 19, 1988. This order concluded that Rudolph "could not have been the father of" Appellant Earl Bellonger Miller. *Id.*

At the time of his death, Decedent lived in Minnesota and had real property interests held in trust located within tribal reservation boundaries in five states: (1) the Fort Peck Reservation in Montana; (2) the Fort Berthold Reservation in North Dakota; (3) the Lake Traverse Reservation of the Sisseton-Wahpeton Sioux Tribe in North and South Dakota; (4) the Winnebago Reservation in Nebraska; and (5) the Cheyenne and Arapaho Reservation in Oklahoma. He also had an IIM account that contained \$7.60 at the time of his death.

Judge Holt conducted probate proceedings. Both Appellant and Laurel testified at a hearing conducted on October 3, 2003. No notice of this hearing was sent to Decedent's paternal half-sisters and they did not appear. Both Appellant and his sister testified that they did not know whether Rudolph had other children besides Decedent. Accordingly, the 2004

Decision distributed the estate only to Laurel and Appellant. In doing so, Judge Holt explained that Appellant had been adopted legally outside of Decedent's family. Based upon the laws of the States of Montana, North Dakota, and Nebraska, he concluded that Decedent's trust real estate interests in those states and his IIM account would be distributed only to Laurel, because these states did not permit intestate descent of a decedent's estate to a biological relative adopted outside the biological family.¹ Judge Holt concluded that Oklahoma law was different, and did allow such inheritance of real property interests by an adopted child, and therefore directed that Appellant and Laurel share equally in Decedent's interests in real estate held in trust within the Cheyenne and Arapaho Reservation. Finally, Judge Holt concluded that the portion of the estate located on the Lake Traverse Reservation was to be determined under the Act Pertaining to the Inheritance of Trust or Restricted Land on the Lake Traverse Indian Reservation in North and South Dakota (Sisseton-Wahpeton Act), Pub. L. No. 98-513, § 3(a)(5), 98 Stat. 2411 (1984). Under that statute, Judge Holt explained, an heir or devisee must be an enrolled member of the Sisseton-Wahpeton Sioux Tribe in order to inherit trust or restricted land. If not so enrolled, an heir or devisee may only receive a life estate in such land. He concluded that the land on the Lake Traverse Reservation would be split equally between Laurel and Appellant, and conveyed as life estates, because both are members of the Fort Peck Tribe but not members of the Sisseton-Wahpeton Sioux Tribe.²

The 2004 Decision was served on Appellant. No Petition for Rehearing was filed.

On February 12, 2007, Mavis Bellonger Resemius sent a letter to Judge Yellowtail alerting him to the existence of Decedent's three half-sisters through their father. Pursuant to an order of the IPJ, Resemius later explained that she learned of her half-brother's death in February 2007 and was neither served with notice of, nor was she in the vicinity of, any public notices regarding, the 2003 probate hearing. Letter from Mavis Resemius to Office of Hearings and Appeals, June 21, 2007. Accordingly, on October 26, 2007, Judge Yellowtail issued the Order Granting Reopening. He also issued the Amended Decision adding the three half-sisters to the distribution of Decedent's estate.

¹ The ALJ applied Montana law to determine the heirs of Decedent's IIM account.

² He also noted that the Sisseton-Wahpeton Act required escheat of any interests less than 2.5 acres in size. He withheld final decision with respect to such trust property until an anticipated determination of the constitutionality of this provision was rendered in the United States District Court for the District of South Dakota. The provision was subsequently held to be unconstitutional. *See Estate of Vincent Duane Ducheneaux*, 48 IBIA 167, 171-72 (2008).

With respect to Appellant, the Amended Decision changed the distribution of the estate in the following respects. First, additional heirs were added, and therefore, while Appellant and Laurel had received 50% of Decedent's interests in trust real property on the Cheyenne and Arapaho Reservation in Oklahoma under the 2004 Decision, as a result of the Amended Decision they and Decedent's paternal half sisters each would receive 20% of each of those interests. Second, Judge Yellowtail corrected Judge Holt's legal error in the distribution of the IIM account funds under Montana law to reflect that the account would be distributed under the laws of Minnesota, where Decedent resided at the time of death. *See Estate of Samuel R. Boyd*, 43 IBIA 11 (2006). Nonetheless, the result with respect to distribution of the IIM account to Appellant remained the same -- he did not share in it. Judge Yellowtail explained that the laws of neither Minnesota nor Montana allow an adopted child to inherit from his biological family members, and therefore Appellant would not share in the IIM account in either case. Third, Judge Yellowtail amended the distribution of Decedent's interests on the Lake Traverse Reservation. He explained that under the Sisseton-Wahpeton Act, an heir who is not an enrolled member of the Sisseton-Wahpeton Sioux Tribe is entitled to a life estate only if the heir is "eligible," a term defined to include only a spouse, child, or grandchild of the decedent. Noting that they are half-siblings of Decedent and non-members of the Sisseton-Wahpeton Sioux Tribe, the IPJ concluded that neither Laurel nor Appellant is an "eligible heir" entitled to share in any portion of Decedent's estate on the Lake Traverse Reservation.

