



INTERIOR BOARD OF INDIAN APPEALS

Estate of Patricia Louise Umtuch

50 IBIA 76 (07/22/2009)

Petition for Reconsideration dismissed:
50 IBIA 251

Background

The facts of this case begin with the death of Appellant's grandmother, Josephine Miller Umtuch (Josephine). Though the record does not include material from Josephine's probate proceeding, it is clear that Josephine predeceased her son George. At her death, Josephine possessed trust interests in Allotment numbers 243, 247, 534, 660, 662, 662-A, 662-B, 662-C, 663, 664, and 665 (the Allotments), located within the boundaries of the Reservation.¹ George died intestate on January 19, 1995, before Josephine's estate was probated. Both Josephine and George were members of the Tribe.

The Board obtained the record for George's estate. *Estate of George Umtuch*, Probate No. IPSA16N03. George was survived by his widow, Decedent, "Patricia Louise Wilcher Umtuch." Patricia was born in Oklahoma and raised in Texas by Dwight and Lorene Wilcher, and there is conflicting information in the record as to whether her birth parents were of Cherokee and Kiowa descent.² George and Patricia bore seven children together between 1957 and 1966: Glenn David, Sue Ellen, Kathryn Louise, George Michael, Lorene Eleanor, Jonathan Allan, and Mary Kaye Umtuch. Decedent died intestate, a resident of Washington but in hospice care in Oregon, on December 10, 2001. At the time of Patricia's death, neither George's nor Josephine's estates had been resolved by final probate decisions.

Through a series of orders, the Office of Hearings and Appeals (OHA) conducted probate proceedings to determine the proper distribution of George's estate, which consisted entirely of the Allotments. A 2003 Order with respect to George's estate established his heirs but was not final due to the fact that he was a potential heir in the estate of his mother Josephine. Order Determining Heirs, June 26, 2003, *Estate of George Umtuch*. According to a subsequent order entered in George's estate in 2005, the probate of Josephine's estate had become final and George's estate inherited some or all of Josephine's interests in the 11 allotments. Order Reopening Estate and Order Re-Determining Heirs, Apr. 21, 2005, *Estate of George Umtuch* (2005 Order). There, Administrative Law Judge William E. Hammett determined that, at the time of George's death in 1995, his then-surviving spouse Patricia was the only heir to his real property interests held in trust. *Id.*

¹ We cannot determine from this record the extent of the interests in the Allotments owned by Josephine or whether George inherited all or a part of her interests. Hereafter, any reference to "the Allotments" refers to the interests in them that passed from Josephine's estate to George's estate.

² It is also unclear whether Decedent was formally adopted by the Wilchers.

But Judge Hammett also observed that, under the Act of August 10, 1972, also known as the Warm Springs Inheritance Act (WSIA), Public Law 92-377, 86 Stat. 530, Congress established that the Tribe may exercise an “option to purchase interests in trust properties which would otherwise pass to persons who are not enrolled members of the Warm Springs Tribes.” *Estate of Ruby Ruth Maldonado*, 38 IBIA 196, 197 (2002). Section 1(a) of the WSIA provides in part:

A person who is not an enrolled member of the Confederated Tribes of the Warm Springs Reservation of Oregon shall not be entitled to receive by devise or inheritance any interest in trust or restricted lands within the Warm Springs Reservation or within the area ceded by the treaty of June 25, 1855 (12 Stat. Treaties, 37), if, while the decedent’s estate is pending . . . the Confederated Tribes of the Warm Springs Reservation of Oregon pay to the Secretary of the Interior, on behalf of such person, the fair market value of such interest as determined by the Secretary of the Interior after appraisal.

Because Patricia was not a member of the Tribe, Judge Hammett determined that the Tribe must be given an option to purchase the Allotments and that the real property must be appraised. 2005 Order. In a subsequent order, Indian Probate Judge M.J. Stancampiano directed the preparation of appraisals of the subject properties as of the date of George’s death, pursuant to 43 C.F.R. § 4.301(a) and (b) (2005), *amended at* 43 C.F.R. § 30.264.³ Order Reopening, Mar. 22, 2006, *Estate of George Umtuch*. Appraisals were completed in August 2006, and Judge Lynch entered an order declaring that the fair market values for the Allotments totalled \$22,568.26 on the date of George’s death. Supplemental Order, Aug. 31, 2007, *Estate of George Umtuch*. This order gave the Tribe the option of purchasing the Allotments within 60 days. By letter dated September 10, 2007, the Tribe timely advised OHA and Decedent’s putative heirs of the Tribe’s intent to purchase the Allotments. On February 11, 2008, Judge Lynch’s office received a certification from the Bureau of Indian Affairs (BIA) confirming that the Tribe had deposited the full amount of the Allotments’ appraised value.⁴

³ The Department’s probate regulations were amended effective December 15, 2008, to incorporate the provisions of the American Indian Probate Reform Act of 2004, *as amended*, primarily codified at 25 U.S.C. §§ 2201 *et seq.* The regulations governing Indian probate hearings are now codified at 43 C.F.R. Part 30. Citations to 43 C.F.R. Part 4 are to the regulations codified in 2007, unless otherwise noted.