Appellant submitted an appeal to this Board. Appellant argues that on the 1962 date of the death of his biological mother (Joyce), Montana law then in effect did not require an adopted child to "cease[] to be the heir of its natural parent." Opening Brief at 3, citing R.C.M. 1947 §§ 61-134 and 61-135.³ Accordingly, Appellant concludes that he is "entitled to an intestate share of brother Clark's estate as a descendent of brother Clark's mother who is also Appellant's mother, Joyce Ann Clark B[e]ll[o]nger." Opening Brief at 2. He contends that this right was fixed on the date of his mother's death or his 1966 adoption. Citing the current Montana Code Annotated section 72-2-124(3), Appellant argues that his mother treated him as her child before her death and his adoption, and therefore he is entitled to inherit from his half-brother. Finally, he argues that his right to inherit from his biological mother vested upon her death and that his subsequent adoption could not affect his right to inherit from his biological siblings.

No other briefs were submitted.

³ We do not necessarily agree with Appellant's characterization of Montana law in the 1960s but, for reasons stated below, we need not address that issue.

Discussion

We must dismiss the appeal. Appellant has standing only to appeal from amendments made in the Amended Decision, or a particular ruling in the Order Granting Reopening. As noted above, with respect to Appellant, the Amended Decision effectuated three changes. Appellant does not appeal from any one of these rulings. First, the Amended Decision reduced his proportionate share of Decedent's estate interests located in Oklahoma. The Order Granting Reopening did the same by permitting Decedent's three additional half-sisters to share in the estate. Appellant does not object to this conclusion or argue that Decedent's half-sisters through Rudolph are not entitled to share in these interests. Second, the Amended Decision excluded Appellant and Laurel from receiving any portion of Decedent's estate on the Lake Traverse Reservation because they are non-members of the Sisseton-Wahpeton Sioux Tribe and, as Decedent's siblings, are therefore not "eligible heirs" under the Sisseton-Wahpeton Act. Appellant does not argue that Judge Yellowtail's construction of that statute is in error or that he is an "eligible heir" under the statute as a half-sibling. Third, Judge Yellowtail concluded that the IIM account would descend under the laws of Minnesota rather than Montana. Appellant does not argue that this conclusion is wrong, or that Judge Yellowtail misconstrued the laws of Minnesota. Therefore, he has not challenged any aspect of the Amended Decision.

Appellant's appeal is a challenge to the outcome rendered in the 2004 Decision, and is therefore untimely. There, Judge Holt established that Appellant, as a child adopted outside his biological mother's family, could not inherit any portion of the IIM account or real estate interests held in trust on the Fort Peck Reservation in Montana, the Fort Berthold Reservation in North Dakota, or the Winnebago Reservation in Nebraska; Judge Holt also held that any rights to inherit land on the Lake Traverse Reservation in North Dakota and South Dakota would be determined by the Sisseton-Wahpeton Act. Appellant did not challenge the 2004 Decision or these conclusions in a Notice of Rehearing filed timely pursuant to 43 C.F.R. § 4.241 (2004). Resemius's 2007 Petition to Reopen and Judge Yellowtail's determination to reopen the estate to include the omitted half-sisters as heirs did not also reopen a right to appeal which Appellant waived in 2004.

Relevant to this appeal, this Board's jurisdiction is limited to review of an order on a petition to reopen. 43 C.F.R. § 4.320(d), 73 Fed. Reg. 67,256 (Nov. 18, 2008) (effective Dec. 15, 2008). Appellant's appeal to this Board is limited to an appeal from the IPJ's Amended Decision or the Order Granting Reopening. *Estate of David Martin Champagne*, 49 IBIA 209, 210 (2009). Appellant does not challenge any issues addressed by the IPJ in his Amended Decision. Thus, the issue presented to the Board is outside the scope of an appeal from the IPJ's Amended Decision, for which reason we dismiss Appellant's appeal.

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, the appeal is dismissed

I concur:

// original signed
Lisa Hemmer
Administrative Judge*

// original signed
Debora G. Luther
Administrative Judge

*Interior Board of Land Appeals, sitting by designation.