⁴ BIA also requested Judge Lynch to issue an order transferring title to the Allotments. *See* 43 C.F.R. § 4.307(b), now found at 43 C.F.R. § 30.273. It does not appear that an order has yet issued.

In 2006, Judge Lynch proceeded to probate Patricia's estate, pending the outcome of the probate of George's estate. After conducting a hearing to determine Patricia's heirs, Judge Lynch issued the Order Determining Heirs, dated August 31, 2007, finding that, because she died intestate, her estate would pass under State law in equal shares to her seven children. Judge Lynch explained that the only trust property included in Decedent's estate would be the property inherited from George's estate, and he described how the property would be distributed, depending on whether the Tribe exercised its option to purchase the Allotments in the probate of George's estate:

To the extent that the Warm Springs Tribe exercises its option to purchase the Warm Springs properties inherited by the "Estate of Patricia Umtuch," in the *Estate of George Umtuch*, the heirs identified in this decision shall receive that portion of the purchase price which corresponds to the [1/7] share noted for each heir above.

2007 Order at 2. Because this eventuality came to pass — that is, the Tribe exercised its option to purchase the Allotments — the sale proceeds went into Decedent's estate to be distributed in equal shares among her seven heirs.⁵

On October 1, 2007, an "appeal" letter (Letter), citing the probate number for Patricia's estate, was submitted seeking another hearing in the "estate in the matter of: Patty Louise Umtuch." Judge Lynch addressed the Letter as if it were a timely petition for rehearing filed pursuant to 43 C.F.R. § 4.241. The Letter contended that Decedent was adopted by the Wilcher family, that she was non-Indian, and that she was a non-member of the Tribe. It stated that Patricia's heirs "understood [that] if the spouse was non-Indian the estate would go to the enrolled heirs." Letter at 2. It stated that they "declined the selling" of the estate real property. *Id.*

On January 18, 2008, Judge Lynch declined to order a rehearing. Noting procedural defects in the Letter that would prevent his granting a rehearing under 43 C.F.R. § 4.241, he also denied rehearing even assuming such defects could be cured. He first described the record evidence that Decedent was of both Kiowa and Cherokee heritage, and cited orders in

⁵ Judge Lynch explained that, had the Tribe chosen not to purchase any of the Allotments from George's estate, interests not purchased would have been distributed to Decedent's estate and would then have been inherited in equal shares by her seven heirs, but distributed to them only if they were members of the Tribe. Interests of any heirs not enrolled with the Tribe would have then been subject to a separate and second purchase option under the WSIA before they could have been distributed.

Estate of George Umtuch that were not appealed and were thus final, which listed Patricia as a Cherokee. Order Denying Rehearing at 2. He explained further that, whatever Decedent's ancestry, so long as she was not a member of the Tribe, the outcome under the WSIA would be the same: she could not inherit the Allotments if the Tribe opted to purchase them. *Id.*

Appellant appealed to the Board in the "matter of the estate of Patty L. Umtuch." Notice of Appeal. She reiterates that Patricia was a non-Indian and asserts that, consequently, the land of her "grandmother Josephine Miller Umtuch is not for sale. . . [and] is to be left alone!" *Id.* On March 24, 2008, Appellant sent a letter to the Board repeating her concerns regarding her mother's ancestry and asking, "who is to decide these matters?" On July 16, 2008, Appellant submitted an Opening Brief. She submits information purporting to be a "family tree from my mother's side," dating back to 1588 in England. Conceding that the Tribe has no tribal enrollment information for Decedent, Appellant acknowledges that Decedent was never a member of the Tribe. She asks the Board to ensure that the land "remain untouched" and that it not be sold.

No other briefs were submitted.

Discussion

We must dismiss this appeal because the Board cannot grant the requested relief, i.e., prevent the sale of the Allotments to the Tribe from George's estate through consideration of this appeal in Decedent's estate. Even if that were not the case, we would reject Appellant's arguments. Appellant appears to believe that if the Board were to determine that her mother was a non-Indian, the outcome would be that the land interests passed down from her grandmother Josephine to her father George could not be sold to the Tribe. This is simply not the case. As Judge Lynch correctly explained in the Order Denying Rehearing, under the WSIA, any trust real property located within the Reservation and owned by a decedent whose heir is not a member of the Tribe is subject to a tribal purchase option. Thus, the purchase option turns not on whether Patricia was Indian or non-Indian, but on whether she was a member of the Tribe. She was not, and this fact has never been in dispute. Therefore, because Patricia (a) was the heir to George's estate and (b) was not a member of the Tribe, the Tribe had a statutory option to purchase the Allotments from George's estate. This Board cannot ignore the requirement of Federal law that grants a purchase right to the Tribe. Accordingly, nothing we might consider with respect to whether Decedent is non-Indian would change the outcome to allow her heirs to avoid the consequences of the Tribe's decision to purchase the Allotments.

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.